

Sponsored by: Snead

**CITY OF MARATHON, FLORIDA
RESOLUTION 2009-136**

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 \$16,000; 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 continue 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.

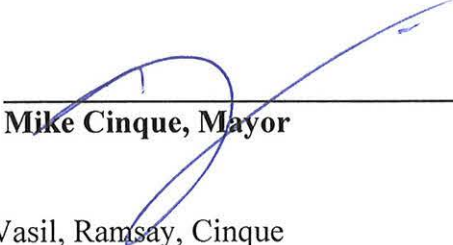
Section 2. Approval of Agreement. The Agreement for Professional Services between the City and the Land Trust, a copy of which is attached as Exhibit “A” hereto, together with such non-material changes as may be acceptable to the City Manager and approved as to form and legality by the City Attorney, 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 22nd of September, 2009.

THE CITY OF MARATHON, FLORIDA



Mike Cinque, Mayor

AYES: Snead, Worthington, Vasil, Ramsay, 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

**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 affordable 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 City hereby retains the services of the Land Trust to provide affordable housing consulting services to the City as further described below. In performing the services under this Agreement, the Land Trust is not acting as a real estate broker, loan officer, mortgage broker, title company or attorney. The Land Trust is simply providing a service to the City for the purposes of collecting and maintaining information about affordable housing and affordable housing deed restrictions approved under the City's Land Development Regulations. As part of this role, the Land Trust will provide information to the public about affordable housing, but will not be required to provide professional advice to the public.

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 City has approved approximately fifty (50) owner-occupied affordable units to date. It is anticipated that additional owner-occupied affordable units will be approved from time to time in the future. Not later than February 1 of each year, 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. The notice shall remind owners of such units of the requirements for affordable deed restrictions and the need to coordinate with the City or the Land Trust at time of sale. Notification shall be by regular mail and certified letter. The Land Trust will use any reasonable means at

its disposal to contact the owner of the deed restricted property. Copies of all notifications shall be provided to the Planning Department within seven days of issuance.

ii. RENTAL UNITS

The City has approved approximately fifty (50) affordable rental units to date. It is anticipated that additional affordable rental units will be approved from time to time in the future. Not later than February 1 of each year, 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. The parties acknowledge that the Land Trust need not track compliance for the units at Seagrape Apartments as it is understood that there will be continuous monitoring through the firm managing the apartments. The notice will seek confirmation and verification that the residence in question still meets the constraints of the required deed restriction. 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. The Land Trust will further use any reasonable means at its disposal to contact the owner of the deed restricted property. If the owner of a deed restricted property fails to respond or does not provide an adequate response, then the Land Trust will notify the Planning Department as part of its regular reporting requirements so that the City may take further legal action as it deems appropriate. The Land Trust's principle responsibility will be to confirm and report compliance or non-compliance with the City's requirements for affordable deed restrictions. Copies of all owner notifications and Certificates of Compliance shall be provided to the Planning Department with seven days of issuance.

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 also use all reasonable efforts to identify any units where the owner has moved out and rented the property in contravention of the deed restriction. The Land Trust shall notify the buyer/owner requesting compliance with the requirements and obligations of the deed restriction. The Land Trust will use any reasonable means at its disposal to contact the owner of the deed restricted property. If the owner of a deed restricted property fails to respond or does not provide an adequate response, then the Land Trust will notify the Planning Department as part of its regular reporting requirements so that the City may take further legal action as it deems appropriate. The Land Trust's principle responsibility will be to determine through the public record of sales, homestead records and by any other reasonable means, when properties have been sold to new owners who do not meet the affordable criteria or rented in contravention of the deed restriction. Copies of all notifications and Certificates of Compliance shall be provided to the Planning Department within seven days of issuance.

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. The Land Trust will provide a courtesy notification to all affordable property owners as part of its normal compliance monitoring, reminding the owner, that should they sell, they will need to coordinate with the Land Trust to qualify the new owner. Copies of all notifications and Certificates of Compliance shall be provided to the Planning Department within seven days of issuance.

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. Such efforts will include information about the constraints of the deed restriction and the reporting obligations under the deed restriction. The effort will be pro active and friendly, completed with the goal of assisting the new owner through the entire process of deed restricting their residence. Copies of all notifications and Certificates of Compliance shall be provided to the Planning Department within seven days of issuance.

All compliance monitoring shall be conducted to meet the requirements of the City of Marathon Land Development Regulations, Chapter 104, Article 1, Affordable Housing and, if applicable, Chapter 107, Article 1, Building Permit Allocation System. The Land Trust shall maintain tracking and documentation of all affordable deed restricted properties as set forth herein.

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 to, but shall not be required to provide professional advice to the public, 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 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 will also assist with and monitor newly added deed restricted units particularly as such units may involve Transferable Building Rights (TBRs). 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. DIRECT TECHNICAL ASSISTANCE TO CITY

The Land Trust shall regularly and actively participate in meetings of the City of Marathon Affordable Housing Committee, the Land Acquisition Committee, and the CDBG Committee. The Land Trust will also 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.

E. 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
- CL T 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.

F. REPORTING

Not later than the fifth day of each month, the Land Trust shall provide a monthly status report to the Planning Department. After review and approval by the Planning Department, the Land Trust will distribute the report to the City Manager and City Council. The report shall incorporate a discussion of the activities within each of the contracted areas (Item 1. A through E.) above whether there has been substantial activity or not. A representative of the Land Trust (Board and or staff) shall present an oral update to the City Council on a quarterly basis at a regularly scheduled meeting of the City Council or more frequently as may be requested 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.

G. 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. Such services could include the identification of properties, funding sources, and projects in furtherance of the City's goals to develop sound and affordable housing within the Marathon community. 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, 2009 upon execution by both parties and shall remain in effect through September 30, 2010, 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 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. All invoices must be accompanied by a monthly status report developed by the Land Trust. The City shall not be obligated to pay any invoice for which a monthly report is not provided. The City shall otherwise pay the invoice in accordance with the Florida Prompt Payment Act.

3.2. 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 \$16,400 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, 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.

4.5 On a timely basis, provide to the Land Trust all pertinent information regarding affordable BPAS allocations that have been granted by the City, as well as any development orders or development agreements that contain affordable housing requirements.

5. Termination.

5.1. The City Manager may terminate this Agreement without cause 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 hereof

5.4. The Land Trust shall transfer all data and documents specifically related to this agreement including, 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 terminate this Agreement without cause 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. Subject to statutory limitations, the City shall defend, indemnify, and hold harmless the Land Trust, 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 City's performance or non-performance of any its obligations under this Agreement. The City shall reimburse the Land Trust 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 City's performance or non-performance of this Agreement.

9.3. The provisions of this section shall survive termination or expiration 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:

Clyde Burnett, City Manager
City of Marathon
9805 Overseas Highway
Marathon, FL 33050
(305) 289 4102

With a copy to:

Jimmy L. Morales
Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.
Museum Tower, 150 W. Flagler Street, Suite 2200
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.

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.

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.

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.

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.

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.

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.

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.

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.

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.

REMAINDER OF PAGE LEFT INTENTIONALLY BLANK

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:

Marie Clavier
City Clerk

CITY OF MARATHON

Clyde Burnett
By:

Date:

MIDDLE KEYS COMMUNITY
LAND TRUST, INC.

[Signature]
By:

Date: 12/9/09

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

<i>Item</i>	<i>Flat Fee</i>
• Item A through E	\$16,000.00 *
• Item G	By amendment of Scope of Services **

* Flat Fee to be divided into twelve equal monthly invoices

** Scope and Cost of Additional Technical Assistance to be negotiated