

**CITY OF MARATHON, FLORIDA  
RESOLUTION 2015-121**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, APPROVING AN INTERLOCAL AGREEMENT BETWEEN MONROE COUNTY AND THE CITY OF MARATHON TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL ALLOCATIONS FOR A PROJECT KNOWN AS ANCHORAGE HOMES LLC; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City of Marathon (the "City") wishes to enter into an Interlocal Agreement with Monroe County (the "County") for the purposes of Transferring affordable housing unit allocations; and

**WHEREAS**, the Interlocal Agreement with the County is in the best interest of Monroe County and the City of Marathon for the purposes of providing opportunities for affordable housing,

**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.

**Section 2.** The Interlocal Agreement (ILA) attached hereto as Exhibit "A", between Monroe County and the City of Marathon Transferring Affordable Housing Residential Allocations For A Project Known As Anchor Homes LLC is hereby approved. The Mayor is authorized to sign the ILA on behalf of the City, and the City Manager is authorized to expend budgeted funds on behalf of the City.

**Section 3.** This resolution shall take effect immediately upon its adoption.

**PASSED AND APPROVED BY THE CITY COUNCIL OF THE CITY OF MARATHON, FLORIDA, THIS 13<sup>th</sup> DAY OF OCTOBER, 2015.**

**THE CITY OF MARATHON, FLORIDA**

  
\_\_\_\_\_  
**Mayor Chris Bull**

AYES: Kelly, Senmartin, Zieg, Bull  
NOES: None  
ABSENT: Keating  
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:**



\_\_\_\_\_  
David Migut, City Attorney

**INTERLOCAL AGREEMENT BETWEEN  
MONROE COUNTY AND THE CITY OF MARATHON  
TRANSFERRING AFFORDABLE HOUSING RESIDENTIAL ALLOCATIONS**

This Agreement (“Agreement”) is made and entered into this \_\_\_\_ day of \_\_\_\_\_, 2015, by and between Monroe County, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, Florida 33040 (“County”), and the City of Marathon, a municipal corporation of the State of Florida, whose address is 9805 Overseas Highway, Marathon, Florida 33050 (the “City”).

**WITNESSETH:**

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

**WHEREAS**, Policy 101.2.15 of the Year 2010 Monroe County Comprehensive Plan allows rate of Growth Ordinance building permit allocations (ROGOs) for affordable housing projects to be pooled and transferred between local government jurisdictions within the Florida Keys Area of Critical Concern, if accomplished through an interlocal agreement between the sending and receiving local governments; and

**WHEREAS**, Chapter Five (5) of the City Comprehensive Plan identifies goals, objectives and policies to provide for development pursuant to intergovernmental coordination and interlocal agreements; and

**WHEREAS**, Monroe County and the City of Marathon have previously entered into Interlocal Agreements to transfer ROGOs; and

**WHEREAS**, Monroe County and the City of Marathon recognize the potential economic value of such transferable affordable allocations; 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 governmental 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 State of Florida Housing Finance Corporation (FHFC) Low Income Housing Tax Credits (LIHTC) application deadline is October 15, 2015; and

**WHEREAS**, Anchorage Homes, LLC, and/or Seagrass Village, Ltd., a Florida limited partnership and or their assigns will be an applicant for FHFC LIHTC funding for 36 affordable housing units (hereinafter referred to as "project") expected to be ranked and approved by the spring of 2016, with closing on the project expected to occur by the Fall of 2016; and

**WHEREAS**, Anchorage Homes, LLC is an applicant for a Major Conditional Use to obtain approval for a project that includes thirty-six (36) affordable housing units expected to be heard and approved by the City of Marathon Planning Commission on September 21, 2015, after the Monroe County Board of County Commission is expected to the consider this Agreement at the following site:

**LEGAL DESCRIPTION - OFFICIAL RECORDS BOOK 1874, PG 87**

Tract Eight (8) in EDMONDS ACREAGE TRACTS, according to the Plat thereof, as recorded in Plat Book 2 at Page 100 of the Public Records of Monroe County, Florida; LESS all of DAY'S SUBDIVISION, according to the plat thereof, as recorded in Plat Book 3 at Page 15 of the Public Records of Monroe County,

**AND**

A parcel of bay bottom land in the Straits of Florida South of and adjacent to Government Lot 1, Section 11, Township 66 South, Range 32 East of Key Vaca, Monroe County, Florida and being more particularly described by metes and bounds as follows:

Commencing at the intersection of the West line of Government Lot 1, Section 11, Township 66 South, Range 32 East and the Southeasterly right-of-way line of U.S. Highway No. 1, bear Northeasterly along the Southeasterly right-of-way line of U.S. Highway No. 1 for a distance of 746.2 feet to a point; thence bear due South for a distance of 1450 feet, more or less, to a point on the shoreline of the Straits of Florida, said point also know as the point of beginning of the parcel of bay bottom land hereinafter described, from said point of beginning, continue bearing South for a distance of 1140 feet, more or less, to a point; thence at right angles and East for a distance of 238.88 feet to a point; thence at right angles and North for a distance of 1480 feet, more or less, back to the shoreline; thence meander the shoreline in a Southwesterly direction back to the point of beginning, containing 8.0 acres, more or less, and lying and being in the County of Monroe in said State of Florida.

**PROPERTY DESCRIPTION**

Tract Eight (8) in EDMONDS ACREAGE TRACTS, according to the Plat thereof, as recorded in Plat Book 2 at Page 100 of the Public Records of Monroe County, Florida; LESS all of DAY'S SUBDIVISION, according to the plat thereof, as recorded in Plat Book 3 at Page 15 of the Public Records of Monroe County, Florida, being more particularly described by metes and bounds as follows:

Commencing at the intersection of the West line of Government Lot 1, Section 11, Township 66 South, Range 32 East and the Southeasterly right-of-way line of U.S. Highway

No. 1, bear Northeasterly along the Southeasterly right-of-way line of U.S. Highway No. 1 for a distance of 746.2 feet to a point; thence bear due South for a distance of 880.00 feet to the Point of Beginning;

thence bear due East for a distance of 238.88 feet;

thence due South for a distance of 534.73 feet to the Mean High Water Line;

thence along the Mean High Water Line for the following five Calls:

thence S75°10'42"W for 20.96 feet; thence N89°25'23"W for 66.96 feet;

thence S83°19'51"W for 43.16 feet; thence N87°20'34"W for 81.33 feet;

thence S60°06'13"W for 31.78 feet; thence leaving the Mean High Water Line due North for a distance of 556.50 feet back to the Point of Beginning. Containing 129,452 sq. ft. (2.97 acres)

TOGETHER WITH:

#### PROPERTY DESCRIPTION

A parcel of bay bottom land in the Straits of Florida, South of and adjacent to Government Lot 1, Section 11, Township 66 South, Range 32 East of Key Vaca, Monroe County, Florida, being more particularly described by metes and bounds as follows:

Commencing at the intersection of the West line of Government Lot 1, Section 11, Township 66 South, Range 32 East and the Southeasterly right-of-way line of U.S. Highway No. 1, bear Northeasterly along the Southeasterly right-of-way line of U.S. Highway No. 1 for a distance of 746.2 feet to a point; thence bear due South for a distance of 1450 feet, more or less, to a point on the shoreline of the Straits of Florida, said point also to be known as the point of beginning of the parcel of bay bottom land hereinafter described; from said point of beginning, continue bearing South for a distance of 1440 feet, more or less, to a point; thence at right angles and East for a distance of 238.88 feet to a point; thence at right angles and North for a distance of 1480 feet, more or less, back to the shoreline; thence meander the shoreline in a Southwesterly direction back to the point of beginning, containing 8.0 acres, more or less, and lying and being in the County of Monroe in said State of Florida, being more particularly described by metes and bounds as follows:

Commencing at the intersection of the West line of Government Lot 1, Section 11, Township 66 South, Range 32 East and the Southeasterly right-of-way line of U.S. Highway No. 1, bear Northeasterly along the Southeasterly right-of-way line of U.S. Highway No. 1 for a distance of 746.2 feet to a point; thence bear due South for a distance of 1436.50 feet to the Mean High Water Line, said point also to be known as the Point of Beginning of the parcel of bay bottom land hereinafter described; from said Point of Beginning, continue bearing due South for a distance of 1453.50 feet; thence at right angles and due East for a distance of 238.88 feet; thence at right angles and due North for a distance of 1475.27 feet back to the Mean High Water Line;

thence along the Mean High Water Line for the following five Calls:

thence S75°10'42"W for 20.96 feet; thence N89°25'23"W for 66.96 feet;

thence S83°19'51"W for 43.16 feet; thence N87°20'34"W for 81.33 feet;

thence S60°06'13"W for 31.78 feet back to the Point of Beginning. Containing 350,698 sq. ft. (8.05 acres); and

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

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

**Section 1. TRANSFER:** The parties agree to permit the transfer of up to thirty- six (36)- comprised of thirty-two (32) low-income category and four (4) very low income category ROGO allocations from Monroe County to the City of Marathon for allocation, pursuant to this Agreement, and subject to the conditions contained therein, including but not limited to:

- a. Anchorage Homes, LLC, or its assignee, obtaining a Conditional Use approval prior to March 15, 2016.
- b. Anchorage Homes, LLC and/or Seagrass Village, Ltd., or their assignee, constructing and obtaining a certificate of occupancy for the affordable units related to such allocations prior to December 31, 2019.
- c. The filing of a 99 year Affordable Housing Deed Restriction on the new affordable housing units pursuant to this Agreement and the applicable requirements of the Code of Ordinances, City of Marathon, Florida.

**Section 2. ASSIGNMENT:** Monroe County has assigned its rights to the affordable allocations to the City, and the thirty-six (36) affordable housing allocations are to be issued by the City to be used specifically by Anchorage Homes, LLC, or its successor or assign (Assignment attached as **Exhibit "A"**), at the development in Marathon known as Seagrass located on 64<sup>th</sup> Street, Ocean, Marathon, Florida 33050 (Legal Description attached as **Exhibit "B"**). In the event the subject project or, as applicable, Anchorage Homes, LLC, or, as applicable, its assign(s) and successor(s) in interest or title, fail to obtain federal or state housing financial assistance and complete the construction as evidenced by issuance of a certificate of occupancy for all 36 units by the City of Marathon, any units which have not received a certificate of occupancy shall result in those allocations reverting to Monroe County and to their former status under the Agreement. No amendment to this agreement is necessary to necessitate the reverted clause.

**Section 3. TERM:** Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force until one of the following occur:

1. The project is not granted funding by FHFC LIHTC program in the FY15-16 or FY 16-17 competitive cycle; or
2. The project does not complete construction and does not obtain certificates of occupancy for 36 units by December 31, 2019. All units for which certificates of occupancy are issued prior to December 31, 2019 shall remain subject to this agreement irrespective of whether all 36 units contemplated herein receive certificates of occupancy.

**Section 4. NOTIFICATION:** The City of Marathon shall (1) notify Monroe County of any assignment(s) and successor(s) in interest or title to Anchorage Homes LLC for the duration of Anchorage Homes LLC's and/or Seagrass Village, Ltd.'s interest(s) in the ROGO allocations

described in **Section 1. (“Transfer”)** above, and (2) shall notify Monroe County of any assignment(s) and successor(s) in interest or title to the ROGO allocations described in **Section 1. (“Transfer”)** above at least thirty (30) days prior to the date of such transfer or succession by certified U.S. Postal Service Certified mail to the Monroe County Planning & Environmental Resources Senior Director. City of Marathon shall provide written notice to Monroe County of the extension, termination, or expiration of the Conditional Use Permit for the Anchorage Homes, LLC and/or Seagrass Village, Ltd.’s project. City of Marathon shall provide written notice to Monroe County of the issuance of Certificates of Occupancy for the affordable units within thirty (30) days after issuance of said certificates.

All such notices under this Section (**“Section 4.”**) shall be sent to the following addresses:

Monroe County County Administrator  
1100 Simonton Street, Key West, FL 33040

Planning & Environmental Resources Department  
**Attn: Senior Director**  
2798 Overseas Highway, Marathon, FL 33050

Failure of the City of Marathon or Anchorage Homes, LLC, and/or Seagrass Village Ltd., or their assign(s) or successor(s) in interest or title to perform any act required by this Section or any other requirement of this Agreement shall neither impair nor limit the validity of this interlocal agreement or limit its enforceability in any way.

**Section 5. GOVERNING LAWS/VENUE:** This Agreement shall be construed in accordance with and governed by the laws of the State of Florida and the United States. Exclusive venue for any dispute arising under this Agreement shall be in the Sixteenth Judicial Circuit in and for 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 6. 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. 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. ss. 290 dd-3 and 290 ee(03)), 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 509.021, Florida Statutes), as may be amended from time to time, relating to non-discrimination; 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 7. 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 8. 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 been paid or agreed to pay any person, company, corporation, individuals, 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 of violation of this provision, 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 9. 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 10. 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 limited the County's responsibility or liability.

**Section 11. 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 12. NON-RELIANCE BY NON-PARTIES:** Other than as stated herein, 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 13. 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 14. NOTICES:** In addition to those communication and notice requirements set forth in Section 4 of this Agreement, all notices and other communications hereunder must be in writing and addressed as follows, or to any other address which either party may designate to the other party by mail:

If to County: Roman Gastesi, Jr., County Administrator  
Monroe County Historic Gato Building  
1100 Simonton Street  
Key West, Florida 33040

Planning & Environmental Resources Department  
**Attn: Senior Director**  
2798 Overseas Highway, Marathon, FL 33050

With a copy to: Robert B. Shillinger, Jr., Esquire  
Monroe County Attorney's Office  
P.O. Box 1026  
Key West, Florida 33041-1026

Gregory S. Oropeza, Esq. (Attorney for Owner/Developer)  
Smith | Oropeza | Hawks, P.L.  
138 Simonton Street  
Key West, Florida 33040

If to City: City Manager  
9805 Overseas Highway  
Marathon, Florida 33050

George Garrett  
Planning Director  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050

With a copy to: David Migut, Esquire  
City Attorney  
City of Marathon  
9805 Overseas Highway  
Marathon, Florida 33050

Gregory S. Oropeza, Esq. (Attorney for Owner/Developer)  
Smith | Oropeza | Hawks, P.L.

138 Simonton Street  
Key West, Florida 33040

Any notice required by this Agreement to be given or made within a specified period of time, or on or before a date certain, shall be deemed to have been duly given if sent by certified mail, return receipt requested, postage and fees prepaid; hand delivered; or sent by overnight delivery service.

**Section 15. ENTIRE AGREEMENT/MODIFICATION/AMENDMENT:** 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. 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.

**Section 16. MISCELLANEOUS:** Each party represents and warrants to the other that the execution, delivery, and performance of this Agreement has been duly authorized by all necessary corporate or other organizational action, as required.

**Section 17. COUNTERPARTS:** 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.

**Section 18. EFFECTIVE DATE:** This Agreement shall take effect on the date set forth above.

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: AMY HEAVILIN, CLERK

By: \_\_\_\_\_  
Clerk

By: \_\_\_\_\_  
Mayor Danny L. Kolhage

Date: \_\_\_\_\_

APPROVED AS TO FORM AND LEGAL  
SUFFICIENCY

By: \_\_\_\_\_  
Assistant County Attorney

ATTEST:

By: *Diane Clavier*  
DIANE CLAVIER  
City Clerk

(City Seal)

THE CITY OF MARATHON, FLORIDA

By: *Chris Bull*  
Mayor Chris Bull

Date: 10-14-15

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

By: *D. Migut*  
David Migut, City Attorney