

Sponsored by: Lindsey

**CITY OF MARATHON, FLORIDA
RESOLUTION 2016-104**

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 HTG CRYSTAL COVE APPROVED BY THE CITY UNDER RESOLUTIONS 2016-71 & 2016-72; AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the City of Marathon (the “City”) wishes to enter into an Inter-Local Agreement with Monroe County (the “County”) for the purposes of Transferring affordable housing unit allocations; and

WHEREAS, the Inter-Local 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 Inter-local 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 HTG Crystal Cove. (Resolutions 2016-71 & 2016-72 provided as Exhibits “B” & “C”) is hereby approved.

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 15th DAY OF NOVEMBER, 2016.

THE CITY OF MARATHON, FLORIDA


Dr. Daniel Zieg, Mayor

AYES: Bartus, Coldiron, Cook, Senmartin, Zieg
NOES: None
ABSENT: None
ABSTAIN: None

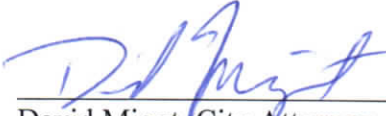
ATTEST:



Diane Clavier, City Clerk

(City Seal)

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



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 _____, 2016, 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 State 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 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, HTG Crystal Cove Resort, LLLP a Florida limited liability limited partnership (hereafter "Property Owner"), has submitted an application for the forty six (46) affordable housing units; and

WHEREAS, the legal descriptions of the property is attached hereto as Exhibit "A" and by reference made a part hereof.

WHEREAS, County hereby agrees to transfer to City forty six (46) affordable housing allocations to allow Marathon to allocate to Property Owners to secure the construction of 46 deed restricted affordable housing units.

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 forty six (46) affordable housing ROGO allocations from Monroe County to the City of Marathon, and subject to the conditions contained therein, including but not limited to:

a. The filing of a 99 year Affordable Housing Deed Restriction on all of the forty six (46) affordable housing units pursuant to this Agreement and the applicable requirements of the Code of Ordinances, City of Marathon, Florida.

b. The affordable housing shall be mainly in the categories of medium income and lesser categories of income with no more than 14 units as moderate income as set forth in Section 104.03 of the City of Marathon Code.

Section 2. ASSIGNMENT: Monroe County has assigned its rights to the affordable allocations to the City and shall be designated as follows:

a. The forty six (46) affordable housing allocations are to be issued by the City to be used specifically by Property Owner.

b. The affordable housing allocations shall be applied and designated as affordable housing for the forty six (46) affordable housing units to be built by the Property Owner.

Section 3. TERM: Subject to and upon the terms and conditions set forth herein, this Agreement shall continue in force until fully performed by the parties and Property Owner.

Section 4. NOTIFICATION: The City of Marathon shall (1) notify Monroe County of any assignment(s) and successor(s) in interest or title to the Property Owner for the duration of 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.

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

Monroe County Administrator
1100 Simonton Street
Key West, FL 33040

Planning & Environmental Resources Department
Attn: Senior Director
2978 Overseas Highway
Marathon, FL 33050

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 ee03), 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 nondiscrimination; and (9) any other nondiscrimination provisions in any federal or state statues 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 and 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: 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

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

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

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

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.

SIGNATURES ON FOLLOWING PAGES

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: _____
Deputy Clerk

By: _____
Mayor/Chairperson

Date: _____

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____
Assistant County Attorney

ATTEST:

THE CITY OF MARATHON, FLORIDA

Diane Clavier
Diane Clavier, City Clerk

By: Daniel Zieg
Dr. Daniel Zieg, Mayor

(City Seal)

Date: 11-16-16

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

By: David Migut
David Migut
City Attorney

LEGAL DESCRIPTION

Lots 5 and 6 of Thompson and Adams Subdivision of Government Lot 1, Section 10, Township 66 South, Range 32 East which plat is recorded in Plat Book 2, at Page 24 of the Public Records of Monroe County, Florida.

That portion of a 66-Foot right-of-way of Old State Highway 4A lying immediately South of Lot 5 of Thompson and Adams Subdivision according to the plat thereof recorded in Plat Book 2, Page 24, of the Public Records of Monroe County, Florida.

Together with a parcel of bay bottom land in the Bay of Florida, North of and adjacent to Lot 5 of Thompson-Adams Subdivision, as recorded in Plat Book 2, Page 24 of the Public Records of Monroe County, Florida. Said Subdivision also being in a part of Government Lot 1, Section 10, Township 66 South, Range 32 East, and being more particularly described by metes and bounds as follows:

BB 1
Commencing at the intersection of the East line of Section 10, Township 66 South, Range 32 East, and the northwesterly right-of-way line of Old State Highway No. 4A. Bear southwesterly along the northwesterly right-of-way line of Old State Highway No. 4A for a distance of 734.09 feet to the Southeast corner of said Lot 5; thence bear North along the East line of Lot 5 for a distance of 889.77 feet to the point of beginning of the parcel of bay bottom land hereinafter described, from said point of beginning, continue bearing North along the East line of Lot 5, extended, for a distance of 220 feet to a point, thence at right angles and West for a distance of 100.97 feet to a point on the West line of Lot 5, extended North, thence bear South along the West line of Lot 5, extended North, for a distance of 270 feet, more or less, to a point on the shoreline, thence meander the shoreline in a southerly and northeasterly direction for a distance of 220 feet, more or less, back to the point of beginning.

Together with a parcel of bay bottom land in the Bay of Florida North of and adjacent to Lot 6 of Thompson and Adams Subdivision as recorded in Plat Book 2, Page 24 of the Public Records of Monroe County, Florida, said subdivision also being in a part of Government Lot 1, Section 10, Township 66 South, Range 32 East and being more particularly described by metes and bounds as follows:

BB 2
Commencing at the intersection of the M.H.W.L. of the Gulf of Mexico and the West boundary of Lot 6 of said Thompson and Adams Subdivision of Government Lot 1, Section 10, Township 66 South, Range 32 East as per plat thereof in Plat Book 2, Page 24, of the Public Records of Monroe County, Florida, as and for the point of beginning of the property to be described. Run thence North into the waters of the Gulf of Mexico for a distance of 323 feet; thence at a right angle and East for a distance of 100.97 feet to a point; thence at a right angle and South to the M.H.W.L. at a point where it intersects the Eastern boundary of said Lot 6; thence meander said M.H.W.L. in a westerly direction to the point of beginning.

Lots 1 and 2, in Block 1 of Vaca Village, according to the plat thereof recorded in Plat Book 2, Page 106, a Re-Subdivision of Lot 7 and 8 of "Thompson and Adarus Subdivision" as recorded in Plat Book 2, at Page 24, of the Public Records of Monroe County, Florida.

Lots 9, 10, 11, 12 and 13, Block 1, Vaca Village, a Subdivision as recorded in Plat Book 2, Page 106, of the Public Records of Monroe County, Florida.

Also

BB 3
A parcel of bay bottom land in Section 10, Township 66 South, Range 32 East, North of and adjacent to Key Vaca described as: Commencing at the Section corner common to Sections 2, 3, 10 and 11 of Township 66 South, Range 32 East; thence South along the section line common to Sections 10 and 11, 1631.62 feet to the Northerly right of way line of Old State Highway 4A, as existing July 25, 1954; thence South 74°20'00" West, 519.93 feet along said Northerly right of way line; thence North 1083.2 feet, more or less, to the M.H.W.L. of the Gulf of Mexico, the Point of Beginning; thence continuing North along said Line, extended into the waters of the Gulf of Mexico, 100 feet, more or less; thence at a right angle and West, 186.94 feet; thence at a right angle and South, 323 feet, more or less, to the M.H.W.L. of the Gulf of Mexico where it intersects the West line of the Glenn H. Curtiss properties; thence meandering said M.H.W.L. in an Easterly and Northerly direction 325 feet, more or less, to the Point of Beginning.