

**BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY**

Meeting Date: March 19, 2008

Division: Housing & Community Development

Bulk Item: Yes X No     

Department: Housing & Community Development

Staff Contact Person/Phone #: Reggie Paros, x6002

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**AGENDA ITEM WORDING:** Approval of agreement with Middle Keys Community Land Trust (MKCLT) for loan of funds for impact fees for Woods Corner, in the amount of \$53,655

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**ITEM BACKGROUND:** At their February 20, 2008 meeting, the Board determined there is a county-wide public purpose in assisting with the provision of affordable housing at Woods Corner in the Village of Islamorada, and approved a request to advance funds from the affordable and employee housing fair share impact fee trust fund for payment of impact fees due from Middle Keys Community Land Trust to the Village of Islamorada. The Islamorada Village Council has formally pledged \$53,655, as it becomes available in the Islamorada Affordable Housing Funds, to the MKCLT for the purpose of repayment of that amount to the Monroe County trust fund; copy of agreement between Islamorada Village of Islands and MKCLT is included. The attached agreement between Monroe County and Middle Keys Community Land Trust, Inc. provides the terms for the loan and repayment of the funds to Monroe County within one year.

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**PREVIOUS RELEVANT BOCC ACTION:** At their meeting on February 20, 2008, BOCC approved request to utilize funds available in the Monroe County affordable and employee housing fair share impact fee trust fund for the purpose of paying impact fees in the amount of \$53,655 due by the MKCLT to the Village of Islamorada in relation to the development of Woods Corner, a 16-unit affordable/workforce community located in Islamorada.

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**CONTRACT/AGREEMENT CHANGES:** n/a

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**STAFF RECOMMENDATIONS:** Approval

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**TOTAL COST:** \$53,655.00

**BUDGETED:** Yes X No     

**COST TO COUNTY:** \$53,655.00

**SOURCE OF FUNDS:** Affordable/Employee Housing Trust Fund

**REVENUE PRODUCING:** Yes      No X **AMOUNT PER MONTH**      **Year**     

**APPROVED BY:** County Atty YES OMB/Purchasing YES Risk Management YES

**DOCUMENTATION:** Included X Not Required     

**DISPOSITION:**     

**AGENDA ITEM #**

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

**CONTRACT SUMMARY**

Contract with: MKCLT Contract # \_\_\_\_\_  
 Effective Date: March 19, 2008  
 Expiration Date: March 19, 2009

Contract Purpose/Description:  
Advance funds to the Middle Keys Community Land Trust (MKCLT) to be used for the  
payment of impact fees to the Village of Islamorada for the Woods Corner affordable  
Housing project (from Affordable and Employee Housing Fair Share Impact Fee Trust Fund)

Contract Manager: Reggie Paros 6002 HCD/Stop 15  
 (Name) (Ext.) (Department/Stop #)

for BOCC meeting on March 19, 2008 Agenda Deadline: March 4, 2008

**CONTRACT COSTS**

Total Dollar Value of Contract: \$ 53,655.00 Current Year Portion: \$ 53,655.00  
 Budgeted? Yes  No  Account Codes: 136 - 5500 - 5510 - 1022 - 36353 - 530340  
 Grant: \$ \_\_\_\_\_  
 County Match: \$ \_\_\_\_\_

**ADDITIONAL COSTS**

Estimated Ongoing Costs: \$ \_\_\_\_\_/yr For: \_\_\_\_\_  
 (Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

**CONTRACT REVIEW**

	Date/In	Changes Needed	Reviewer	Date Out
Division Director	<u>3/7/08</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>3/7/08</u>
Risk Management	<u>3-3-08</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>3-3-08</u>
O.M.B./Purchasing	<u>3-3-08</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>3/4/08</u>
County Attorney	_____	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>Prepared by Susan M. Grimsley</u>	<u>2/29/08</u>

Comments: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

**AGREEMENT BETWEEN MONROE COUNTY  
AND  
THE MIDDLE KEYS COMMUNITY LAND TRUST, INC.  
FOR  
LOAN OF FUNDS FOR IMPACT FEES FOR WOODS CORNER**

This Agreement (Agreement) is made the \_\_\_\_ day of \_\_\_\_\_ by and between Monroe County (County), a political subdivision of the State of Florida, and the Middle Keys Community Land Trust, Inc.(Trust), a Florida non-profit corporation qualified as a charitable organization pursuant to Section 501(c)(3) of the Internal Revenue Code.

**WITNESSETH:**

WHEREAS, the Trust is building a sixteen unit affordable housing project called “Woods Corner” located at 281 Woods Avenue within the municipality of Islamorada, Village of Islands (Village), which municipality is within County’s boundaries; and

WHEREAS, impact fees required by Village add an additional \$3,353.44 to the price of each home totaling \$53,655.00 for the project; and

WHEREAS, these fees will result in an increased price of the homes to each purchaser if the Trust pays the fees; and

WHEREAS, if County loans the money for the impact fees to the Trust, the price of the home will be reduced by the sum of \$3,353.44; and

WHEREAS, Village has recently approved an affordable housing impact fee ordinance which will provide a fund for the payment of such fees for affordable housing projects; however, the fund currently has no monies in it; and

WHEREAS, by a separate act of the Village Council, it has agreed to reimburse the Trust for the payment of the Village’s impact fees upon receipt of monies from its affordable housing impact fee fund; and

WHEREAS, County has an Affordable and Employee Housing Fair Share Impact Fee Trust Fund which may be used to pay for impact fees to other entities for affordable housing projects; and

WHEREAS, at its regular meeting of February 20, 2008, County by action of its Board of County Commissioners, determined that there is a countywide public purpose in assisting with the provision of affordable housing at Woods Corner within the Village’s boundaries; and

WHEREAS, Trust will repay the funds to the County;

NOW, THEREFORE, the parties agree as follows:

February 25, 2008

**1. RECITALS.** The above recitals are true and correct and are incorporated as though fully set forth herein.

**2. LOAN AND TERMS.**

A. County shall advance the sum of Fifty-three Thousand Six Hundred Fifty-five Dollars (\$53,655.00) to the Trust to be used specifically and only for the payment of impact fees to the Village for the Woods Corner affordable housing project.

B. Trust shall repay to County on the 15<sup>th</sup> day of each month, all sums received from Village as reimbursement to Trust for the amount paid to Village for its impact fees.

C. Payment shall be sent to: County Clerk  
Monroe County  
500 Whitehead Street  
Key West, FL 33040

D. Trust shall, in any event, repay County within one (1) year the total sum of \$53,655. 00.

E. County shall not charge any interest to Trust during the term of this Agreement.

**3. TERM.** The term of this Agreement shall be one year from the date above written.

**4. INDEMNIFICATION.** Trust does hereby agree to defend, indemnify and hold County harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys' fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the Trust, its officials, agents or employees, in connection with this Agreement.

**5. NOTICES.** All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a "Notice") and addressed as follows (or to any other address which either party may designate by Notice):

If to County: County Administrator for Monroe County  
1100 Simonton Street  
Key West, FL 33040

With a copy to: Suzanne Hutton, County Attorney  
1111 12<sup>th</sup> Street  
Suite 408  
Key West, FL 33040

If to Trust: Richard Casey, Administrator  
Middle Keys Community Land Trust  
PO Box 500194  
Marathon, Florida 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; facsimile; or sent by overnight delivery service.

## **6. CLAIMS AND LITIGATION.**

A. 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.

B. 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.

**7. 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 or mediation arising out of this Agreement shall be in Monroe County, Florida, or the Federal Court Southern District of Florida. This Agreement is not subject to arbitration.

## **8. ENTIRE AGREEMENT/MODIFICATION**

A. 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.

B. 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.

## **9. RECORDS.**

The Trust shall keep such records as are necessary to document the performance of the agreement and expenses as incurred, and give access to these records at the request of the County, the State of Florida or authorized agents and representatives of said government bodies. It is the responsibility of the Trust to maintain appropriate records in accordance with generally accepted accounting principles consistently applied to insure a proper accounting of all funds and expenditures. The Trust understands that it shall be responsible for repayment of any and all audit exceptions which are identified by the Auditor General for the State of Florida, the Clerk of Court for Monroe County, the Board of County Commissioners for Monroe County or their agents and representatives. If an inspection or audit discloses that County funds paid to the Trust under this Agreement were used for a purpose not authorized by this Agreement, then the Trust must refund the funds improperly spent with interest calculated pursuant to Section 55.03, Florida Statutes, with interest running from the date the County paid the improperly spent funds to the Trust. This paragraph shall survive the termination of this Agreement.

**10. ASSIGNMENT.** This Agreement shall not be assignable by either party unless such assignment is first approved by both parties.

**11. SEVERABILITY AND WAIVER**

A. 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.

B. 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.

**12. 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.

IN WITNESS WHEREOF, the parties have executed this instrument on the day and year indicated.

**(SEAL)**  
**DANNY L. KOLHAGE, CLERK**

**MONROE COUNTY BOARD OF  
COUNTY COMMISSIONERS**

\_\_\_\_\_  
Clerk/Deputy Clerk

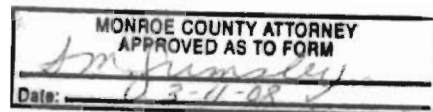
\_\_\_\_\_  
Mayor Charles "Sonny" McCoy

Secretary

**MIDDLE KEYS COMMUNITY  
LAND TRUST, INC.**

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Joshua Mothner, President



**AGREEMENT BETWEEN ISLAMORADA, VILLAGE OF ISLANDS  
AND  
THE MIDDLE KEYS COMMUNITY LAND TRUST, INC.  
FOR  
IMPACT FEES FOR WOODS CORNER**

This Agreement ("Agreement") is made the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between Islamorada Village of Islands (the "Village"), a Municipal Corporation of the State of Florida, and the Middle Keys Community Land Trust, Inc. (the "Trust"), a Florida non-profit corporation qualified as a charitable organization pursuant to Section 501(c)(3) of the Internal Revenue Code.

**WITNESSETH:**

WHEREAS, the Trust is building a sixteen unit affordable housing project called "Woods Corner" located at 281 Woods Avenue within the Village; and

WHEREAS, the Trust is required to pay the Village \$53,655.00 in impact fees for the Woods Corner project; and

WHEREAS, Village has recently approved an affordable housing impact fee ordinance which will provide a fund for the payment of such fees for affordable housing projects; however, the fund currently has no funds in it; and

WHEREAS, the Village Council has agreed to reimburse the Trust for the payment of the Village's impact fees upon receipt of monies from its Affordable Housing Trust Account; and

WHEREAS, Monroe County (the "County") has an Affordable and Employee Housing Fair Share Impact Fee Trust Fund which may be used to pay for impact fees to other entities for affordable housing projects; and

WHEREAS, at its regular meeting of February 20, 2008, the County by action of its Board of County Commissioners, determined that there is a countywide public purpose in assisting with the provision of affordable housing at Woods Corner within the Village's boundaries; and

WHEREAS, the County and the Trust have entered into an Agreement to loan the impact fees to the Trust which requires the Trust to repay the funds to the County; and

WHEREAS, the Village has agreed to repay from the Village's Affordable Housing Trust Account the Trust \$53,655.00 to be used by the Trust for the sole purpose of repaying the County.

NOW, THEREFORE, the parties agree as follows:

**1. RECITALS.** The above recitals are true and correct and are incorporated as though fully set forth herein.

**2. IMPACT FEES REIMBURSEMENT.**

A. Village shall pay the Trust the total sum of Fifty-three Thousand Six Hundred Fifty-five Dollars (\$53,655.00) to be used specifically and only for the re-payment to the County of funds advanced by the County to pay impact fees to the Village for the Woods Corner affordable housing project.

B. Village shall pay the Trust on a monthly basis as funds become available from the Affordable Housing Trust Fund until the total amount in Paragraph 2A is reached.

C. Payment shall be sent to: Middle Keys Community Land Trust  
PO Box 500194  
Marathon, Florida 33050

D. If at any time the County forgives the Trust for any or all of the funds due under the Agreement between the County and the Trust, the Village’s obligation to continue to pay the Trust shall cease.

**3. TERM.** The term of this Agreement shall be from the date of execution and shall continue until the total funds specified in Paragraph 2A are paid to the Trust.

**4. INDEMNIFICATION.** Trust does hereby agree to defend, indemnify and hold Village harmless from and against any and all liability, damages, costs or expenses (including reasonable attorneys’ fees, costs, and expenses at both the trial and appellate levels) arising from the acts or omissions of the Trust, its officials, agents or employees, in connection with this Agreement.

**5. NOTICES.** All notices, requests, demands, elections, consents, approvals and other communications hereunder must be in writing (each such, a “Notice”) and addressed as follows (or to any other address which either party may designate by Notice):

If to Village: Village Manager  
Islamorada, Village of Islands  
P.O. Box 568 (81990 Overseas Highway)  
Islamorada, Florida 33036

With a copy to: Nina L. Boniske, Village Attorney  
Weiss Serota Helfman Pastoriza Cole & Boniske, P.L.  
2525 Ponce de Leon Blvd., Suite 700  
Coral Gables, Florida 33134

If to Trust: Richard Casey, Administrator  
Middle Keys Community Land Trust  
PO Box 500194  
Marathon, Florida 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; facsimile; or sent by overnight delivery service.

## **6. CLAIMS AND LITIGATION.**

A. 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.

B. 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.

**7. 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 or mediation arising out of this Agreement shall be in Monroe County, Florida, or the Federal Court Southern District of Florida. This Agreement is not subject to arbitration.

## **8. ENTIRE AGREEMENT/MODIFICATION**

A. 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.

B. 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.

## **9. RECORDS.**

A. The Village 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 Trust or its subcontractors involving transactions related to this Agreement.

B. If an inspection or audit discloses that Village funds paid to the Trust under this Agreement were used for a purpose not authorized by this Agreement, then the Trust must refund the funds improperly spent with interest calculated pursuant to Section 55.03, Florida Statutes, with interest running from the date the Village paid the improperly spent funds to the Trust. This paragraph shall survive the termination of this Agreement.

**10. ASSIGNMENT.** This Agreement shall not be assignable by either party unless such assignment is first approved by both parties.

## **11. SEVERABILITY AND WAIVER**

A. 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.

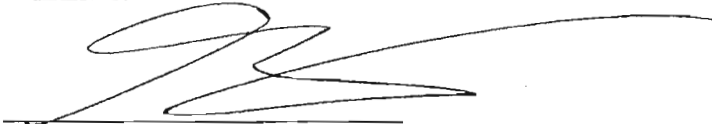
B. The failure of either party to this Agreement to object to or to take affirmative action with respect to any conduct of the other which is in violation of the terms of this Agreement shall not be construed as a waiver of the violation or breach, or of any future violation, breach or wrongful conduct.

**12. 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.

IN WITNESS WHEREOF, the parties have executed this instrument on the day and year indicated.

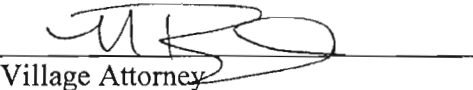
**VILLAGE:**



Dave Boerner, Mayor

Date: 2/29/08

Approved as to form and legal sufficiency for the use and benefit of Islamorada, Village of Islands:

  
Village Attorney

Date: 2/29/08

Attest:

  
Village Clerk

Date: 2/29/08



**MIDDLE KEYS COMMUNITY LAND TRUST, INC.:**

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

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