

LANDS COMMITTEE MEETING AGENDA

OPEN TO THE PUBLIC

October 9, 2018
Following Board Meeting

District Headquarters
Live Oak, Florida

1. Call to Order / Committee Roll Call
2. Public Comment
3. General Discussion / Updates
 - Agreement Consideration with the North Florida Land Trust
4. Land Acquisition / Property Offers: None
5. Conservation Easement Modification Requests: None
6. Surplus Lands: None
7. Announcements
8. Adjournment

A person may not lobby the District until such person has registered as a lobbyist with the Contracts and Procurement Coordinator by filing a registration form.

Definitions:

•"Lobbies" is defined as seeking to influence a district policy or procurement decision or an attempt to obtain the goodwill of a district official or employee. (112.3261(1)(b), Florida Statutes [F.S.]

•"Lobbyist" is a person who is employed and receives payment, or who contracts for economic consideration, for the purpose of lobbying, or a person who is principally employed for governmental affairs by another person or governmental entity to lobby on behalf of that other person or governmental entity. (112.3215(1)(h), F.S.)

MEMORANDUM

TO: Lands Committee
FROM: Steve Minnis, Deputy Executive Director, Business and Community Services
DATE: September 28, 2018
RE: Agreement Consideration with the North Florida Land Trust

RECOMMENDATION

Staff requests Lands Committee approval to forward a recommendation to the Governing Board to authorize the Executive Director to enter into an Agreement with the North Florida Land Trust to provide conservation acquisition services.

BACKGROUND

District staff has reexamined its conservation land acquisition program for programmatic cost efficiencies while maintaining or enhancing associated services. To achieve these objectives, staff has developed a proposed agreement (see attachment) with the North Florida Land Trust (NFLT) to perform specific acquisition services on behalf of the District. These acquisition services will only be performed upon District staff receiving the appropriate approvals by the Governing Board Lands Committee and Governing Board.

On September 18, 2018, the NFLT Board of Directors approved the Agreement.

The District's acquisition initiation and implementation processes are set forth in sections 373.139 and 373.1391 Florida Statutes, Rule 40B-9.041(1), Florida Administrative Code, and with Governing Board Directive 18-0003.

Funding for this agreement is available in account codes 10-2486-3-2100-10 and 13-2-586-3-2100-19-00.

SM/rl
Attachment

**AGREEMENT FOR SERVICES BETWEEN
SUWANNEE RIVER WATER MANAGEMENT DISTRICT
AND
NORTH FLORIDA LAND TRUST, INC.**

THIS AGREEMENT for Services (the "Agreement") is made as of the _____ day of _____, 2018, by and between the Suwannee River Water Management District, a special taxing district organized under Chapter 373 of Florida Statutes, with its offices located at 9225 County Road 49, Live Oak, Florida 32060 (hereinafter referred to as the "District") and the North Florida Land Trust, Inc., a Florida not-for-profit corporation, which is qualified as a tax exempt entity under I.R.C. § 501(c)(3), with offices located at 2038 Gilmore Street, Jacksonville, Florida 32204 (hereinafter referred to as the "Land Trust"). The District and the Land Trust are hereinafter collectively referred to as the "parties".

IN CONSIDERATION of the mutual promises and covenants hereinafter set forth and for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE 1: BASIC SERVICES OF THE LAND TRUST

- 1.1 The District, in the execution of its mission to "manage water and related natural resources in north-central Florida by providing water quality and quantity monitoring, research, regulation, land acquisition and management, and flood protection," occasionally acquires conservation lands in furtherance of that mission. Through this agreement, the Land Trust agrees to provide certain conservation real estate services to and on behalf of the District which may include outreach and negotiations for purchase or exchange of land or interests in land, execution of appropriate due diligence in acquiring that land, coordination with District staff, committees and the Governing Board in facilitation of those acquisitions, and other services deemed necessary towards the acquisition of land in support of the District. The full scope of these services is otherwise described in Exhibit A, Scope of Work.
- 1.2 The Land Trust shall give reasonably prompt written notice to the District whenever the Land Trust observes or otherwise becomes aware of any development that affects the scope or timing of the Land Trust's services.

ARTICLE 2: ADDITIONAL SERVICES OF THE LAND TRUST

- 2.1 If the parties agree in writing, the Land Trust shall furnish additional services pursuant to this Agreement otherwise unprovided for in Exhibit A, for compensation mutually agreed by the parties, by amendment of Exhibit A, Scope of Work.

ARTICLE 3: THE DISTRICT'S RESPONSIBILITIES

- 3.1 The District shall promptly provide to the Land Trust available information regarding the requirement for the Services and whatever data needed by the Land Trust to complete the services as described in Exhibit A.
- 3.2 The District shall give prompt written notice to the Land Trust whenever the District observes or otherwise becomes aware of any development that affects the scope or timing of the Land Trust's Services.

ARTICLE 4: PAYMENTS TO THE LAND TRUST

- 4.1 At the request of the District, the Land Trust shall provide to the District an estimated budget for the detailed assessment and negotiations stage of a transaction (the "Assessment and Negotiations Budget") in the format attached as Exhibit B for each property chosen by the District for acquisition services by the Land Trust. Once the Assessment and Negotiations Budget is approved, the Land Trust may proceed with the acquisition services listed in the Assessment and Negotiations Budget. The Land Trust shall not exceed the Assessment and Negotiations Budget without first obtaining a written amendment to the Assessment and Negotiations Budget from the District. Upon review and confirmation by the District, reimbursements and payments will be made to the Land Trust within thirty (30) days of presentation of the invoice that includes a summary of work performed, hours worked, documentation of costs for services contracted, and copies of all work products created in the process of acquisition. Invoices shall be submitted in the form attached as Exhibit D.
- 4.2 If negotiations are successful, at the request of the District, the Land Trust shall provide to the District an estimated budget for the contract stage of a transaction (the "Contract Budget") in the format attached as Exhibit C for each property chosen by the District to continue to the contract stage. Once the Contract Budget is approved, the Land Trust may proceed with the acquisition services listed in the Contract Budget. The Land Trust shall not exceed the Contract Budget without first obtaining a written amendment to the Contract Budget from the District. Upon review and confirmation by the District, reimbursements and payments will be made to the Land Trust within thirty (30) days of presentation of the invoice that includes a summary of work performed, hours worked, documentation of costs for services contracted, and copies of all work products created in the process of acquisition. Invoices shall be submitted in the form attached as Exhibit D.
- 4.3 The Assessment and Negotiations Budget and the Contract Budget shall hereinafter collectively be referred to as the "Budgets".
- 4.4 The purchase price and other closing costs towards properties identified by the Land Trust shall be directly forwarded to closing agent or escrow account for closing.

ARTICLE 5: TERMINATION

- 5.1 This Agreement shall remain in force through September 30, 2019, subject to the right of the District to extend the Agreement through such additional time period as the District deems necessary in order to complete the Scope of Work.
- 5.2 Either party may withdraw from this Agreement at any time by giving thirty (30) days written notice to the other party. All products and information regarding open projects must be submitted by the Land Trust before final payments will be made by District.

ARTICLE 6: ONLY DISTRICT TO ENTER INTO CONTRACTS

- 6.1 Notwithstanding anything else herein to the contrary, the Land Trust shall not have the authority to bind the District to any contracts or quasi contracts.
- 6.2 Only the District itself, acting through its governing board, may bind the District to:
 - 6.2.1 A contract for the purchase of interests in real property;
 - 6.2.2 A contract for the reimbursement of any expenses concerning the possible purchase of real property; or,
 - 6.2.3 Any other contractual or quasi contractual relationship.
- 6.3 In its dealings with others, the Land Trust shall make clear that it does not have the authority to enter into any contracts on behalf of the District or bind the District to any contracts. To document the above, before it begins working on any particular parcel of property, the Land Trust shall have a disclosure, in substantially the form attached hereto as Exhibit "D", executed by the landowner.
- 6.4 In the event that the Land Trust enters into contracts between the Land Trust and contractors as authorized by the District in the Budgets, the District shall reimburse the Land Trust as described in Article 4.

ARTICLE 7: MISCELLANEOUS PROVISIONS

- 7.1 The District may not use the Land Trust's name and/or logo in any way without prior written consent from the Land Trust, nor the Land Trust use the District's name and/or logo without the District's consent.
- 7.2 This Agreement shall become binding when signed by both parties. This Agreement supersedes all prior or contemporaneous communications and negotiations, both oral and written and constitutes the entire Agreement between the parties relating to the work set out above. No amendment shall be effective except in writing signed by both parties.

- 7.3 If any provision of this Agreement is held invalid, the other provisions shall not be affected thereby.
- 7.4 Pursuant to Section 373.139 (3)(a), Florida Statutes, the Land Trust shall maintain the confidentiality of appraisal reports, offers, and counteroffers until an option contract is executed or, if no option contract is executed, until 30 days before a contract or agreement for purchase is considered for approval by the governing board. Upon approval by the District, the Land Trust may disclose appraisal reports to private landowners during negotiations for acquisitions using alternatives to fee simple techniques, if the District determines that disclosure of such reports will bring the proposed acquisition to closure.
- 7.5 Independent Contractor Status. The Land Trust shall be deemed to be an independent contractor in all its operations and activities hereunder.
- 7.5.1 Land Trust's Employees. The employees furnished by the Land Trust to perform the work provided herein and the Land Trust's subcontractors shall be paid by the Land Trust for all such services. The Land Trust will be responsible for all obligations and reports concerning FICA, unemployment insurance, worker's compensation, income tax, and other reports and deductions required by an applicable state or federal law. Under no circumstances shall such employees and subcontractors be deemed to be the employees of the District.
- 7.5.2 Land Trust Not to Be Agent. The Land Trust is not an agent of District and does not have any authority with respect to any matter or in any manner to obligate or commit District by contract or otherwise.
- 7.6 W-9 Requirement. The Land Trust shall immediately submit to the District a completed IRS Form W-9, for reporting purposes only. The District shall make no payments to the Land Trust, under this Agreement or for any other reason, unless and until such form is submitted to District.
- 7.7 Insurance Coverages. The Land Trust shall provide insurance as follows:
- 7.7.1 The Land Trust will purchase and maintain all insurance necessary to protect it from claims under workers' compensation laws, disability benefit laws or other similar employee benefit laws; from claims for damages because of bodily injury, occupational sickness or disease, or death of its employees, including claims insured by usual personal injury liability coverage; from claims for damages because of bodily injury, sickness or disease, or death of any person other than its employees including claims insured by usual personal injury liability coverage; and from claims for injury to or destruction of tangible property, including loss of use resulting therefrom - any or all of which may arise out of or result from the Land Trust's operations under this Agreement, whether those operations be by the Land Trust or by any subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be legally liable.
- 7.7.2 This insurance shall be written for not less than (i) for workers' compensation insurance, the limits shall be as required by law; (ii) for motor vehicular liability

insurance, the limits shall be for not less than \$500,000 combined single limit; (iii) for general liability insurance, the limits shall be a minimum of \$1,000,000 per occurrence and \$1,000,000 general aggregate; (iv) for professional liability insurance, the limits shall be a minimum of \$1,000,000 per occurrence and \$1,000,000 general aggregate.

7.7.3 Before starting work under this Agreement, the Land Trust will file with the District certificate(s) of insurance, acceptable to the District, providing evidence that the Land Trust has in full force and effect the insurance required herein with insurers authorized to do business in the State of Florida. These certificate(s) shall contain provision(s) that provide, without limitation, the following:

7.7.3.1 For all insurances except for professional liability insurance, name the District as a named or additional insured without waiving any defense of sovereign immunity or increasing the limits of District's liability in excess of the statutory cap provided under Section 768.28, Florida Statutes.

7.7.3.2 The coverage afforded under the policies will not be cancelled or materially changed until at least 30 days prior written notice has been given to the District.

7.8 Compliance with Laws. The Land Trust, employees and representatives, shall at all times comply with all applicable laws, ordinances, statutes, rules, and regulations of the federal, state, or local government, including but not expressly limited to those relating to wages, hours, and work conditions.

7.9 Ownership of and Rights to Items Produced. District shall have absolute ownership of and unlimited rights in all items produced or delivered in the performance of this Agreement. The Land Trust shall not publish or use any of the information or products generated by this Agreement for advertising, presentations not directly connected with this Agreement, or for other uses not connected with this Agreement without the prior written approval of the District.

7.10 Indemnification. The Land Trust shall be solely responsible for and shall hold District free and harmless from, and hereby indemnifies District against any and all claims, demands, courses of action, loss, cost, damages, and expenses, attorneys fees and consultants fees arising out of or in connection with, property damage, or injuries or death of any and all persons in any way sustained, or alleged to have been sustained, in connection with, or arising out of the performance of the work set out herein by the Land Trust, its agents and employees, and its subcontractors, unless caused by the sole negligence of District employees while working for District. To the extent permitted by law, the District shall be solely responsible for and shall hold the Land Trust free and harmless from, and hereby indemnifies the Land Trust against any and all claims, demands, courses of action, loss, cost, damages, and expenses, attorneys fees and consultants fees arising out of or in connection with, property damage, or injuries or death of any and all persons in any way sustained, or alleged to have been sustained, in connection with, or arising out of the performance of the work set out herein by the District, its agents and employees, and its subcontractors, unless caused by the sole negligence of the Land Trust employees while working for Land Trust.

- 7.11 Records. The books, records, and documents of Land Trust, insofar as they relate to the work performed or money received under this Agreement, shall be subject to audit, at any reasonable time and upon reasonable notice, by District or other duly authorized representatives of the State.
- 7.12 Gifts. The Land Trust shall not pay any part of the amounts paid to it as provided herein, directly or indirectly, to any officer or employee of District or the State of Florida as wages, compensation, or gifts in exchange for or in connection with any work contemplated or performed in connection with this Agreement, without prior District approval.
- 7.13 Non-Discrimination. The Land Trust will not discriminate against any individual because of that individual's race, color, religion, sex, national origin, age, handicaps or marital status with respect to any operations and activities hereunder.
- 7.14 Conflicts. The Land Trust covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. The Land Trust further covenants that, in the performance of this Agreement, no person having any such interest shall be employed. The Land Trust warrants that it has not employed, retained, paid, or agreed to pay any company or person, other than a bonafide employee, to solicit or secure this Agreement contingent upon or resulting from the award or making of this Agreement.
- 7.15 Public Records. This Agreement is subject to the requirements of Section 119.0701, Florida Statutes regardless of whether such requirements are expressly set out herein. However, as required by such statute, the Land Trust shall:
- 7.15.1 Comply with all public records laws of the State of Florida.
 - 7.15.2 Keep and maintain all records it generates and/or receives in the performance of the services set out herein.
 - 7.15.3 Upon request from the District's custodian of public records, provide the District with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in this Ch. 119, Florida Statutes or as otherwise provided by Florida law.
 - 7.15.4 Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of the Agreement and following completion of this Agreement the Land Trust does not transfer the records to the District.
 - 7.15.5 Upon completion of this Agreement, transfer, at no cost, to the District all public records in possession of the Land Trust or keep and maintain public records required by the District to perform the services set out herein. If the Land Trust transfers all public records to the District upon completion of this Agreement, the Land Trust shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Land Trust keeps and maintains public records upon completion of this Agreement, the

Land Trust shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the District, upon request from the District's custodian of public records, in a format that is compatible with the information technology systems of the District.

IF THE LAND TRUST HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE LAND TRUST'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT _____ (telephone number, e-mail address, and mailing address).

- 7.16 Extension of Services. District and the Land Trust may by mutual agreement, in writing extend the scope of these services including additional work to be performed by the Land Trust with additional payments by District. However, for this to be effective, the document must be executed in writing with same formalities as this Agreement.
- 7.17 No Third-Party Beneficiaries. This Agreement is between the District and the Land Trust and shall not be interpreted to be for the benefit of any party or entity not signing this Agreement.
- 7.18 Drug Free Workplace. Land Trust represents that it has established a drug free workplace and shall maintain a drug free workplace during the term of this Agreement.
- 7.19 Public Entity Crime. A person or affiliate who has been placed on the convicted vendor list, following a conviction for a public entity crime, may not perform the work set out herein as a grantee, contractor, supplier, subcontractor, or consultant under a contract with any public entity, and may not transact business with any public entity in excess of the threshold amount, provided in Section 287.017 F.S. for Category Two, for a period of 36 months from the date of being placed on the convicted vendor list. The Land Trust warrants that it has not been placed on the convicted vendor list for a public entity crime.
- 7.20 Venue and Jurisdiction of Litigation. The exclusive venue and jurisdiction for any litigation enforcing, construing or relating to this Agreement shall be the Circuit Court or the County Court in and for Suwannee County, Florida. If under applicable law exclusive jurisdiction over any such matters is vested in the federal courts, then exclusive jurisdiction and venue shall be in the United States District Court for the Middle District of Florida, Jacksonville Division.
- 7.21 Waiver of Jury Trial. The parties mutually and forever waive any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement or this transaction. The parties agree to have any such actions decided by a judge alone, without a jury.
- 7.22 Limitation on Remedy. Notwithstanding anything else in herein to the contrary, the parties mutually and forever waive the right to recover any consequential, incidental, indirect, special or punitive damages, including, without limitation, loss of future revenue, income or profits, in any legal proceeding enforcing, construing, arising out of or relating to this Agreement. This waiver shall apply to legal actions sounding in both contract and tort and shall apply whether or not the possibility of such damages has been disclosed in advance or could have been reasonably foreseen. This provision shall not be interpreted to mean that absent this provision such damages would have been recoverable.

- 7.23 No Waiver of Sovereign Immunity. Notwithstanding anything else herein to the contrary, nothing herein shall be construed to waive or to otherwise affect the District's sovereign immunity and/or the protections given the District under Section 768.28, Florida Statutes.
- 7.24 Terms Not to Be Construed Against Either Party. This Agreement is the product of negotiation between the parties, thus the terms of this Agreement shall not be construed against either party as the drafter.
- 7.25 Assignment. Neither party shall assign its rights or responsibilities under this Agreement without the prior written consent of the other party.
- 7.26 Governing Law. This Agreement shall be governed by Florida law without regard to its conflict of laws rules.

(This section intentionally left blank)

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first above written.

Suwanee River Water Management
District

THE NORTH FLORIDA LAND TRUST, INC. a
Florida not-for-profit corporation

By: _____
Hugh Thomas
As its Executive Director

By: _____

Date: _____

Date: _____

EXHIBIT A

SCOPE OF SERVICES

Negotiate the purchase, exchange or donation of fee simple rights, conservation easements and/or development rights for those properties identified by the Suwannee River Water Management District

The North Florida Land Trust will manage a program of land acquisition on behalf of Suwannee River Water Management District, managing the real estate process under District direction, ensuring land and interests in land are promptly and properly conveyed to the District in support of their conservation mission. Upon request by the District, for acquisition or exchange of a property, District staff will provide information to the Land Trust including acres, county, tax parcel ID, type of acquisition (fee, conservation easement, other interest), and summary of reason for purchase. The Land Trust will then provide a Detailed Assessment and Negotiations Budget in the format shown in Exhibit B, which must be approved by District before work commences. If negotiations are successful, upon request by the District, the Land Trust will provide a Contract Budget in the format shown in Exhibit C, which must be approved by the District before work commences.

The Land Trust shall provide the following services:

Negotiations and Partnerships

1. Negotiate agreements for the purchase or donation of fee simple rights, conservation easements and/or development rights on targeted properties as directed by the District.
2. Facilitate and participate in coordination meetings and teleconferences with the District.
3. Coordinate with partners that may have funds available that can be used towards the acquisition of target properties if necessary.
4. Determine the bundle of rights for potential acquisitions that the Seller can agree upon, hire appraisers to conduct the appraisals based on the agreed upon rights, and obtain title work on the property for the appraiser.
5. Negotiate agreements for the purchase of land or conservation easements and draft conservation easements, purchase agreements or agreements to acquire development rights including fee simple purchase, easements, donations, and other less than fee mechanisms.
6. Draft documents related to the purchase or any donation(s) of fee simple rights, conservation easements and/or development rights subject to review and approval by the District's General counsel.

7. Upon request by the District, participate in initial site visits and landowner meetings in preparation for Land Committee and Governing Board approval of projects and Budgets.

Due Diligence and Closing

1. Obtain and review appraisals, surveys, title work, Phase 1 Environmental Assessments and any other due diligence necessary to implement the purchase or donation(s) of fee simple rights, conservation easements and/or development rights. Provided that for such purposes, the Land Trust shall only use appraisers, surveyors and engineers from the District's approved lists. All title work shall be obtained through the District's General Counsel as the authorized agent for a Florida licensed title insurance company.
2. Complete Easement Documentation Report(s) as needed.
3. Resolve title defects and any other issues necessary and assist the closing agent with closing and finalizing the transaction(s).

EXHIBIT B

Detailed Assessment and Negotiations Budget

Example Budget: Project 1, X acres, County, Tax Parcel ID	Not to exceed cost
Land Trust Detail Assessment and Negotiations Fee (fixed cost):	
Appraisal(s):	
Title Search/Commitment:	

**Exhibit C
Contract Budget**

Example Budget: Project 1, X acres, County, Tax Parcel ID	Not to exceed cost
Acquisition Price:	
Land Trust Contract Fee (fixed cost):	
Boundary Survey	
Title Insurance:	
Baseline Documentation Report (for easements only):	
Geological Survey:	
Closing Agent Fee:	
Title Insurance:	
Recording Fee:	
Taxes:	
Phase I Environmental Site Assessment:	
Phase II Environmental Site Assessment:	

**EXHIBIT D
Sample Invoice**



7.31.2018

INVOICE 0112731

BILL TO	SHIP TO	INSTRUCTIONS
		Please remit to : North Florida Land Trust 2038 Gilmore Street Jacksonville FL 32204

QUANTITY	DESCRIPTION	UNIT PRICE	TOTAL
(1)		\$0	\$0
(2)		\$0	\$0
(1)		\$0	\$0

SUBTOTAL	\$0 .00
SALES TAX	N/A
SHIPPING & HANDLING	N/A
TOTAL DUE BY [SELECT DATE]	Upon Receipt

Thank you for your business!
North Florida Land Trust
2038 Gilmore Street

EXHIBIT E
ACKNOWLEDGMENT OF DISCLOSURE

I HEREBY acknowledge that I am the owner, or the authorized representative of the owner, of that certain parcel of real property in _____ County, Florida assigned parcel No. _____ and that I have read and am aware of the following:

1. The North Florida Land Trust, Inc., a Florida not-for-profit corporation, (the "Land Trust") has been retained by the Suwannee River Water Management District a special taxing district organized under Chapter 373 of Florida Statutes (the "District") as a consultant to assist in the acquisition of real property and provide other services with regards to real property.

2. However, neither the Land Trust nor its agents nor employees have any authority to legally bind the District to any agreement or contract.

3. The District will not be bound to any agreement relating to the purchase of any rights in real property (or otherwise) until and unless such agreement is reduced to a written contract and approved and executed by the District's governing board. Further, the District will not be liable for any cost or expense incurred by a landowner in seeking a contract with the District, unless such cost or expenses is approved, in advance, and in writing by the District's governing board.

Date: _____, 20_____.

Print Name: _____

Signature: _____