

CITY OF GAINESVILLE
AGREEMENT FOR LAND ACQUISITION SERVICES WITH
ALACHUA CONSERVATION TRUST, INC.

This AGREEMENT ("Agreement") is made and entered into on this _____ day of _____, 2006 between the CITY OF GAINESVILLE ("City") and ALACHUA CONSERVATION TRUST ("Contractor"), a Florida not-for-profit corporation.

WHEREAS, CITY applied for and received a grant award from Florida Communities Trust ("FCT") to acquire and protect property known as the Hogtown Creek Headwaters; and,

WHEREAS, CONTRACTOR has unique knowledge and experience with the Hogtown Creek Headwaters project, having prepared the CITY's grant application to FCT, and having completed similar land acquisition projects with the CITY and with FCT; and,

WHEREAS, CITY desires to retain the services of CONTRACTOR to complete the land acquisition process including due diligence for the Hogtown Creek Headwaters project; and,

WHEREAS, the mission of Alachua Conservation Trust is to protect the natural, historic, scenic, and recreational resources in and around Alachua County, Florida through purchase, donation, conservation easement, and bargain sale – and this Agreement is consistent with CONTRACTOR's mission

NOW, THEREFORE, CITY and CONTRACTOR agree as follows:

I. SCOPE OF CONTRACTOR SERVICES

CONTRACTOR shall provide land acquisition services for the Hogtown Creek Headwaters project, including:

- 1) Negotiate the terms of a Grant Award Agreement with FCT on behalf of the City.
- 2) Order, receive, and review a title and encumbrance report certified to the City and to FCT by a qualified contractor selected by Contractor. The cost of title research may be reimbursable to ACT from FCT, and the City is not responsible for paying for the title research. Any direct costs associated with clearing of any title defect will not be Contractor's financial responsibility, however Contractor will negotiate in the City's best interests to have any title defects cleared by the Seller or other parties which may be involved.
- 3) Order, receive, and review a Phase 1, and possibly a Phase 2 environmental audit certified to the City and to FCT by a qualified contractor selected by ACT. The cost of environmental audits may be reimbursable to ACT from FCT, and the City is not responsible for paying for the

Environmental Audits. The Contractor is not liable for any environmental clean-up costs prior to closing, and the City may choose not to close if there are any liabilities identified prior to closing.

- 4) Negotiate any out-parcel sales, provided the sale of such out-parcels does not inure to the benefit of a private party, and are in the best interests of the park design. Any changes to the boundaries of the proposed project, due to out-parcel sales or any other reason, will be confirmed with the City prior to any final decisions.
- 5) Order, receive, and review two appraisals certified to the Contractor and FCT by a qualified contractor selected by ACT. The cost of appraisals may be reimbursable to ACT from the Florida Communities Trust. Contractor and City agree to be bound by the applicable confidentiality rules in the Florida statutes regarding state land acquisitions under the Florida Forever program.
- 6) Negotiate an option contract for the purchase of the property, said option contract being acceptable in form to Florida Communities Trust and to the City of Gainesville. The basic form of the option contract will be provided by the State of Florida.
- 7) Negotiate the terms of conservation easements with two or more property owners, including preparation of Baseline Documentation.
- 8) Order, receive, and review boundary surveys by a qualified contractor selected by ACT and certified to the City and to the State of Florida. The cost of the survey may be reimbursable to ACT from the Florida Communities Trust. The City will be provided with five sealed copies of the final survey, as well as electronic files containing the survey information.
- 9) Create a preliminary site plan for the property using a qualified designer or engineer selected by ACT, including presenting the plan at meetings to solicit public input. These meetings may be under the auspices of an existing City advisory committee or Board.
- 10) Cooperate with City staff in the preparation of the "Land Management Plan," which FCT requires to be completed before closing. City staff will take the lead, with Contractor providing information and maps to assist in its preparation.
- 11) Complete a "Project Plan" for the project. This is a compilation of many of the previous documents, plus financial reconciliation statements, and is required by FCT.
- 12) Coordinate the closing, including title insurance, an expense that is reimbursable from the proceeds of the FCT grant and is not a responsibility of the City.
- 13) Coordinate any preliminary site work or trash clean-up, except that City shall pay any tipping fees (or seek waivers) for trash or debris removed from the site by Contractor. Contractor shall not be required to pay for the cost of demolishing any buildings, and shall not be liable for the cost of any trash clean-up with a labor cost of more than \$2000.

II. CITY RESPONSIBILITIES

CITY will provide the following:

- 1) City will designate a person to coordinate the City's staff review and legal review of all documents provided by Contractor, and will return the documents to Contractor, with suggested revisions or comments, within ten working days, unless other provisions are agreed to by both parties. At a minimum, the City will be expected to review the title work, the environmental audit, the appraisals, option contracts, conservation easements, the boundary survey, the site plan, closing statements, and the Project Plan.
- 2) City will provide the matching funds required to close on the transaction with the Seller and Florida Communities Trust. Contractor agrees to negotiate in the City's best interest, which is to minimize the amount of matching funds required by negotiating the lowest possible sales price. Contractor will work with FCT to have the difference in the appraised value of the property and the ultimate sales price to be considered the City's required match.
- 3) City will complete the Land Management Plan acceptable to FCT in a timely manner that does not delay the closing.
- 4) City will initiate any change in planning designations or re-zoning petitions that would be required. Contractor will attend and participate in any staff meetings or public meetings regarding planning or zoning designations.
- 5) City will use its best efforts to close on this transaction in a timely manner, however City is under no obligation to exercise an option to purchase the property until and unless the option contract and related documents are accepted and approved by the Gainesville City Commission.

III. TERM

The term of this AGREEMENT shall be effective upon final execution and will continue for one year, subject to funding in subsequent fiscal years. At the end of the contract period, upon satisfactory performance, the City may at its option, extend the contract from month to month until the completion of the entire scope of services.

IV. COMPENSATION/PAYMENT

CONTRACTOR shall be paid as follows:

Within 30 days of the execution of this Agreement	\$ 25,000.
Upon completion of the environmental audit, appraisal, and survey	\$ 25,000.
Within 30 days of the closing	<u>\$ 20,000.</u>
TOTAL	\$ 70,000.

V. DEFAULT

Failure to perform any responsibility under this Agreement shall place the non-performing party in default. Upon written notice by the non-defaulting party, the party in default shall have ten (10) days to correct the default. If the default is not corrected, this Agreement may be terminated at the option of the non-defaulting party.

VI. TERMINATION

Either party may terminate this Agreement without cause upon ninety (90) days prior written notice to the other party. In the event of termination, Contractor will be compensated for services rendered up to and including the day of termination, including all direct expenses and labor.

VII. INDEPENDENT CONTRACTOR

Contractor shall be considered as an independent contractor and as such shall not be entitled to any right or benefit to which City employees are or may be entitled to by reason of employment. Contractor shall be solely responsible for the means, method, techniques, sequences, and procedures utilized by the Contractor in full performance of this Agreement.

VIII. INDEMNIFICATION

Contractor shall agree to indemnify and save harmless the City, its officers, agents and employees, from and against any and all liability, claims, demands, fines, fees, expenses, penalties, suits, proceedings, actions and cost of action, including attorney's fees for trial and on appeal, of any kind and nature arising or growing out of or in any way connected with the performance of this Agreement whether by act of omission or negligence of the Contractor, its agents, employees, or contractors, or because or of due to the mere existence of this Agreement between the parties.

IX. INSURANCE

Contractor shall maintain an insurance policy for general liability that is acceptable to the City, and shall provide proof of such insurance upon request.

X. SOVEREIGN IMMUNITY

Nothing in this Agreement shall be interpreted as a waiver of the City's sovereign immunity as granted under Section 768.28 Florida Statutes.

XI. VALIDITY

If any provision of this Agreement is contrary to, prohibited by, or deemed invalid by applicable law, rules, or regulations of any jurisdiction in which it is sought to be enforced, then such

provision shall be deemed inapplicable and omitted, and shall not invalidate the remaining provisions of this Agreement.

XII. COMPLIANCE WITH LAW

The Agreement and the legal relations between the parties hereto shall be governed and construed in accordance with the laws of the State of Florida. Venue is in the courts of Alachua County, Florida.

XIII. CONTACT PERSONS

The parties hereto designate the following persons to be contacted regarding the performance of this Agreement:

CITY:
Mr. Russ Blackburn
City Manager
City of Gainesville
Station 6
PO Box 490
Gainesville, FL 32602
(352) 334-5010

CONTRACTOR:
Ms. Lauren Day
Executive Director
Alachua Conservation Trust, Inc.
Suite 201
12 West University Avenue
Gainesville, FL 32601
(352) 373-1078

XIV. ENTIRE AGREEMENT

This Agreement constitutes the entire Agreement between the City and Contractor. Any modifications, amendments, or alterations shall be in writing and executed by both parties prior to becoming effective.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first written above.

City of Gainesville

Alachua Conservation Trust, Inc.

Russ Blackburn
City Manager

Lauren Day
Executive Director

Witness

Witness

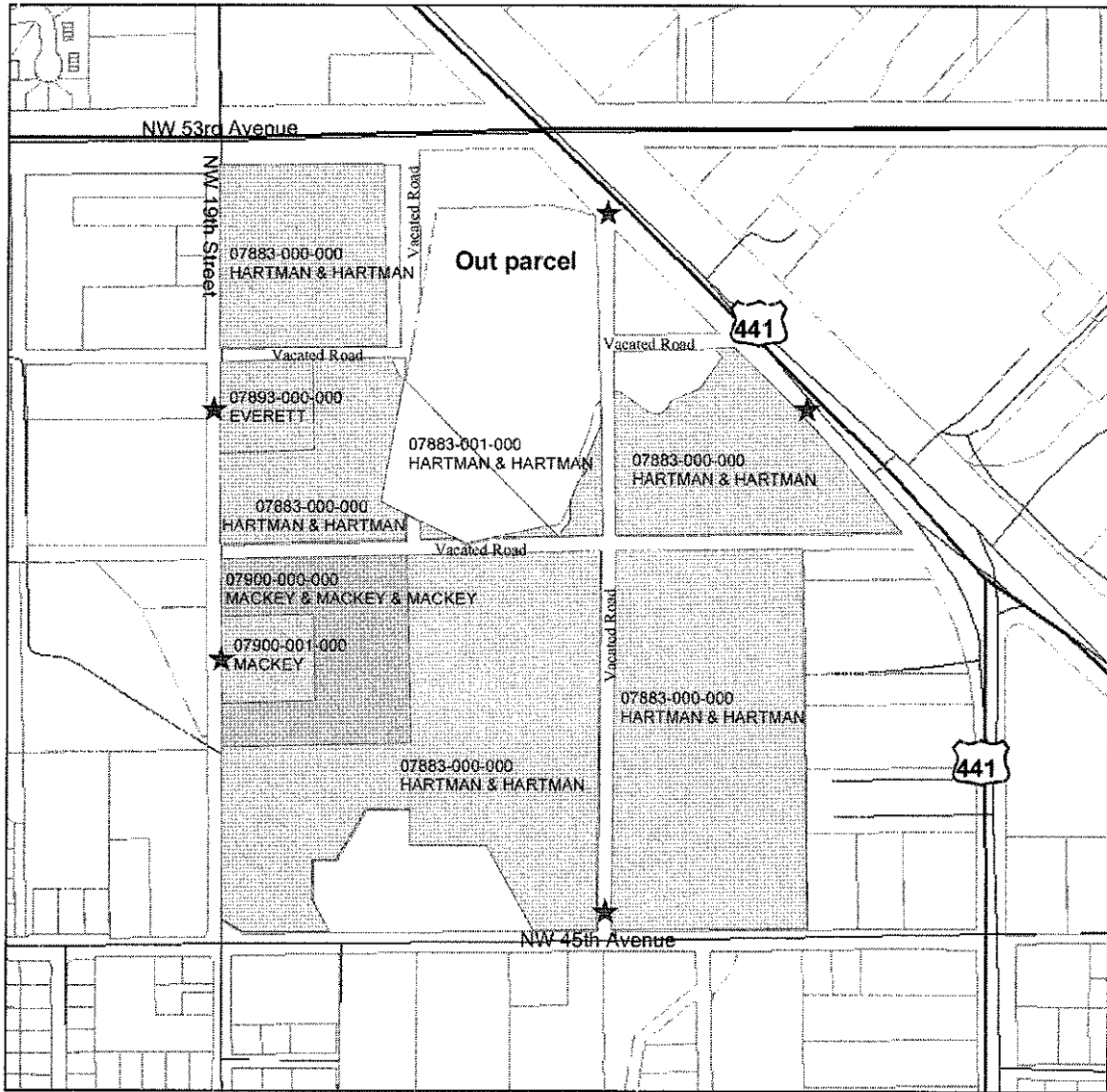
List of contract attachments or addenda

Attachment A – Property map

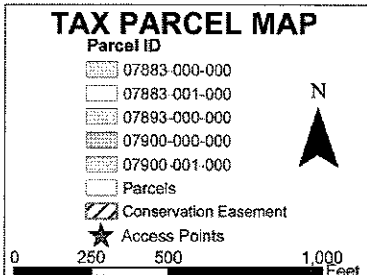

Attachment B – Drug-Free Workplace Form (provided by City)

Attachment C – Other required City attachments

Attachment A
Property map



This map is for informational purposes only. Do not rely on this map for accuracy of dimensions, size or location. The City of Gainesville does not assume responsibility to update this information or for any error or omission on this map. For specific information, you are directed to contact the City of Gainesville Florida.

Florida Communities Trust
2006 Grant Application
City of Gainesville Florida

DRUG-FREE WORKPLACE PROGRAM

Job Applicant Acknowledgment of Receipt and Understanding

I hereby acknowledge that I have received and read the Notice to Applicants and Employees about the City's Drug-free Workplace policy, a summary of the drugs which may alter or affect a drug test and a list of local Employee Assistance Programs and drug and alcohol treatment programs. I have had an opportunity to have all aspects of this material fully explained. I understand that the full text of the Drug-free Workplace policy is available upon request.

I HEREBY ACKNOWLEDGE RECEIPT OF "THE NOTICE TO APPLICANTS AND EMPLOYEES ABOUT THE CITY OF GAINESVILLE'S DRUG-FREE WORKPLACE PROGRAM", "ALACHUA AND MARION COUNTY DRUG AND ALCOHOL TREATMENT PROGRAMS AND EMPLOYEE ASSISTANCE PROGRAMS", AND A LISTING OF THE OVER-THE-COUNTER AND PRESCRIPTION DRUGS WHICH COULD ALTER OR AFFECT THE OUTCOME OF A DRUG TEST.

I ALSO UNDERSTAND THAT THE DRUG-FREE WORKPLACE POLICY AND RELATED DOCUMENTS ARE NOT INTENDED TO CONSTITUTE A CONTRACT BETWEEN THE CITY AND ME.

THE UNDERSIGNED FURTHER STATES THAT HE OR SHE HAS READ THE FOREGOING ACKNOWLEDGMENT AND KNOWS THE CONTENTS THEREOF AND SIGNS THE SAME OF HIS OR HER OWN FREE WILL.

SIGNATURE

DATE

WITNESS

DATE

Summary of a proposal to the City of Gainesville from Alachua Conservation Trust for a contract to acquire the Hogtown Creek Headwaters

In September, the City of Gainesville was awarded a land acquisition grant from Florida Communities Trust (FCT) to acquire the Hogtown Creek Headwaters project. The project area includes 76 acres of the former Hartman property which was purchased by Home Depot in October, 2006. Also included are conservation easements totaling 12.5 acres on two adjacent privately owned properties. The entire FCT grant award is for \$4.9 million, of which the City of Gainesville is required to provide a 25% match of the project costs, or about \$ 1.2 million.

Alachua Conservation Trust (ACT), a non-profit land trust, prepared the grant application under contract with the City. Of 115 applications, the City's proposal was ranked fifth, and was one of only twenty that were funded this year. FCT grants allow the property to be used for nature-based recreation, and may include minimal active components on areas that are already disturbed. If acquired, the Hogtown Headwaters would become the City's next nature park, and the property is well-suited for this designation and use.

In October, the City received a proposal from ACT in which ACT would negotiate the entire acquisition for a fixed fee. The intent is for ACT to secure a bargain sale of at least 25% below the appraised value, thereby reducing or eliminating the need for the City to provide matching land acquisition funds. The cost of the contract with ACT is \$70,000, and the primary services ACT will provide include: coordinating the appraisals, title commitment, survey, environmental audit, option contract negotiations, site planning, and other requirements of FCT. The primary responsibility of the City will be to create a land management plan. Since any contracts negotiated by ACT will be option contracts, both the City and Florida Communities Trust will have to accept the terms of the contract before land acquisition funds are committed. Many of the due diligence and transaction related costs, which could total nearly \$50,000, will be reimbursable to ACT from Florida Communities Trust provided the project closes.

ACT is qualified to facilitate this transaction, having successfully completed similar negotiations with Florida Communities Trust on Lake Tusawilla Preserve and Blues Creek Ravine, and ACT is currently negotiating on an FCT project to purchase properties in the Prairie Creek Basin. ACT has received grant awards from FCT in all seven applications that it has submitted over the past fifteen years.

Note, the following are the estimated cost of contractor services, based on previous projects. Where noted, these costs may be reimbursable. ACT has and will seek charitable donations associated with some of these services. These figures are being supplied to the City for informational purposes, and are not a part of this contract.

1) Negotiate the terms of a Grant Award Agreement with FCT on behalf of the City.	\$ 500
2) Order, receive, and review a title and encumbrance report certified to the City and to FCT by a qualified contractor selected by Contractor. The cost of title research may be reimbursable to ACT from FCT, and the City is not responsible for paying for the title research. Any direct costs associated with clearing of any title defect will not be Contractor's financial responsibility; however Contractor will negotiate in the City's best interests to have any title defects cleared by the Seller or other parties which may be involved.	\$ 500
3) Order, receive, and review a Phase 1, and possibly a Phase 2 environmental audit certified to the City and to FCT by a qualified contractor selected by ACT. The cost of environmental audits may be reimbursable to ACT from FCT, and the City is not responsible for paying for the Environmental Audits. The Contractor is not liable for any environmental clean-up costs prior to closing, and the City may choose not to close if there are any liabilities identified prior to closing.	\$ 6,000
4) Negotiate any out-parcel sales, provided the sale of such out-parcels does not inure to the benefit of a private party, and are in the best interests of the park design. Any changes to the boundaries of the proposed project, due to out-parcel sales or any other reason, will be confirmed with the City prior to any final decisions.	\$ 3,000
5) Order, receive, and review two appraisals certified to the Contractor and FCT by a qualified contractor selected by ACT. The cost of appraisals may be reimbursable to ACT from the Florida Communities Trust. Contractor and City agree to be bound by the applicable confidentiality rules in the Florida statutes regarding state land acquisitions under the Florida Forever program.	\$ 20,000
6) Negotiate an option contract for the purchase of the property, said option contract being acceptable in form to Florida Communities Trust and to the City of Gainesville. The basic form of the option contract will be provided by the State of Florida.	\$ 2,000
7) Negotiate the terms of conservation easements with two or more property owners, including preparation of Baseline Documentation.	\$ 3,000
8) Order, receive, and review boundary surveys by a qualified contractor selected	\$ 23,000

by ACT and certified to the City and to the State of Florida. The cost of the survey may be reimbursable to ACT from the Florida Communities Trust. The City will be provided with five sealed copies of the final survey, as well as electronic files containing the survey information.	
9) Create a preliminary site plan for the property using a qualified designer or engineer selected by ACT, including presenting the plan at meetings to solicit public input. These meetings may be under the auspices of an existing City advisory committee or Board.	\$ 7,000
10) Cooperate with City staff in the preparation of the "Land Management Plan," which FCT requires to be completed before closing. City staff will take the lead, with Contractor providing information and maps to assist in its preparation.	\$ 1,000
11) Complete a "Project Plan" for the project. This is a compilation of many of the previous documents, plus financial reconciliation statements, and is required by FCT.	\$ 500
12) Coordinate the closing, including title insurance, an expense that is reimbursable from the proceeds of the FCT grant and is not a responsibility of the City.	\$ 2,000
13) Coordinate any preliminary site work or trash clean-up, except that City shall pay any tipping fees (or seek waivers) for trash or debris removed from the site by Contractor. Contractor shall not be required to pay for the cost of demolishing any buildings, and shall not be liable for the cost of any trash clean-up with a labor cost of more than \$2000.	\$ 1,500
Total	\$ 70,000