

**APALACHICOLA NATIONAL FOREST (ANF) RESTORATION,  
RELOCATION, AND RESEARCH RECIPIENT SITE**

**ANF GOPHER TORTOISE DONOR AGREEMENT**

This **ANF GOPHER TORTOISE DONOR AGREEMENT** (hereinafter "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 2018, by and between **Wiregrass Ecological Associates, LLC**, (hereinafter "WEA"), whose mailing address is **2897 South Jefferson Street, Monticello, Florida 32344** and **City Fort Lauderdale**, and/or their approved agents, (hereinafter "Donor") whose mailing address is **6000 NW 21<sup>st</sup> Avenue, Fort Lauderdale, Florida 33309** (hereinafter collectively the "Parties").

**WITNESSETH:**

**WHEREAS**, WEA maintains the Apalachicola National Forest Research Recipient Site (hereinafter "Recipient Site"); a gopher tortoise recipient site located in Leon County, Florida that has been approved for the release of gopher tortoises and commensal species by the Florida Fish and Wildlife Conservation Commission (hereinafter "FWC");

**WHEREAS**, WEA agrees to provide area within the recipient site and Donor agrees to provide gopher tortoises from a permitted relocation project with the FWC. Donor agrees to the terms and conditions below to be used to relocate gopher tortoises associated with the proposed development of a project known as the **FXE Perimeter Loop Road Project** in **Broward County** (hereinafter "Project");

**WHEREAS**, the acreage of lands to be reserved from WEA has been determined by Donor based on an estimated **26** (twenty-six) **gopher tortoises**; and

**WHEREAS**, WEA requires as part of this Agreement for Donor to remit this Agreement to WEA in order to allow Donor to submit the recipient site information for the offsite relocation permit;

**NOW, THEREFORE**, in consideration of the premises and of the mutual covenants hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto, each intending to be legally bound, do hereby warrant and agree as follows:

**TERMS OF AGREEMENT**

1. **Payment**. The price per tortoise is Seven Hundred-Fifty dollars (\$750.00) payable in check or cashier's check to the Fish and Wildlife Foundation of Florida (hereinafter "FWFF"), whose mailing address is Post Office Box 11010,

Tallahassee, Florida 32302. There will be no fee for tortoises with a carapace less than 130mm. Should only tortoises with a carapace less than 130mm be delivered, WEA will charge a pick-up and delivery fee of Five Hundred Dollars (\$500.00). **WEA does not require a deposit.** Payment to FWFF will be made by the Donor in compliance with Chapter 218, Florida Statutes, also known as the "Local Government Prompt Payment Act" upon receipt of an invoice from WEA. Payment shall be accompanied by a completed "Gopher Tortoise Conservation Fund Recipient Site Fee Deposit Form" found in this Agreement as Appendix 1. WEA shall be responsible for securing distribution of all funds and payments from the FWFF.

2. **Late Fee** Invoices past payment due date will be subject to interest in accordance with Chapter 218, Florida Statutes, also known as the "Local Government Prompt Payment Act."
3. **Recipient Site Reservation.** WEA will provide the necessary reservation letter and coordination with recipient site owners. The aforementioned per tortoise fee of \$750.00 is only valid through **December 31, 2018**. If the FWC gopher tortoise relocation permit is received prior to or on **December 31, 2018**, the agreed upon tortoise fee is valid for the duration of the permit. If WEA does not receive a copy of the FWC gopher tortoise relocation permit by that date, that fee is subject to change; any increase in the amount of the fee, however, shall only be binding if the parties mutually amend this Agreement in writing. WEA does not guarantee the per tortoise fee after **December 31, 2018**.
4. **Permit and Completion Report.** Donor agrees to provide WEA with a signed copy of the relocation permit prior to initial delivery of gopher tortoises. Donor also agrees to provide WEA with a copy of the completion report. This information is necessary for WEA reporting requirements with the FWC. Failure to do so can result in the denial of any future requests for use of the recipient site.
5. **Gopher Tortoise Transfer and Condition.** All coordination regarding delivery and timing of tortoise relocations is negotiated through WEA. The Donor shall provide WEA with one (1) week advance notification prior to delivery of gopher tortoises. Donor shall also be required to provide and transfer tortoises in appropriate clinical disposition (not showing signs of poor health, poor condition, disease, injury, damage, dehydration, stress, death, or other similar descriptors) and with indications that they have been appropriately permitted, excavated/trapped, held, and transferred for translocation per all current FWC specifications, guidelines and requirements. Gopher tortoises under this agreement shall be delivered by the Donor to WEA at **Gainesville, Florida**.

If the Donor does not deliver gopher tortoises per the agreed upon schedule or delivers tortoises in a disposition that results in the refusal of their acceptance by WEA and/or the landowner, WEA shall have the right to refuse the acceptance of

gopher tortoises for translocation, monitor and/or quarantine gopher tortoises at the expense of Donor, and require Donor forfeit all current and/or future opportunity for gopher tortoise relocations with the recipient site.

Acceptance of gopher tortoises is also pursuant to the conditions established under FWC Permits GTR-10-00001A, and LSSC-10-00040A; USFS Permit WAK2020; the **August 15, 2018** WEA Reservation Letter; and this Agreement. If no tortoises are delivered under this agreement, an up to 5% processing and coordination fee may be assessed for the total estimated invoice amount.

6. **Gopher Tortoise Release.** WEA will release the gopher tortoises into the designated portion of the area of the recipient site. WEA will also provide starter burrows for each gopher tortoise, as needed.
7. **Reservation Time Frame:** WEA will reserve the Donor's release area within the area for the duration of time associated with the gopher tortoise relocation permit up to one (1) year after the issuance of the permit. Upon one (1) year after the original issuance of the relocation permit by FWC, WEA will no longer reserve said area unless written request is received from Donor. If no written request is received, said release area will no longer be available. Also, if the entirety of the release area is not filled by the maximum number of gopher tortoises permitted, the remaining area will not be reserved for future relocations for the Donor. WEA reserves the right to use any remaining lands for other relocations.
8. **Contacting of Recipient Site Landowners.** The Donor shall at no time, contact or attempt to contact the recipient site landowners directly or indirectly unless consent is expressly given by WEA. Should the Donor attempt to contact the recipient site landowners directly or indirectly without expressed consent of WEA, the Donor shall forfeit all current and/or future opportunity for gopher tortoise relocations with the recipient site landowners.
9. **Breach.** If, for some reason, payments have not been conveyed to WEA by the Donor for gopher tortoises received, this action will constitute a breach of the Agreement by Donor, and therefore, WEA reserves the right to refuse any additional gopher tortoises until all monies have been received from the Donor and notification to the FWC.

This Agreement may be terminated by either party for cause upon ten (10) days' notice or by either party for convenience upon no less than thirty (30) days' advance written notice. Termination of this Agreement for cause shall include, but not be limited to, failure to suitably perform the work, failure to continuously perform the work in a manner calculated to meet or accomplish the objectives of Donor as set forth in this Agreement, or multiple breach of the provisions of this Agreement notwithstanding whether any such breach was previously waived or cured. In the event this Agreement is terminated for convenience, WEA shall be

paid for any services performed to the date the Agreement is terminated.

10. **Applicable Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Florida., as well as in accordance with all applicable laws, statutes, including the Local Government Prompt Payment Act (218.735 and 218.76 F.S.) as amended in the 2010 legislative session, ordinances, codes, rules, regulations and requirements of any governmental agencies, which regulate or have jurisdiction over the Project or the services to be provided and performed by WEA hereunder. The venue of any action to enforce the terms of this Agreement shall be in Leon County, Florida.
11. **Entire Agreement.** This Agreement contains the entire understanding between the Donor and WEA. The Donor and WEA agree that no representation was made by or on behalf of the other which is not contained in this Agreement, and that in entering into this Agreement neither relied upon any representation not especially herein contained. This Agreement shall not be binding upon the Donor and WEA until executed by an officer of the Donor and WEA, if applicable its corporate seal affixed, and an executed copy of the Agreement has been delivered to the Donor and WEA.
12. **Amendments and Waivers.** This Agreement may not be amended, modified, altered, or changed in any respect whatsoever, except by a further agreement in writing duly executed by each and all of the parties hereto. No failure by Donor or WEA to insist upon the strict performance of any covenant, duty, agreement or condition of this Agreement or to exercise any right or remedy upon a breach thereof shall constitute a waiver of any such breach or of such any other covenant, agreement, term or condition. Any party hereto, by notice, may but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenants of any other party hereto. No waiver shall affect or alter this Agreement, but each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.
13. **Captions; Genders.** Captions used in this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement. Whenever used, the singular shall include the plural, the plural shall include the singular, and gender shall include all genders.
14. **Partial Invalidity.** In case any term of this Agreement shall be held to be invalid, illegal or unenforceable, in whole or in part, neither the validity of the remaining part of such term or the validity of any other term of this Agreement shall in any way be affected thereby.
15. **Calculation of Time.** Time periods of five (5) days or less shall be computed without including Saturdays, Sundays, or national legal holidays, and any time

period existing on a Saturday, Sunday or national legal holiday shall be extended until 5:00 p.m. on the next business day.

16. **Effective Date.** This Agreement is effective on the date on which the last of the parties signs this Agreement.
17. **Typewritten or Handwritten Provisions.** Handwritten provisions and/or typewritten provisions inserted in this Agreement, which are initialed by both parties, shall control over the printed provisions in conflict therewith.
18. **Counterparts.** This Agreement may be executed in any number of counterparts, any one and all of which shall constitute the agreement of the parties and shall be deemed one original instrument.
19. **Time is of the Essence.** Time is of the essence under the terms of this Agreement.
20. **Indemnification.** To the maximum extent permitted by Florida law and subject to the conditions and limitations of F.S. Section 768.28, Donor shall indemnify and hold harmless WEA, its officers and employees from any and all liabilities, damages, losses and costs, including, but not limited to, reasonable attorneys' fees and paralegals' fees, to the extent caused by the negligence, recklessness, or intentionally wrongful conduct of Donor or anyone employed or utilized by Donor in the performance of this Agreement provided such employees are acting within the course and scope of their employment. This indemnification obligation shall not be construed to negate, abridge or reduce any other rights or remedies which otherwise may be available to an indemnified party or person described in this paragraph. Nothing herein shall be deemed a waiver of Donor's sovereign immunity.
21. **Other Provisions**

Contractor is required to comply with public records laws codified in Chapter 119, Florida Statutes, and is specifically required to:

- a. Keep and maintain public records required by Donor to perform the service.
- b. Upon request from Donor's custodian of public records, provide Donor 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 Chapter 119 or as otherwise provided by law.
- c. 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 contract term and following

completion of the contract if the Contractor does not transfer the records to Donor.

- d. Upon completion of the contract, transfer, at no cost, to Donor all public records in possession of the Contractor or keep and maintain public records required by Donor to perform the service. If the Contractor transfers all public records to Donor upon completion of the contract, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the contract, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to Donor, upon request from Donor's custodian of public records, in a format that is compatible with the information technology systems of Donor.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT DONOR'S CUSTODIAN OF PUBLIC RECORDS by telephone at 954-828-5002 or by e-mail at PRRCONTRACT@FORTLAUDERDALE.GOV or by mail at 100 North Andrews Avenue, Fort Lauderdale, FL 33301 Attention: Custodian of Public Records.**

\* \* \* \*

**APPENDIX 1**



**GOPHER TORTOISE CONSERVATION FUND  
RECIPIENT SITE FEE DEPOSIT FORM**

This source document must accompany all deposits and contributions to the Gopher Tortoise Conservation Fund. **Mail completed form along with the deposit to:**

Fish & Wildlife Foundation of Florida  
Will Bradford, CFO  
Attn: Gopher Tortoise Conservation Fund  
P.O. Box 11010  
Tallahassee, FL 32302

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

Donor Site Project Title: \_\_\_\_\_

County: \_\_\_\_\_

Number of Tortoises: \_\_\_\_\_

Name/Depositor: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone Number: (\_\_\_\_) \_\_\_\_-\_\_\_\_ E-mail: \_\_\_\_\_

Total Deposit: \$ \_\_\_\_\_ *(Payable to Fish & Wildlife Foundation of Florida)*

Check/Warrant No.: \_\_\_\_\_

Type of Payment (circle one): **Advance Deposit** or **Remainder Deposit** or **Full Payment**

\*\*\*\*\* **DO NOT WRITE BELOW THIS LINE** \*\*\*\*\*

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

Copy: Mr. Austin D. Carroll, [acarroll@wiregrasseecological.com](mailto:acarroll@wiregrasseecological.com)  
Mr. Will Bradford, [will.bradford@myfwc.com](mailto:will.bradford@myfwc.com)  
Mr. John Dunlap, [jdunlap@fs.fed.us](mailto:jdunlap@fs.fed.us)  
Mr. Jeff Gainey, [jgainey@fs.fed.us](mailto:jgainey@fs.fed.us)

\*\*\*\*\*  
Rev: 5/2016

\* \* \* \*

**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Agreement, to become effective as of the date and year first above written and in accordance with the terms of this Agreement.

**WEA:**

**Wiregrass Ecological Associates, LLC**

Executed on \_\_\_\_\_, 2018      By: \_\_\_\_\_  
**Austin D. Carroll, Vice-President**

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_, by \_\_\_\_\_ who is Personally Known \_\_\_\_ OR Produced Identification \_\_\_\_\_. Type of Identification Produced \_\_\_\_\_.

\_\_\_\_\_  
Signature of Notary Public-State of \_\_\_\_\_

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped (NOTARY SEAL)



**DONOR:**  
**City Fort Lauderdale**

WITNESSES:

**CITY OF FORT LAUDERDALE**, a  
municipal corporation of the State of Florida.

\_\_\_\_\_

By \_\_\_\_\_  
DEAN J. TRANTALIS, Mayor

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

\_\_\_\_\_

By \_\_\_\_\_  
LEE R. FELDMAN, City Manager

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

(SEAL)

ATTEST:

\_\_\_\_\_  
JEFFREY A. MODARELLI, City Clerk

Approved as to form:  
ALAIN E. BOILEAU, City Attorney

\_\_\_\_\_  
LYNN SOLOMON, Assistant City Attorney

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2018, by DEAN J. TRANTALIS, Mayor of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida.

(SEAL)

\_\_\_\_\_  
Signature: Notary Public, State of Florida

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped  
Personally Known \_\_\_\_\_

STATE OF FLORIDA:  
COUNTY OF BROWARD:

The foregoing instrument was acknowledged before me this \_\_\_\_\_day of \_\_\_\_\_, 2018, by LEE R. FELDMAN, City Manager of the CITY OF FORT LAUDERDALE, a municipal corporation of Florida.

(SEAL)

\_\_\_\_\_  
Signature: Notary Public, State of Florida

\_\_\_\_\_  
Name of Notary Typed, Printed or Stamped

Personally Known \_\_\_\_\_