

MEMORANDUM

TO: Governing Board

FROM: Charles H. Houder III, Director of Land Resources

DATE: October 1, 2012

RE: Approval and Execution of Resolution 2012-70, Authorizing the Exchange of District Lands to Damascus Peanut Company, Inc.

RECOMMENDATION

Staff recommends approval and execution of Resolution 2012-70:

- **Authorizing the exchange of 670 acres of the Ellaville tract for 585 acres of Damascus Peanut Company Inc. acreage to the Suwannee River Water Management District, and**
- **Authorizing the Chairman and Secretary to execute necessary closing documents.**

BACKGROUND

A public hearing is scheduled for October 9, 2012, to take comments on the proposed exchange of 670 acres of District lands in Madison County for the 585-acre Damascus Peanut Company Parcel in Madison County.

In March 2012 the Governing Board approved detailed assessment for this exchange. As part of the District's effort to exchange property for property with greater water resource values, the Surplus Land Committee consisting of Carl Meece, Ray Curtis and Kevin Brown recommended on July 12, 2012, that staff work toward an exchange of these parcels.

Under the exchange proposal Rich Property & Investment Group, Inc. will exchange 585 deeded acres of the Damsacus Peanut Company parcel to the District. Donald Rich of Rich Property & Investment Group, Inc. has an option to purchase this tract from Damascus Peanut Company. Mr. Rich will exercise his option interest at closing, and the District will take title from Rich Property & Investment Group, Inc. The District will surplus and exchange 670 acres of the Ellaville tract and \$200,000 for the Damsacus Peanut Company parcel.

Florida Statutes 373.089 (4) allows the Governing Board to exchange lands, to fix the terms and conditions and to pay any sum of money necessary to equalize the values of exchanged properties. The District is exchanging 670 acres and \$200,000 for the 585-acre Damascus

Peanut Company lands. Based on the appraisal averages, the District is exchanging its lands for 69% of the average appraised value of Damascus Peanut Company.

Several contingencies are in the contract, including obtaining rezoning of the property from conservation to agriculture, the application and approval of a water use permit by the District, and the District's release of all mineral rights. Mr. Rich has a 90- to 120-day due diligence period to satisfy these items at his expense.

In order to meet the Florida Statute requirement to have an appraisal current to 90 days of sale date, the parcel was reappraised on July 27, 2012, by William Carlton, MAI and Robert Sutte, MAI. If closing does not occur during that 90-day period, update appraisals will be ordered.

No state agency expressed interest to own the property. A notice of intent to sell will be advertised for once each week for three consecutive weeks prior to the sale date in a local Madison County newspaper.

The original contract for this exchange was signed by Rich Property and Investments Inc. on August 24, 2012. District counsel prepared an amendment to the existing contract to clarify the District's advertising and appraisal requirements to surplus the exchange parcel and to formalize with the Florida Fish and Wildlife Conservation Commission the intent for tortoise relocation. Staff recommends includes approval of the agreement including the amendment.

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enclosures
60-12-003

AMENDMENT TO CONTRACT

THIS CONTRACT is made and entered into this _____ day of _____ 2012, by and between the SUWANNEE RIVER WATER MANAGEMENT DISTRICT, a Florida water management district created pursuant to Section 373.069, Florida Statutes (the "DISTRICT"), whose address is 9225 CR 49, Live Oak, Florida 32060; and RICH PROPERTY AND INVESTMENT GROUP, INC., a Georgia corporation ("RICH"), whose address is 3269 Barwick Road, Quitman, Georgia 31643.

WITNESSETH:

WHEREAS, RICH and the DISTRICT have previously entered into a contract for the swapping of certain real property such contract being executed by the RICH on _____, 2012 and by the DISTRICT on _____, 2012 (the "CONTRACT"); and,

WHEREAS, the CONTRACT presently provides at paragraph 2 as follows:

This Contract shall be executed by the Executive Director of the DISTRICT and by RICH, and then presented to the Governing Board of DISTRICT. The Governing Board of DISTRICT shall then consider the Contract and approve the same if acceptable. This Contract shall not be effective or binding on either party unless and until it is approved by written resolution of the Governing Board of DISTRICT (and the date of such approval shall be the "Effective Date of this Contract").

; and,

WHEREAS, the Governing Board of the DISTRICT has not yet considered the CONTRACT; and,

WHEREAS, prior to such consideration by the Governing Board of the DISTRICT, the

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parties wish to amend the executed contract so that the Governing Board will consider the CONTRACT with this amendment already in place.

NOW THEREFORE, for and in consideration of the covenants of both parties as herein set forth, the sum of Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, DISTRICT and RICH agree as follows:

1. RECITALS: The above recitals are accurate and are an integral part of this Contract.
2. AMENDMENT OF THE CONTRACT: The CONTRACT is hereby changed altered and amended as follows:

A. Subparagraph 13(A) of the CONTRACT shall hereafter read as follows:

A. DISTRICT represents to RICH that: (i) other than in compliance with all applicable environmental laws, rules and regulations, DISTRICT has not disposed of or dumped any hazardous waste or other environmental pollutants onto the DISTRICT Property, and DISTRICT has no actual knowledge, without inquiry, that any third party has dumped any hazardous waste or other environmental pollutants onto the DISTRICT Property, (ii) to the best of DISTRICT's actual information and belief, without inquiry, the DISTRICT Property has not been used as a dump, land-fill or garbage disposal site, and there has been no allegations that the DISTRICT Property has violated any applicable environmental laws, rules or regulations, (iii) DISTRICT has not received actual notice from any government agency that the DISTRICT Property is in violation of any applicable environmental laws, rules or regulations, or that any remedial action is required on the DISTRICT Property. For purposes of the representations set forth in this paragraph 13.A, knowledge and belief of DISTRICT and receipt of notice by DISTRICT is deemed to be that of Charles H. Houder, III, an employee of DISTRICT responsible for the DISTRICT Property. Within five (5) days after the Effective Date of this Contract, DISTRICT shall furnish RICH with a copy of any and all environmental audits and reports, and all correspondence relating to environmental matters on and for the RICH Property (the "Environmental Reports") in DISTRICT's possession.

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B. A subparagraph C is hereby added to paragraph 13 of the CONTRACT.

Subparagraph 13(C) of the CONTRACT shall hereafter read as follows:

C. The DISTRICT may, in its sole discretion and at its sole expense, relocate any of the gopher tortoises located on the DISTRICT Property. The DISTRICT shall obtain all permits required for such relocation at the DISTRICT's sole expense. The provisions of this subparagraph shall not be construed to require the DISTRICT to relocate any gopher tortoise or any particular gopher tortoise but rather grants this option to the DISTRICT. The DISTRICT shall have a term of six (6) months running from the Effective Date of this Contract to accomplish such relocation. The provisions of this subparagraph shall not toll or effect any other time limits set out this Contract or the date of closing. The DISTRICT's authority to accomplish such relocation shall survive closing. During the above six (6) month term, both before and after closing, the DISTRICT may enter the DISTRICT Property with manpower and equipment to accomplish such relocation and neither RICH nor any assignee nor subsequent owner of the DISTRICT Property, shall interfere with the same. No later than closing, the DISTRICT shall deliver to RICH a drawing of the DISTRICT Property showing the general area(s) on the DISTRICT Property from which the DISTRICT intends to relocate gopher tortoises. After closing, neither RICH nor any assignee nor subsequent owner of the DISTRICT Property, shall disturb any such area(s) shown on such drawing nor harm any gopher tortoise located therein, until the DISTRICT has completed its relocation in such area(s) or the running of the above six (6) month term, whichever occurs first.

C. Paragraph 20 of the CONTRACT shall hereafter read as follows:

20. CONDITION PRECEDENT TO CLOSING:

A. A condition precedent to RICH's obligation to close, is a determination by RICH, to RICH's satisfaction and at RICH's expense, after research and investigation by RICH, that the DISTRICT Property is (or will be after re-zoning of the DISTRICT Property to "Agriculture") exempt from gopher tortoise mitigation under the Florida Fish and Wildlife Commission (FWC) regulations. This condition precedent shall be waived unless RICH sends written notice to DISTRICT that this condition precedent has not been met no later than ninety (90) days after the Effective Date of this Contract.

B. A condition precedent to the DISTRICT's obligation to close shall be compliance with the relevant provisions of law governing the DISTRICT's authority to sell real property, including without limitation Sections 373.089 and

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373.099, Florida Statutes. These statutory requirements include, but are not limited to, the requirements that (1) both the RICH Property and the DISTRICT Property be appraised and that these appraisals show the appropriate fair market values for the specified time frames; and (2) a notice of intention to sell be published as required by statute and should a better offer be made in response thereto, that the DISTRICT would have the right to terminate this Contract, in which event both parties shall be relieved of all further obligations to the other. Further, should the DISTRICT fail to comply with all of these legal requirements through inadvertence, oversight or otherwise, the parties agree to extend the Closing Date a reasonable amount of time to allow compliance with the same.

4. REMAINDER OF THE CONTRACT REAFFIRMED: All portions of the CONTRACT, other than those portion set out above are hereby reaffirmed by the parties.

5. THIS AMENDMENT TO BE CONSIDERED BY THE GOVERNING BOARD WITH THE CONTRACT: This Amendment shall be considered by the Governing Board of the DISTRICT at the same time the Governing Board of the DISTRICT considers the CONTRACT. Like the CONTRACT, this Amendment shall not be effective or binding on either party unless and until it is approved by written resolution of the Governing Board of DISTRICT.

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EXECUTED on this ____ day of _____, 2012 by the Executive Director of the
SUWANNEE RIVER WATER MANAGEMENT DISTRICT.

SUWANNEE RIVER WATER MANAGEMENT
DISTRICT

By: _____
ANN SHORTELLE, PHD.
As its Executive Director

STATE OF FLORIDA
COUNTY OF _____

Acknowledged before me this ____ day of _____, 2012, by ANN
SHORTELLE, PHD, as Executive Director of and on behalf of SUWANNEE RIVER WATER
MANAGEMENT DISTRICT, who is personally known to me or who produced
_____ as identification.

Notary Public

APPROVED AS TO
FORM AND LEGALITY

GEORGE T. REEVES
Governing Board Counsel

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EXECUTED on this _____ day of _____, 2012 by RICH PROPERTY AND INVESTMENT GROUP, INC.

RICH PROPERTY AND INVESTMENT GROUP, INC.

By: _____
J. DONALD RICH, CEO

STATE OF FLORIDA
COUNTY OF _____

Acknowledged before me this ____ day of _____, 2012, by J. DONALD RICH, as CEO, of and on behalf of RICH PROPERTY AND INVESTMENT GROUP, INC., who is personally known to me or who produced _____ as identification.

Notary Public

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