# MEMORANDUM

Agenda Item No. 8(M)(4)

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**TO:** Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

**DATE:** March 3, 2015

**FROM:** R. A. Cuevas, Jr.
County Attorney

**SUBJECT:** Resolution authorizing the execution of Amendment IV to the Agreement between Miami-Dade County and The Nature Conservancy for continued provision of land acquisition and other professional services for The Environmentally Endangered Lands program for a four-year period not to exceed $451,074.27

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The accompanying resolution was prepared by the Regulatory and Economic Resources Department and placed on the agenda at the request of Prime Sponsor Metropolitan Services Committee.

R. A. Cuevas, Jr.
County Attorney

RAC/cp

# Memorandum

MIAMI-DADE COUNTY

**Date:** March 3, 2015

**To:** Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

**From:** Carlos A. Gimenez
Mayor

**Subject:** Resolution Authorizing an Amendment to the Agreement with The Nature Conservancy for Continued Provision of Land Acquisition and Other Services for the Environmentally Endangered Lands Program for a Four-Year Period Not to Exceed $451,074.27

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**Recommendation**

It is recommended that the Board of County Commissioners (Board) approve the attached resolution authorizing the execution of an amendment to an existing agreement between Miami-Dade County and The Nature Conservancy Charitable Trust, a non-profit organization, for continued land acquisition and other services for the Miami-Dade County Environmentally Endangered Lands (EEL) Program.

**Scope**

This agreement provides services for the EEL Program, which is countywide in nature.

**Fiscal Impact/Funding Source**

The maximum total cost for the four (4) additional years of this amendment is $451,074.27. For the first three (3) years of Amendment III, actual expenditures were $224,019.65, which was only 61 percent of the maximum allowable annual cost of $367,817.00. Funding is provided by the EEL Acquisition Trust Fund. As of November 30, 2014, the balance of the EEL Trust Fund GF080 is $44,109,328.00, of which $21,394,752.03 is reserved for acquisition and $22,714,575.97 is reserved for management.

**Track Record / Monitor**

Cynthia Guerra, the EEL Program Manager within the Department of Regulatory and Economic Resources, Division of Environmental Resources Management, will monitor this contract.

**Background**

The Nature Conservancy is nationally renowned as environmental land acquisition experts and essentially acts as a land acquisition agent for the County in acquiring conservation lands by negotiating land purchases and preparing real estate option agreements. On March 8, 2001, the Board approved a waiver of formal bid in granting a six-year agreement with The Nature Conservancy under Resolution No. R-189-01. In 2007, 2009, and 2011, the Board approved amendments for extensions under Resolution Nos. R-551-07, R-170-09, and R-231-11. Under this and prior agreements, The Nature Conservancy has successfully negotiated the sale of over 20,204 acres of wetlands valued at over $49,500,000.00 within EEL project areas for purchase by the County and the South Florida Water Management District. The current agreement with The Nature Conservancy expires April 19, 2015. The attached amendment extends the agreement by four (4) additional years.

The Nature Conservancy is uniquely qualified and experienced in the acquisition of endangered lands and has an excellent track record in negotiating option agreements, resolving problems during negotiations, and preparing the option contracts for EEL land purchases. Therefore, the resolution to extend the agreement with The Nature Conservancy is recommended for approval.

Jack Osterholt, Deputy Mayor

# MEMORANDUM

(Revised)

**TO:** Honorable Chairman Jean Monestime
and Members, Board of County Commissioners

**DATE:** March 3, 2015

**FROM:** R. A. Cuevas, Jr.
County Attorney

**SUBJECT:** Agenda Item No. 8(M)(4)

**Please note any items checked.**

_____ **"3-Day Rule" for committees applicable if raised**

_____ **6 weeks required between first reading and public hearing**

_____ **4 weeks notification to municipal officials required prior to public hearing**

_____ **Decreases revenues or increases expenditures without balancing budget**

_____ **Budget required**

_____ **Statement of fiscal impact required**

_____ **Ordinance creating a new board requires detailed County Mayor's report for public hearing**

_____ **No committee review**

_____ **Applicable legislation requires more than a majority vote (i.e., 2/3's ____, 3/5's ____, unanimous _____ ) to approve**

_____ **Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required**

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 8(M)(4)
3-3-15

RESOLUTION NO. _____

RESOLUTION APPROVING AMENDMENT IV TO THE AGREEMENT BETWEEN MIAMI-DADE COUNTY AND THE NATURE CONSERVANCY, A DISTRICT OF COLUMBIA NONPROFIT CORPORATION, FOR CONTINUED PROVISION OF LAND ACQUISITION AND OTHER PROFESSIONAL SERVICES FOR THE ENVIRONMENTALLY ENDANGERED LANDS PROGRAM FOR A FOUR-YEAR PERIOD NOT TO EXCEED $451,074.27; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE PROVISIONS CONTAINED THEREIN

**WHEREAS**, this Board desires to accomplish the purposes outlined in the accompanying memorandum, a copy of which is incorporated herein by reference; and

**WHEREAS**, this Board desires to accomplish the purposes of Division 3 of Chapter 24 of the Code of Miami-Dade County,

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA,** that this Board hereby approves Amendment IV to the existing Agreement between Miami-Dade County and The Nature Conservancy authorized to transact business in the State of Florida as The Nature Conservancy, Inc., as Trustee of The Nature Conservancy Charitable Trust, for continued provision of land acquisition and other professional services for the Miami-Dade County Environmentally Endangered Lands Program for a four-year period not to exceed $451,074.27, in substantially the form attached hereto and made a part hereof; and authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade-County and to exercise the provisions contained therein.

The foregoing resolution was offered by Commissioner ,

who moved its adoption. The motion was seconded by Commissioner

and upon being put to a vote, the vote was as follows:

Jean Monestime, Chairman
Esteban L. Bovo, Jr., Vice Chairman

| | |
|---|---|
| Bruno A. Barreiro | Daniella Levine Cava |
| Jose "Pepe" Diaz | Audrey M. Edmonson |
| Sally A. Heyman | Barbara J. Jordan |
| Dennis C. Moss | Rebeca Sosa |
| Sen. Javier D. Souto | Xavier L. Suarez |
| Juan C. Zapata | |

The Chairperson thereupon declared the resolution duly passed and adopted this 3rd day of March, 2015. This resolution shall become effective upon the earlier of (1) 10 days after the date of its adoption unless vetoed by the County Mayor, and if vetoed, shall become effective only upon an override by this Board, or (2) approval by the County Mayor of this Resolution and the filing of this approval with the Clerk of the Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By:_____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency. R

Thomas H. Robertson

**AMENDMENT IV**
**MIAMI-DADE COUNTY**
**ENVIRONMENTALLY ENDANGERED LANDS PROGRAM**
**AGREEMENT FOR PROFESSIONAL SERVICES**

**THIS AMENDMENT** is made and entered into this _____ day of _____, 2015, by and between Miami-Dade County, a political subdivision of the State of Florida ("County") and The Nature Conservancy, a District of Columbia nonprofit corporation, authorized to transact business in the State of Florida as The Nature Conservancy, Inc., as Trustee of The Nature Conservancy Charitable Trust dated May 11, 1998, as amended, exempt from Federal taxation under Section 501(c)(3) of the Internal Revenue Code ("Conservancy").

**WHEREAS**, County and Conservancy entered into that certain Dade County Environmentally Endangered Lands Program Agreement for Professional Services dated April 20, 2001, amended by Amendment I dated April 20, 2007, Amendment II dated March 20, 2009, Amendment III dated April 14, 2011 (collectively, the "Agreement"), which provided for the Conservancy to perform certain services in connection with the County's Environmentally Endangered Lands Program; and

**WHEREAS**, the term of the Agreement expires April 19, 2015; and

**WHEREAS**, the parties desire to extend the term of the Agreement until April 19, 2019; and

**NOW THEREFORE**, for and in consideration of the mutual covenants and promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and Conservancy hereby agree as follows:

1. Section 3.01 is hereby amended to add the following:

"The County shall pay the Conservancy for its direct and indirect costs incurred in performing the work hereunder (the "Contract Fee") as follows: For the period from April 20, 2015 to April 19, 2016 an amount not to exceed $107,818.95. For the period from April 20, 2016 to April 19, 2017, the County shall pay the Conservancy a Contract fee not to exceed $111,053.52. For the period April 20, 2017 to April 19, 2018, the County shall pay the Conservancy a Contract Fee not to exceed $114,385.12. For the period from April 20, 2018 to April 19, 2019, the County shall pay the Conservancy a Contract fee not to exceed $117,816.68 (collectively referred to herein as the "Maximum Fee"), which sums shall be paid on a cost reimbursable basis in accordance with the Fee Schedule attached as Exhibit "A" and incorporated herein by reference. The Conservancy's indirect costs for the extended term shall be calculated based on its current overhead rate of 22.48% in accordance with the Negotiated Indirect Cost Rate Agreement (NICRA) letter from the U.S. Department of Interior ("DOI") dated June 20th 2014, attached as Exhibit "B" and incorporated herein by reference. In the event that the Conservancy's NICRA is revised, the indirect cost rate paid hereunder shall automatically

be adjusted to such revised rate. Notification and evidence of the Conservancy's revised rate shall be sent to the County in the event of any rate adjustment, provided however, such rate adjustments shall not require the County to pay in excess of the Maximum Fee. In addition to the Contract Fee for the extended term, the County shall reimburse the Conservancy for option agreement fees and/or earnest money deposits (the "Option Fees") that the Conservancy has paid to landowners in the process of assisting the County in acquiring the property during the term of this Agreement.

The Contract Fee and Option Fees shall be paid on a quarterly basis, beginning three months after the effective date of this Agreement. Payments will be made within thirty (30) days of receipt by the County's authorized representative of the Conservancy's quarterly invoice for Contract Fees and Option Fees. Contract Fees and Option Fees will be invoiced quarterly."

3. Article IV – Term is hereby modified as follows:

   "Unless otherwise terminated, the Agreement shall continue to be in full force and effect until April 19, 2019, or sixty (60) days after receipt by the Conservancy of written notice of termination from the County, whichever shall first occur (the "Extension Term")."

4. This Agreement may be amended by mutual written agreement of both parties.

ALL ELSE REMAINS THE SAME.

**IN WITNESS WHEREOF**, the parties have set their hand and affixed their seals this _____ day of _____, 2015.

THE NATURE CONSERVANCY, a nonprofit District of Columbia Corporation, as Trustee of The Nature Conservancy Charitable Trust dated May 11, 1998, as amended

By: _____
for Temperince Morgan

Its: Florida State Director

(Corporate Seal)

Date signed: 2/3/15

Witness

Witness

Legal Review: JR

MIAMI-DADE COUNTY, a political
subdivision of the State of Florida

By:_____
for

Print Name:_____

Approved by County Attorney
as to form and Legal Sufficiency

_____
Assistant County Attorney

The foregoing was accepted and approved on the ___ day of _____, 2015 by Resolution No. _____ of the Board of County Commissioners of Miami-Dade County, Florida.

Exhibit A
Fee Schedule

HOURLY RATE RANGES

The hourly rate ranges for various positions for the first contract year are listed as below. The personnel charges will be billed at the actual rate.

| **Position** | **Hourly Rate Ranges (including benefits)** | |
|---|---|---|
| | Low End | High End |
| Director of Protection and Director of Real Estate | $44.40 | $75.57 |
| Field Representative | $28.14 | $44.94 |

Reimbursable expenses include travel, communications, supplies, and miscellaneous expenses that cover training and meeting fees, dues, staff monthly parking fees, and any expenses necessary to implement this agreement.

The Conservancy's indirect costs shall be calculated based on its current overhead rate of 22.48% in accordance with the Negotiated Indirect Cost Rate Agreement (NICRA) letter from the U.S. Department of Interior ("DOI") dated June 20th, 2014. In the event that the Conservancy's NICRA is revised, the indirect cost rate paid hereunder shall automatically be adjusted to such revised rate, provided however, in no event shall any rate adjustments require the County to pay in excess of the Maximum Fee.

* The Nature Conservancy will provide legal and administrative support with attorney, legal assistant, finance staff and administrative staff. These staff will not charge time to the county contract.

Exhibit B

United States Department of the Interior
NATIONAL BUSINESS CENTER
Indirect Cost Services
2180 Harvard Street, Suite 430
Sacramento, CA 95815

June 20, 2014

Mr. Stephen Howell, Chief Financial & Administrative Officer
The Nature Conservancy
4245 N. Fairfax Drive, Suite 100
Arlington, VA 22203-1606

Dear Mr. Howell:

Enclosed is the signed original negotiated indirect cost rate agreement that was processed by our office. If you have any questions concerning this agreement, please refer to the signature page for the name and contact number of the negotiator.

As a recipient of federal funds, you are required to submit Indirect Cost Proposals on an annually basis. Proposals are due within 6 months after the close of your fiscal year end and are processed on a first-in, first-out basis.

**Common fiscal year end dates and proposal due dates are listed below:**

| Fiscal Year End Date | Proposal Due Date |
|---|---|
| September 30th | March 31st |
| December 31st | June 30th |
| June 30th | December 31st |

Please visit our Web site at http://www.doi.gov/ibc/services/Indirect_Cost_Services for guidance and updates on submitting future indirect cost proposals. The website includes helpful tools such as a completeness checklist, indirect cost and lobbying certificates, sample proposals, excel worksheet templates, and links to other Web sites.

Sincerely,

Deborah A. Moberly
Office Chief

Ref: J:\Other (Non-Profit, Guam,VI,Puerto Rico)\Nonprofit\Nature Conservancy (Nacoh629)\FY 13F 15P\Naco-Issue Ltr.FY13F 15P.doc

Phone: (916) 566-7111
Fax: (916) 566-7110

TAKE PRIDE IN AMERICA

E-mail: ICS@nbc.gov
Internet: http://www.aqd.nbc.gov/ics

# State and Local Governments
# Indirect Cost Negotiation Agreement

EIN: 53-0242652

**Organization:**

The Nature Conservancy
4245 N. Fairfax Drive, Suite 100
Arlington, VA 22203-1606

Date: June 20, 2014

Report No(s).: 14-A-0842(13F)
14-A-0843(15P)

**Filing Ref.:**
Last Negotiation Agreement
dated August 20, 2013

The indirect cost rate contained herein is for use on grants, contracts, and other agreements with the Federal Government to which 2 CFR 230 (OMB Circular A-122) applies, subject to the limitations in Section II.A. of this agreement. The rate was negotiated by the U.S. Department of the Interior, Interior Business Center, and the subject organization in accordance with the authority contained in 2 CFR 230.

**Section I: Rate(s)**



| Type | Effective Period From | Effective Period To | Rate* | Locations | Applicable To |
|---|---|---|---|---|---|
| Fixed Carryforward | 07/01/14 | 06/30/15 | 22.48% 1/ | All | All Programs |
| | | Fringe Benefit Rates | | | |
| Final | 07/01/12 | 06/30/13 | 40.37% 2/ | All | Regular Salaries |
| Final | 07/01/12 | 06/30/13 | 12.51% 3/ | All | Short-Term Salaries |
| Final | 07/01/12 | 06/30/13 | 12.71% 4/ | All | Foreign Salaries |
| Provisional | 07/01/14 | 06/30/15 | 40.00% 2/ | All | Regular Salaries |
| Provisional | 07/01/14 | 06/30/15 | 12.00% 3/ | All | Short-Term Salaries |
| Provisional | 07/01/14 | 06/30/15 | 12.00% 4/ | All | Foreign Salaries |

**1/Base:** Total direct costs, less external transfers and the value of land sold or donated to government agencies and other conservation organizations. Equipment costs valued between $5,000 and $50,000 are included in the base limited to the first year of capitalization. **All subawards, regardless of dollar amounts, are included in the base.**

**2/Base:** Total salaries and wages for regular employees.

**3/Base:** Total salaries and wages for short-term employees.

**4/Base:** Total salaries and wages for foreign employees.

Note: The foreign fringes rate is applicable to benefits that are paid centrally by TNC's headquarters. Additional benefits are paid locally by TNC's foreign locations which are charged directly to government awards.

**Treatment of fringe benefits:** Fringe benefits applicable to direct salaries and wages are treated as direct costs; fringe benefits applicable to indirect salaries and wages are treated as indirect costs.

**Treatment of Paid Absences:** (a) For employees paid on TNC's U.S. payroll, the costs of vacation, holiday and sick leave pay are included in the organization's fringe benefit rate and are not included in the direct costs of salaries and wages. Claims for direct salaries and wages must exclude those amounts paid or accrued to employees for periods when they are on vacation, holiday or sick leave. Other paid absences are billed directly. (b) For employees paid on local payrolls in other country programs, paid absences are billed directly.



A. **Limitations:** Use of the rate(s) contained in this agreement is subject to any applicable statutory limitations. Acceptance of the rate(s) agreed to herein is predicated upon these conditions: (1) no costs other than those incurred by the subject organization were included in its indirect cost rate proposal, (2) all such costs are the legal obligations of the grantee/contractor, (3) similar types of costs have been accorded consistent treatment, and (4) the same costs that have been treated as indirect costs have not been claimed as direct costs (for example, supplies can be charged directly to a program or activity as long as these costs are not part of the supply costs included in the indirect cost pool for central administration).

B. **Audit:** All costs (direct and indirect, federal and non-federal) are subject to audit. Adjustments to amounts resulting from audit of the cost allocation plan or indirect cost rate proposal upon which the negotiation of this agreement was based will be compensated for in a subsequent negotiation.

C. **Changes:** The rate(s) contained in this agreement are based on the organizational structure and the accounting system in effect at the time the proposal was submitted. Changes in organizational structure, or changes in the method of accounting for costs which affect the amount of reimbursement resulting from use of the rate(s) in this agreement, require the prior approval of the responsible negotiation agency. Failure to obtain such approval may result in subsequent audit disallowance.

D. **Rate Type:**

1. Fixed Carryforward Rate: The fixed carryforward rate is based on an estimate of the costs that will be incurred during the period for which the rate applies. When the actual costs for such periods have been determined, an adjustment will be made to the rate for future periods, if necessary, to compensate for the difference between the costs used to establish the fixed rate and the actual costs.

2. Provisional/Final Rates: Within 6 months after year end, a final indirect cost rate proposal must be submitted based on actual costs. Billings and charges to contracts and grants must be adjusted if the final rate varies from the provisional rate. If the final rate is greater than the provisional rate and there are no funds available to cover the additional indirect costs, the organization may not recover all indirect costs. Conversely, if the final rate is less than the provisional rate, the organization will be required to pay back the difference to the funding agency.

3. Predetermined Rate: The predetermined rate contained in this agreement is based on estimated costs which will be incurred during the period for which the rate applies and is normally not subject to subsequent carry-forward adjustments. However, if material changes occur in the grantee/contractor's cost structure, adjustments to the rate may be necessary to compensate for the effects of such changes.

E. **Agency Notification:** Copies of this document may be provided to other federal offices as a means of notifying them of the agreement contained herein.

F. **Record Keeping:** Organizations must maintain accounting records that demonstrate that each type of cost has been treated consistently either as a direct cost or an indirect cost. Records pertaining to the costs of program administration, such as salaries, travel, and related costs, should be kept on an annual basis.

G. **Reimbursement Ceilings:** Grantee/contractor program agreements providing for ceilings on indirect cost rate(s) or reimbursement amounts are subject to the ceilings stipulated in the contract or grant agreements. If the ceiling rate is higher than the negotiated rate in Section I of this agreement, the negotiated rate will be used to determine the maximum allowable indirect cost.

H. **Use of Other Rate(s):** If any federal programs are reimbursing indirect costs to this grantee/contractor by a measure other than the approved rate(s) in this agreement, the grantee/contractor should credit such costs to the affected programs, and the approved rate should be used to identify the maximum amount of indirect cost allocable to these programs.

I. **Central Service Costs:** Where central service costs are estimated for the calculation of indirect cost rate(s), adjustments will be made to reflect the difference between provisional and final amounts.

J. **Other:**

1. The purpose of an indirect cost rate is to facilitate the allocation and billing of indirect costs. Approval of the indirect cost rate does not mean that an organization can recover more than the actual costs of a particular program or activity.

2. Programs received or initiated by the organization subsequent to the negotiation of this agreement are subject to the approved indirect cost rate if the programs receive administrative support from the indirect cost pool. It should be noted that this could result in an adjustment to a future rate.

3. New indirect cost proposals are necessary to obtain approved indirect cost rate(s) for future fiscal or calendar years. The proposals are due in our office 6 months prior to the beginning of the year to which the proposed rate(s) will apply.

**Section III: Acceptance**

Listed below are the signatures of acceptance for this agreement:

By the State & Local Government:

The Nature Conservancy
State/Local Government

/s/
Signature

Stephen Howell
Name (Type or Print)

Chief Financial & Administrative Officer
Title

June 17, 2014
Date

By the Cognizant Federal Government Agency:

U.S. Department of the Interior
Agency

Deborah A. Moberly /s/
Signature

Deborah A. Moberly
Name

Office Chief
Office of Indirect Cost Services
Title

U.S. Department of the Interior
Interior Business Center
Agency

JUN 20 2014
Date

Negotiated by Muberra Guvenc
Telephone (916) 566-7007