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CLERK OF THE BOARD
OF COUNTY COMMISSIONERS
MIAMI-DADE COUNTY, FLORIDA

Memorandum

MIAMI-DADE COUNTY

Date: April 4, 2011

To: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

Agenda Item No. 8(D)(1)(B)

Resolution No. R-231-11

From: Carlos Alvarez
Mayor

George M. Burgess
County Manager

Subject: Resolution Authorizing the Execution of Amendment III to the Agreement between Miami-Dade County and 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 $497,851; Providing for Waiver of Formal Bid Procedure

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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 (TNC) 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 annual cost for the four (4) additional years of this amendment is $119,000 for the first year, $122,570 for the second year, $126,247 for the third year and $130,034 for the fourth. The total four-year maximum cost is $497,851. Funding is provided by the EEL Acquisition Trust Fund. As of December 31, 2010, the balance of the EEL Trust Fund (Subfund 081, Project Numbers 081005/-6/-7/-8) is $56,760,911, of which $25,542,381 is reserved for acquisition and $31,218,530 is reserved for management.

Track Record/Monitor
The Director of the Department of Environmental Resources Management (DERM) will monitor this agreement.

Background
On March 8, 2001, the Board approved a six-year agreement with TNC under Resolution No. R-189-01. In 2007 and 2009, the Board approved two amendments for extensions under Resolution No. R-551-07 and R-170-09. TNC acts as a land acquisition agent on behalf of the County in acquiring conservation lands from willing sellers. Under this and previous agreements, TNC has successfully negotiated the sale of over 19,700 acres of wetlands valued at over $48,000,000 within EEL project areas for purchase by the County and the South Florida Water Management District. TNC has an excellent track record in negotiating option agreements, resolving problems identified during negotiations and preparing the option contracts for EEL land purchases. In addition, the organization's statewide experience, expertise in government land acquisition under Florida law, and working knowledge of the State's land conservation and grant programs have benefited Miami-Dade County. The County has a continuing need for TNC's services, which include negotiating land purchases and preparing real estate option agreements. The current agreement with TNC expires April 19, 2011. Amendment III extends the agreement for four additional years.

TNC has provided professional services to the EEL Program since April 1994. TNC is nationally renowned as environmental land acquisition experts. The contract with TNC was established to expedite the pace of acquisitions. Although the Public Works Department (PWD) Real Estate Officers conduct negotiations for pineland and hammock properties, more than 90% of EEL purchases are within the South Dade Wetlands Project and are negotiated by TNC in accordance with their professional services agreement. The EEL Program maintains a very small staff and cannot process the numerous negotiations and contracts. Further, this contract allows land owners to negotiate purchase contracts with TNC serving as an impartial third party.

The second contract amendment allowed TNC to assist in the acquisition of eligible properties by tax deed auction. Since that amendment was approved in 2009, TNC has assisted the EEL Program in acquiring 38 acres at tax deed auctions for $88,210. The parcels acquired at auction had a tax assessed value of $162,259 and an estimated appraised value of $303,350. Therefore, TNC assisted the EEL Program in buying these lands at 46% below their tax assessed values and 71% below their appraised values. TNC provides their expertise in a cost-effective manner. Since the last amendment, TNC staff reductions agreed upon by both the EEL Program and TNC have resulted in a cost-saving of at least 60% of the maximum cost of the contract. This amendment would extend the contract for four years at a maximum rate of $497,851. The previous contract extension was for 2 years and $547,184. With seven months remaining, only $96,443 has actually been expended. Additionally, TNC's staff rate is approximately 50% less than the staff rate of the PWD Real Estate Officers.

These factors demonstrate that it is in the County's best interest to continue using TNC for environmental land acquisition. It is therefore recommended that the Board approve the resolution to extend the agreement with TNC for an additional four years.

Assistant County Manager

MEMORANDUM

(Revised)

TO: Honorable Chairman Joe A. Martinez and Members, Board of County Commissioners

DATE: April 4, 2011

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

SUBJECT: Agenda Item No. 8(D)(1)(B)

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 Manager'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(D)(1)(B)
4-4-11

RESOLUTION NO. R-231-11

RESOLUTION AUTHORIZING THE EXECUTION OF AMENDMENT III 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 $497,851; PROVIDING FOR WAIVER OF FORMAL BID PROCEDURE

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 Section 24-50 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 III to the existing Agreement between Miami-Dade County and The Nature Conservancy, 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 $497,851, in substantially the form attached hereto and made a part hereof; provides for waiver of formal bid procedure; authorizes the County Mayor or County Mayor's designee to execute same for and on behalf of Miami-Dade County; and authorizes the County Mayor or County Mayor's designee to exercise the provisions contained therein.

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The foregoing resolution was offered by Commissioner Audrey Edmonson, who moved its adoption. The motion was seconded by Commissioner Rebeca Sosa and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman	aye		
Audrey M. Edmonson, Vice Chairwoman	aye		
Bruno A. Barreiro	aye	Lynda Bell	aye
Jose "Pepe" Diaz	aye	Carlos A. Gimenez	aye
Sally A. Heyman	aye	Barbara J. Jordan	aye
Jean Monestime	aye	Dennis C. Moss	aye
Rebeca Sosa	aye	Senator Javier D. Souto	aye

The Chairperson thereupon declared the resolution duly passed and adopted this 4th day of April, 2011. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

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

HARVEY RUVIN, CLERK

By: DIANE COLLINS
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

Robert A. Duvall

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

THIS AMENDMENT is made and entered into this _____ day of _____, 2011, 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 and further amended by Amendment II dated March 20, 2009 (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, 2011; and

WHEREAS, the parties desire to extend the term of the Agreement until April 19, 2015; 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. Sections 1.09 and 1.10 in Article I are hereby deleted in their entirety.

2. Section 3.01 in Article III is hereby amended to provide the following:

   "For the period from April 20, 2011 to April 19, 2012, the County shall pay the Conservancy for its direct and indirect costs incurred in performing the work hereunder (the "Contract Fee") an amount not to exceed $119,000.00. For the period from April 20, 2012 to April 19, 2013, the County shall pay the Conservancy a Contract fee not to exceed $122,570.00. For the period April 20, 2013 to April 19, 2014, the County shall pay the Conservancy a Contract Fee not to exceed $126,247.10. For the period April 20, 2014 to April 19, 2015, the County shall pay the Conservancy a Contract Fee not to exceed $130,034.51 (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 23.13% in accordance with the Negotiated Indirect Cost Rate Agreement (NICRA) letter from the U.S. Department of Interior ("DOI") dated September 7, 2010, 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."

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, 2015, 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. Section 7.03 is hereby deleted and replaced with the following:

"7.03 Notices.

(a) Notices required or permitted to be given hereunder shall be in writing, may be delivered personally or by mail, telex, cable or courier service and shall be deemed given when received by the addressee named below for each party. Addressee shall be the designated agent for service of the process. Notices shall be addressed as follows:

To the County:

Ms. Cynthia Guerra
Program Director
Miami-Dade County
Department of Environmental Resources Management
Environmentally Endangered Lands Program
701 NW 1st Court, Suite 400
Miami, FL 33139
Tel. 305-372-6781

To the Conservancy:

Ms. Angela Klug
Director of Real Estate
The Nature Conservancy
222 S. Westmonte Drive, Suite 300
Altamonte Springs, FL 32714
Tel. 407-389-4861
aklug@tnc.org

With a copy to:

Legal Department
The Nature Conservancy
222 S. Westmonte Drive, Suite 300
Altamonte Springs, FL 32714

or to such other address as either party may direct by notice given to the other as hereinabove provided.

Notwithstanding the foregoing, any notice sent to the last designated address of the party to whom a notice may be or is required to be delivered hereunder shall not be deemed ineffective if actual delivery cannot be made due to a change of address of the party to whom the notice is directed or the failure or refusal of such party to accept delivery of the notice."

5. 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 _____, 2011.

WITNESSES

Print Name: LAURA P. Robinson

Print Name: Barbara J. Berger

Legal Review: GR - 1/5/11

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

By _____
Jeff Danner, Florida State Director

(Corporate Seal)

Date signed: Jan 6, 2011

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

By:_____
for George Burgess, County Manager

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 _____, 2011 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 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	$52.10	$76.46
Field Representative	$32.51	$49.03

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 23.13% in accordance with the Negotiated Indirect Cost Rate Agreement (NICRA) letter from the U.S. Department of Interior (DOI) dated September 7, 2010. 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

(See Attached Indirect Cost Negotiation Agreement)

Nonprofit Organization
Indirect Cost Negotiation Agreement

EIN: 53-0242652

Organization:

The Nature Conservancy
4245 North Fairfax Drive, Suite 100
Arlington, Virginia 22203-1606

Date: September 7, 2010

Report No(s).: 10-A-1069(09F)
10-A-1070(10P)

Filing Ref.:
Last Negotiation Agreement
dated July 13, 2009

The indirect cost rates contained herein are 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 rates are negotiated by the U.S. Department of the Interior, National Business Center, and the subject organization in accordance with the authority contained in 2 CFR 230.

Section I: Rates

Type	Effective Period From	Effective Period To	Rate	Locations	Applicable To
Fixed Carryforward	07/01/10	06/30/11	23.13% 1/	All	All Programs
		Fringe Benefit Rates			
Final	07/01/08	06/30/09	40.00% 2/	All	Regular Salaries
Final	07/01/08	06/30/09	12.00% 3/	All	Short-Term Salaries
Final	07/01/08	06/30/09	12.00% 4/	All	Foreign Salaries
Provisional	07/01/10	06/30/11	42.00% 2/	All	Regular Salaries
Provisional	07/01/10	06/30/11	12.00% 3/	All	Short-Term Salaries
Provisional	07/01/10	06/30/11	12.00% 4/	All	Foreign Salaries

1/ **Base:** Total direct costs, less external transfers, 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 cost 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 rates contained in this agreement is subject to any applicable statutory limitations. Acceptance of the rates 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 rates 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 rates in this agreement, require the prior approval of the responsible negotiation agency. Failure to obtain such approval may result in subsequent audit disallowance.

D. **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.

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 rates 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 Rates:** If any federal programs are reimbursing indirect costs to this grantee/contractor by a measure other than the approved rates 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 rates, 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 rates 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 rates will apply.

Section III: Acceptance

Listed below are the signatures of acceptance for this agreement:

By the Nonprofit Organization:

Signature

Stephen C. Howell

Name (Type or Print)

Chief Financial & Administrative Officer

Title

Date

By the Cognizant Federal Government Agency:

Signature

Deborah A. Moberly

Name

Indirect Cost Coordinator

Indirect Cost Services

Title

U.S. Department of the Interior

National Business Center

Agency

Date September 7, 2010

Negotiated by Elena Chan

Telephone (916) 566-7111