

Memorandum



Date: July 20, 2021

To: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

Agenda Item No. 8(L)(4)

From: Daniella Levine Cava
Mayor

A handwritten signature in blue ink that reads "Daniella Levine Cava".

Subject: Recommendation Approving a Designated Purchase Agreement for Fairchild Tropical Botanic Garden, Inc. to Provide Biological Monitoring Services for Miami-Dade County Natural Area Preserves

Recommendation

It is recommended that the Board of County Commissioners (Board) approve the attached Designated Purchase Agreement (Agreement) with Fairchild Tropical Botanic Garden, Inc. (FTBG) to provide biological monitoring services for natural area preserves. The current agreement with FTBG expires on June 24, 2021. The new Agreement has a proposed term of 2021 until 2026, and seeks to provide biological monitoring services for both the Natural Areas Management (NAM) in the Department of Parks, Recreation and Open Spaces (PROS) and the Environmentally Endangered Lands (EEL) Program in the Department of Regulatory and Economic Resources Division of Environmental Resources Management (RER-DERM), as outlined in the Agreement attached as Exhibit 1.

The biological monitoring services to be provided by FTBG under the recommended Agreement are necessary for the continued effective management of natural area preserves which include rare and protected habitats throughout 84 preserves managed by the RER-DERM EEL Program and 41 natural area preserves managed by PROS. Given the technical specificity associated with these tasks and FTBG's unique qualifications to perform this work, including experience with restoration and management of native south Florida plant community habitat, and the cultivation, handling and re-introduction of endangered plant species within our native environment, the approval of the Agreement is recommended.

Scope

Fairchild Tropical Botanic Garden is located at 10901 Old Cutler Road, Coral Gables, Florida in Commission District 7, represented by Commissioner Raquel Regalado. However, the services provided under the Agreement are for countywide natural area preserves.

Fiscal Impact/Funding Source

The fiscal impact of this five-year Agreement is a payment by Miami-Dade County to FTBG, all on a reimbursement basis, for services outlined in the Agreement in an amount not to exceed \$478,628.00 for the areas managed by the RER-DERM EEL Program and in an amount not to exceed \$300,000.00 for the areas managed by PROS, for a total not to exceed amount of \$778,628.00.

The total amount of \$478,628.00 for the management of natural area preserves by the EEL Program will be funded through the EEL Trust Fund on a cost reimbursement basis. As of March 31, 2021, the balance of the EEL Trust Fund is \$22,706,319.00 of which \$11,857,459.00 is reserved for acquisition and \$10,848,860.00 is reserved for management.

The total amount of \$300,000.00 for the management of natural area preserves by PROS will be funded by the PROS Natural Areas Annual Budget for Fiscal Years 2021-2026.

Track Record / Monitor

The EEL Program Manager within RER-DERM, Janet Gil, will monitor this Agreement for the natural area preserves managed by the EEL Program.

The Natural Areas Manager within PROS, Jenny Stern, will monitor this Agreement for the natural area preserves managed by PROS.

Delegated Authority

The County Mayor or County Mayor's designee will have the authority to exercise all provisions of the Agreement, including the amendment and termination provisions, consistent with Section 2-8.1 of the Code of Miami-Dade County (Code) and Administrative Order 3-38.

Background

On June 7, 2016, the Board approved the current Agreement through Resolution No. R-476-16, authorizing the execution of a five-year agreement with FTBG for a Biological Monitoring Program pertaining to the County's natural area preserves. Under this Agreement with Fairchild, many significant discoveries and accomplishments include:

- coordination of the preparation of the Richmond Pineland Management Plan and completion and publication of studies on such topics as control methods for a highly invasive grass species and abundance estimates for federally endangered butterfly host plants;
- documentation of more than a dozen new populations of endangered plants, as well as many new populations of non-native invasive species;
- completion of more than 35 reintroductions of 13 endangered species to augment dwindling wild populations and mapping and monitoring of populations of more than 60 threatened and endangered plant species; and
- provision of more than 1,000 native plants grown from local seed, at no additional costs, for County habitat restoration projects.

FTBG is an internationally renowned botanical garden that provides a unique combination of experience and resources for this project. Under the proposed new Agreement, FTBG will continue to implement the Biological Monitoring Program for plant conservation and assist in updating adaptive habitat restoration plans that will include community and species level goals, restoration priorities, and measurable objectives. Additionally, Fairchild will continue to maintain a collection of the County's most critically imperiled plant species and monitor critically imperiled plant populations as well as evaluate the effects of fire, public recreation, and other factors on the aforementioned plant populations. The proposed Agreement adds both RER-DERM EEL Program and PROS and adds the following services: management planning for EEL Preserves; floristic (plant) inventories for PROS Natural Areas; Lepidopteran (butterfly/moth) inventories for PROS Natural Areas; hosting PROS Volunteer Workdays; and Fairchild will devote two additional part-time staff members to the monitoring program. In addition, the Agreement removes the update to the Richmond Management Plan because it has been completed.

As per Section 2-8.1 (b) (3) of the Code, the County pursued the maximum amount of competition available under the circumstances for a Designated Purchase. PROS contacted two other firms; however, both firms were unable to provide all of the required services and having multiple firms and contracts is not viable.

The County has a long history of successful collaboration with Fairchild on the monitoring of natural area preserves managed by PROS and RER-DERM’s EEL Program. In 1989, Fairchild and the County entered into a Conservation Partnership whereby Fairchild assisted in developing management plans for numerous park preserve areas. In the wake of Hurricane Andrew, the County contracted with FTBG through Resolution No. R-1556-93 to develop a geographical information system based on a remote sensing program that allowed County resource managers to identify non-native plant species invasions. This monitoring system was useful in tracking large-scale vegetation patterns in post-hurricane vegetation management. The Biological Monitoring Program for the County’s natural area preserves was developed and implemented after Board approval of Resolution No. R-841-02 in 2002 and has remained a successful partnership with Fairchild throughout the years, continuing under Resolution Nos. R-808-07, R-688-13, and R-476-16. In addition to carrying out the Biological Monitoring Program, Fairchild staff have mobilized quickly to help with unanticipated needs such as post-hurricane assessments of rare species in 2005 (Hurricanes Katrina and Wilma) and 2017 (Hurricane Irma), and surveys for the federally endangered Miami Tiger Beetle in 2015-2016.



Jimmy Morales
Chief Operations Officer

EXHIBIT 1

BIOLOGICAL MONITORING SERVICES AGREEMENT

This Biological Monitoring Services Agreement (the “Agreement”), is made and entered into this ____ day of _____, 20__, by and between Miami-Dade County (the “County”), a political subdivision of the State of Florida, and Fairchild Tropical Botanic Garden, Inc. (“Fairchild”), a non-profit corporation organized under the laws of Florida, whose address is 10901 Old Cutler Road, Coral Gables, Florida, 33156.

RECITALS

WHEREAS, the County and Fairchild entered into that certain Biological Monitoring Services Agreement R-476-16 (the “Agreement”), dated June 24, 2016, which provided for Fairchild to perform certain services for Miami-Dade County; and

WHEREAS, Parks Recreation and Open Spaces Department (PROS) is responsible for the management of over 30 natural areas totaling over 2,400 acres, and 11 special tax districts covering more than 40 acres, all of which contain various native plant communities with populations of invasive exotic and rare native plants; and

WHEREAS, Chapter 24-50 of the Code of Miami-Dade County establishes the Department of Regulatory and Economic Resources’ Environmentally Endangered Lands (EEL) Program managed by the Division of Environmental Resources Management (RER-DERM) and its purposes and provides procedures and standards for the acquisition and management of environmentally endangered lands with EEL funds; and

WHEREAS, disbursements from the EEL Management Trust Fund shall be made only for the preservation, enhancement, restoration, conservation or maintenance of those environmentally-endangered lands which have been acquired with monies from the EEL Acquisition Trust Fund or which have been approved for management; and

WHEREAS, RER-DERM’s EEL Program is responsible for the management of more than 84 natural area preserves covering more than 27,000 acres that contain various native plant communities with populations of invasive exotic and rare native plants; and

WHEREAS, the restoration of these natural areas requires the integration of adaptive management and monitoring to ensure ecosystem sustainability; and

WHEREAS, the County wishes to continue the monitoring program it began through an agreement with Fairchild in 2002; and

WHEREAS, Fairchild recognizes the imperative for conserving the County’s flora and wishes to undertake these responsibilities subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the term of the existing Agreement expires June 24, 2021; and

WHEREAS, the parties desire to enter into a new Agreement; and

NOW, THEREFORE, in consideration of the foregoing recitals, each of which the parties agree are true and correct and form a part of this Agreement, and of promises and covenants contained herein the County and Fairchild agree as follows:

AGREEMENT

ARTICLE 1 **BIOLOGICAL MONITORING PROGRAM**

1.01 Scope of Services. Fairchild agrees to continue the Biological Monitoring Program for plant conservation implemented through the agreements between the County and Fairchild adopted through Board of County Commissioners' Resolution Nos. R-476-16, R-688-13, R-808-07, and R-841-02. The role of Fairchild is to provide scientific and field expertise and specifically deliver the following:

1. Provide monitoring services in natural areas managed by EEL (Exhibit A-1) to include (a) submitting reports on occurrences, maintaining a GIS database of location information, and assessing threats and population trends for key rare species prioritized by both parties, (b) conducting surveys, mapping locations and vouchering occurrences for key non-native species prioritized by both parties, (c) resampling long-term monitoring transects installed in preserves between 2008 and 2012 (see Possley et al. 2014), and (d) coordinating with the Institute of Regional Conservation to review and update the Floristic Inventory for EEL managed preserves and upload the data to the Floristic Inventory of South Florida online database; and

2. Support managers assigned to EEL managed preserves, including those within Parks, with information about the plants in County preserves to assist them in adapting their management activities to best promote the conservation of rare species by (a) hosting an annual review to provide monitoring results, management recommendations, progress review, and recommended work plans for subsequent years, (b) training preserve managers assigned to EEL managed preserves, including those within Parks, and contracted crews in the identification of new or unusual Early Detection and Rapid Response (EDRR) non-native species, (c) producing weed alerts for new EDRR species of concern, (d) assisting preserve managers assigned to EEL managed preserves, including those within Parks, with tasks including plant identification, restoration activities, accompanying visiting researchers, and other on-site activities as needed, (e) assisting with rare plant rescues in EEL managed preserves, and (f) coordinating with Miami-Dade County to provide

rare species information to Federal, State and local agencies for actions related to listing status, as may be required from time to time; and

3. Sustainably collect native plant propagules from preserves managed by the EEL Program, including those within Parks, for propagation and/or storage for (a) County restoration projects, (b) long-term seed/spore storage at Fairchild, the National Laboratory for Genetic Resources Preservation, and the North American Orchid Conservation Center, (c) Fairchild's Connect to Protect Network, and (d) ex situ conservation collections at Fairchild; and

4. Contribute to management planning for EEL preserves under the purview of and in cooperation with EEL and partner agencies by (a) developing a template for 1-page "management briefs" for staff training and field use for all preserves, (b) co-authoring the Habitat Conservation Plan for Miami-Dade County pine rockland preserves according to USFWS guidelines, (c) reviewing and providing data and written summaries of relevant biological monitoring information for individual preserve management plans as mandated by County code; and

5. Provide monitoring services in natural areas managed by PROS (Exhibit A-2) to include (a) mapping, monitoring, and maintaining a GIS database of native plants that are state-listed or locally rare as well as all occurrences of non-native species that are on the regional EDRR list or the Florida Exotic Pest Plant Council (FLEPPC) list, (b) introducing rare species or common yet "missing" species such as but not limited to *Croton linearis* or *Zamia integrifolia* to five priority sites, and (c) coordinating plant management activities with PROS staff, including NAM and Park Site Managers; and

6. Create or update floristic inventories for PROS natural areas, coordinate with The Institute for Regional Conservation to review and upload the data to the Floristic Inventory of South Florida online database, and provide data to PROS staff including NAM and Park Site Managers; and

7. Create a lepidopteran (butterfly and moth) inventory for PROS natural areas by (a) conducting timed surveys to record species and number of individuals observed, (b) compiling comprehensive species lists per preserve that are updated as warranted by new observations, and (c) providing data to PROS staff including NAM and Park Site Managers; and

8. Sustainably collect native plant propagules for propagation and/or storage for (a) County restoration projects, (b) long-term seed/spore storage at Fairchild, the National Laboratory for Genetic Resources Preservation, and the North American Orchid Conservation Center, (c) Fairchild's Connect to Protect Network, and (d) ex situ conservation collections at Fairchild; and

9. Host 4 or more annual workdays at 7 sites where members of the public assist PROS and Fairchild staff with invasive species removal and/or fire preparation, including (a) coordinating with the PROS Volunteer Coordinator to recruit volunteers, (b) coordinating with PROS staff, including NAM and Park Site Managers to plan events, (c) coordinating with PROS communications staff to advertise events, when appropriate, and (d) providing PROS Natural Areas Management Division (NAM) with a summary of the event, including number of volunteers, number of volunteer hours, and work completed; and

10. Provide PROS staff, including NAM and Park Site Managers, with information about the plants in County preserves to assist them in adapting their management activities to best promote the conservation of rare species, to include (a) hosting an annual review to provide monitoring results, management recommendations, progress review, and recommended work plans for subsequent years, (b) training NAM staff, Park Site Managers, and crews in the identification of new or unusual EDRR non-native species, (c) producing weed alerts for new EDRR species of concern, and (d) coordinating with Miami-Dade County to provide rare species information to federal, state, and local agencies for actions related to listing status, as may be required from time to time.

1.02 Fairchild's Designation of Project Manager. To accomplish the objectives outlined in § 1.01 of this Agreement, Fairchild shall, within thirty (30) days of the execution of this Agreement by both parties, provide the County the name and resume of a Project Manager employed by Fairchild that will be assigned to work on the Biological Monitoring Program. Work under this agreement will be limited to that which the Fairchild Project Manager can carry out during 1 (one) P.T.E. (part-time equivalent) per year and 1-2 P.T.E. Project Technician positions. The parties understand and agree that the Project Manager and the Project Technician will be required to devote a portion of this part-time work at Fairchild and not in the field.

1.03 "Project" Defined. For the purposes of this Agreement, the term "Project" shall include all of Fairchild's duties and responsibilities required to perform the work and accomplish the results described in §§ 1.01 and 1.02 of the Agreement.

ARTICLE 2

COMPENSATION TO FAIRCHILD

2.01 Definition of Project and Administrative Costs. As used in this Agreement, "Project and Administrative Costs" shall mean the wages and benefits of the Project Manager, travel expenses, materials for Fairchild's Geographic Information Systems, attendance at relevant scientific meetings, field and office supplies, data storage, batteries, software, books, journals, and printing. Project and Administrative Costs shall also include up to fifty-one percent (51%) of the wages and benefits paid by Fairchild to the Project Manager and any other Fairchild employees working directly on the Project, based on the percentage of their total

work schedule that the Project Manager and those other Fairchild employees devote to the Project. In all events, Project and Administrative Costs shall be limited to those above-described categories of expenses that Fairchild incurs directly as a result of its entry into this Agreement, and in no event shall Project and Administrative Costs include the wages and benefits paid to individuals performing administrative duties for Fairchild (E.g., executives, accountants, and clerks).

2.02 Reimbursement for Project and Administrative Costs. In consideration of Fairchild's services to be rendered pursuant to this Agreement, County RER DERM's EEL Program shall pay Project and Administrative Costs on a cost-reimbursable basis, in an amount not to exceed the cost schedules attached hereto as "Exhibit B-1" and only for work conducted within the Board of County Commissioners approved EEL Boundaries that RER- DERM's EEL Program is required to manage and where the EEL Management Trust Fund can be used. See "Exhibit A-1" for a list of these areas as may be amended from time to time. In consideration of Fairchild's services to be rendered pursuant to this Agreement, PROS shall pay Project and Administrative Costs on a cost-reimbursable basis, in an amount not to exceed the cost schedules attached hereto as "Exhibit B-2" and only for work conducted outside the areas where the RER DERM's EEL Program is required to manage and where PROS is required to manage, as may be amended from time to time. See "Exhibit A-2" for a list of these areas, as may be amended from time to time.

2.03 Manner of Invoicing. Fairchild shall invoice the County on a twice-annual basis. Invoices for work completed pursuant to "Exhibit B-1" shall be directed to Division of Environmental Resources Management, Regulatory & Economic Resources Department, Attn: EEL Program, 701 NW 1st Court, 4th Floor, Miami, FL 33136. Invoices for work completed pursuant to "Exhibit B-2" shall be directed to Natural Areas Management Division, Parks, Recreation and Open Spaces Department, 22200 SW 137th Avenue, Miami, FL 33170. All invoices submitted to the County pursuant to this § 2.03 shall be accompanied by backup documentation justifying the Project and Administrative Costs for which reimbursement is sought. With each invoice, the Project Manager shall submit a semi-annual summary describing, at a minimum, the work performed under this Agreement and progress on the objectives described in § 1.011 and 1.012 of this Agreement. In addition, each invoice shall clearly identify whether the objectives achieved are described in §1.011 or §1.012. Payment shall be due to Fairchild within thirty (30) days of delivery of proper invoices and summaries to RER-DERM and PROS.

2.04 Maintenance of Records and Audit Rights. Fairchild shall maintain accurate and complete books, records, and documents such as vouchers, bills, invoices, receipts, cancelled checks, and contracts, sufficient to reflect properly all receipts and expenditures of funds for the purposes expressed herein. The system of accounting will be in accordance with generally accepted accounting principles, consistently applied. Fairchild shall permit, upon request, authorized representatives of the County to inspect and audit all books, records, documents and other supporting data and documentation relating to its performance of this Agreement. These rights

of audit shall extend for a period of five (5) years following the completion of the Project.

2.05 Miami-Dade County Inspector General Review. Under § 2-1076 of the Code of Miami-Dade County, as amended by Ordinance No. 99-63, Miami-Dade County has established the Office of the Inspector General which may, on a random basis, perform audits on all County contracts, throughout the duration of said contracts. The cost of the audit for this Agreement shall be one quarter (1/4) of one percent (1 %) of the total contract amount, which cost shall be included in the total contract amount. The audit cost will be deducted by the County from all payments due to Fairchild under this Article. The audit cost shall also be included in contract renewals and extensions.

2.06 Delinquencies Prohibited. As required by § 2-8.1(c) of the Code of Miami-Dade County, upon entering into this Agreement, Fairchild shall verify that all delinquent and currently due fees or taxes (including, but not limited to, real and personal property taxes, utility taxes, and occupational license taxes) collected in the normal course by the Miami-Dade County Tax Collector and County-issued parking tickets for vehicles registered in the name of Fairchild, have been paid. To the extent Fairchild is, or during the term of the Agreement becomes, delinquent on any of the foregoing obligations, the County shall be entitled to deduct any such delinquent amount from any payment due under this Article.

ARTICLE 3

USE AND OWNERSHIP OF INFORMATION

3.01 Fairchild's Right to Use Information and Data. The parties acknowledge and agree that Fairchild shall provide the County with information and scientific data, including GIS data, obtained and developed by Fairchild in carrying out its duties and responsibilities under this Agreement. The County's right to possess and use this information and data shall be non-exclusive, and the parties expressly agree that Fairchild, without any obligation to the County (financial or otherwise), may retain a copy of and use said information and scientific data, including GIS data, obtained and developed by Fairchild in carrying out its duties and responsibilities under this Agreement.

ARTICLE 4

TERM

4.01 Term of Agreement. Unless otherwise terminated pursuant to Article 5 of this Agreement, this Agreement shall remain in full force and effect for a period of five (5) years from the Effective Date of this Agreement. However, nothing shall preclude the County and Fairchild from extending the term of this Agreement upon the same terms and conditions for additional periods as the County may deem necessary or appropriate for purposes of natural areas management, maintenance, conservation and preservation of Miami-Dade world heritage flora. Each extension and associated budget shall be agreed upon, in writing, not later than sixty days prior to the end of the applicable term. For the County, extensions must be approved by the Board of County Commissioners, the County Mayor or designee, in writing and subject to the approval of the County Attorney for form and legal sufficiency.

4.02 Term of Budget. Nothing shall preclude the County and Fairchild from shifting the budget timelines (“Exhibit B-1” and “Exhibit B-2”) in this Agreement, if necessitated by delays in execution of this Agreement. Any changes in the budget timeline shall provide the same level of service, must not change the total agreed-upon amounts (\$478,628.00 per “Exhibit B-1,” RER-DERM and \$300,000.00 per “Exhibit B-2,” PROS), and shall be agreed upon in writing, by all parties.

ARTICLE 5

TERMINATION

5.01 Termination. This Agreement may be terminated by either party, with or without cause, upon sixty (60) days written notice, which notice shall specify the termination date. Upon delivery of a written notice of termination, all work on the Project shall cease, and Fairchild shall submit an invoice in the manner described in § 2.03 of this Agreement, setting forth all Project and Administrative Costs incurred through the termination date, unless the County agrees to a different date in writing. The County shall pay the invoice submitted pursuant to this § 5.01 in the manner described in § 2.03 of this Agreement. If either party terminates the other for cause, for a default not justified by an event of force majeure, then a termination under this § 5.01 shall be without prejudice to the non-defaulting party's right to pursue damages against the defaulting party, provided that neither party shall be entitled to pursue or recover indirect or consequential damages (including, but not limited to, lost profits or revenue or damages for loss of good will) against the other.

ARTICLE 6

MISCELLANEOUS TERMS

6.01 Amendments. This Agreement may be modified or amended only by written document executed by both parties. In the case of the County, amendments that (1) decrease the scope of work under § 1.01 of this Agreement or (2) provide for the payment of additional County funds to Fairchild, shall require the approval of the

Board of County Commissioners. Any other amendments may be approved, in writing, by the County Mayor or designee, subject to the approval of the County Attorney for form and legal sufficiency.

6.02 Background Screening. In accordance with the Shannon Melendi Act, Miami-Dade County Ordinance No. 08-07 (as it may be amended from time to time), all of the Fairchild's employees, personnel, volunteers, contractors, consultants and any other entity or persons that will provide any services or perform any work on park property owned by Miami-Dade County must comply with the Shannon Melendi Act before the scheduled start of such employment, volunteerism, or work.

6.03 Duty to Update Disclosures. In connection with its entry into this Agreement, and as required by § 2-8.1(d)(1) of the Code of Miami-Dade County, Fairchild has disclosed its full legal name and business address and the full legal name and business address of all of its officers, directors, and persons holding, directly or indirectly, five percent (5%) or more of outstanding stock in Fairchild. Fairchild shall provide updated disclosures to the County within thirty (30) days of any change to the information last disclosed to the County.

6.04 Required Completion of Uniform County Affidavit. Within thirty (30) days of the Effective Date of this Agreement, Fairchild shall be required to complete and submit the Uniform County Affidavit available online at <http://www.miamidade.gov/procurement/library/vendor-affidavits.pdf>. Fairchild's failure to submit the Uniform County Affidavit shall render this Agreement voidable at the County's sole and exclusive election.

6.05 Compliance with all Laws. Fairchild agrees that it shall be required to comply with all applicable federal, state, and local laws and regulations, including those of the County, whether or not specifically referenced in this Agreement.

6.06 Time is of the Essence. It is mutually agreed that time is of the essence in the performance of all obligations required to be performed under to this Agreement.

6.07 Public Records. The parties understand, agree and acknowledge that this Agreement and the activities conducted thereunder are subject to the provisions of Chapter 119 of the Florida Statutes commonly referred to as "Florida Public Records Laws".

- (a) For purposes of this section, the term "public records" shall mean all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business of the County.

- (b) IF FAIRCHILD HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FAIRCHILD'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT THE MIAMI-DADE COUNTY REGULATORY AND ECONOMIC RESOURCES, DIVISION OF ENVIRONMENTAL RESOURCES MANAGEMENT, ENVIRONMENTALLY ENDANGERED LANDS PROGRAM, ATTN: MS. JANET GIL, (305) 372-6687, janet.gil@miamidade.gov, 701 NW 1ST STREET, 5TH FLOOR, MIAMI, FL 33136.
- (c) Fairchild is required to keep and maintain public records required to perform under this Agreement and, upon request from the County's custodian of public records, provide the County 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 applicable law.
- (e) Fairchild shall 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 Agreement term and following completion of the Agreement if Fairchild does not transfer the records to the County
- (f) Upon completion of the Agreement, Fairchild shall transfer, at no cost, to the County all public records in possession of Fairchild or keep and maintain public records required by the County to perform the service. If Fairchild transfers all public records to the County upon completion of the Agreement, Fairchild shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Fairchild keeps and maintains public records upon completion of the Agreement, Fairchild shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the County, upon request from the County's custodian of public records, in a format that is compatible with the information technology systems of the County.
- (g) If the County does not possess public records responsive to a request to inspect or copy public records relating to this Agreement, the County shall immediately notify Fairchild of the request, and Fairchild must provide the records to the County or allow the records to be inspected or copied within a

reasonable time.

- (h) If Fairchild does not comply with a request for records, it shall be a material breach of this Agreement. Failure by Fairchild to provide the public records within a reasonable time may subject Fairchild to penalties under s. [119.10](#).

6.08 Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The County and Fairchild agree not to contest personal jurisdiction in any proceeding brought in a Florida court, which proceeding concerns a controversy or claim arising out of or relating to this Agreement. Venue for any court action between the parties shall be in the Eleventh Judicial Circuit in and for Miami-Dade County, Florida, or in the Miami Division of the U.S. District Court for the Southern District of Florida.

6.09 No Third-Party Beneficiaries. Nothing in this Agreement, expressed or implied, is intended to (a) confer upon any entity or person, other than the expressed parties herein, any rights or remedies under or by reason of this Agreement as a third-party beneficiary, or otherwise; or (b) authorize anyone not a party to this Agreement to maintain an action pursuant to or based upon this Agreement.

6.10 Non-Discrimination. Fairchild does hereby for itself, its personal representatives, successors in interest, and assignors, as part of the consideration hereof, covenant and agree that no person on the ground of race, color, religion, ancestry, national origin, sex, pregnancy, marital status, familial status, gender identity or gender expression, status as a victim of domestic violence, dating violence or stalking, sexual orientation, age, residency within or outside the County, or handicap shall be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination in connection with the performance of this Agreement, except as provided by law. In the event of breach of any of the above non-discrimination covenants, the County shall have the right to terminate the Agreement. This provision shall not be effective, where applicable, until the procedures of Title 45, Code of Federal Regulations, Part 80, are followed and completed including exercise or expiration of appellate rights. Fairchild shall not discriminate against any employee or applicant for employment in the performance of the Agreement with respect to hiring, tenure, terms, conditions, or privileges of employment because of race, color, religion, ancestry, national origin, sex, pregnancy, marital status, familial status, gender identity or gender expression, status as a victim of domestic violence, dating violence or stalking, sexual orientation, age, residency within or outside the County, or handicap.

6.11 Indemnification. Fairchild shall indemnify and hold harmless the County and its officers, employees, agents and instrumentalities from any and all liability, losses or damages, including attorneys' fees and costs of defense, which the County or its officers, employees, agents or instrumentalities may incur as a result of claims, demands, suits, causes of actions or proceedings of any kind or nature arising

out of, relating to or resulting from the performance of this Agreement by Fairchild or its employees, agents, servants, partners, principals or subcontractors. Fairchild shall pay all claims and losses in connection therewith and shall investigate and defend all claims, suits or actions of any kind or nature in the name of the County, where applicable, including appellate proceedings, and shall pay all costs, judgments, and attorney's fees which may issue thereon. Fairchild expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Manager shall in no way limit the responsibility to indemnify, keep and save harmless and defend the County or its officers, employees, agents and instrumentalities as herein provided.

6.12 Notices. All notices required or permitted to be given under the terms and provisions of this Agreement by either party to the other shall be in writing and shall be sent by registered or certified mail, return receipt requested, to the parties as follows:

As to the County

Ms. Janet Gil
Program Director
Environmentally Endangered Lands
Dept. of Regulatory and Economic Resources
701 NW 1st Court, 5th Floor
Miami, FL 33136

Ms. Jennifer Stern
Natural Areas Manager
Natural Areas Management Division
Parks, Recreation and Open Spaces Dept.
22200 SW 137th Avenue
Miami, FL 33170

As to Fairchild:

Dr. Carl Lewis
Director
Fairchild Tropical Botanic Garden
10901 Old Cutler Rd
Miami, FL 33156

or to such other address as may hereafter be provided by the parties in writing. Notices by registered or certified mail shall be deemed received on the delivering date indicated by the U.S. Postal Service on the return receipt.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective and duly authorized officers the day and year first above written.

ATTEST:

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

By: _____
Harvey Ruvin
Clerk of the Board

By: _____
Daniella Levine Cava
Mayor, Miami-Dade County

By: _____
Maria I. Nardi
Director, Parks, Recreation and
Open Spaces Department

By: _____
Lourdes M. Gomez
Director, Department of Regulatory
and Economic Resources

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

By: _____
Assistant County Attorney

FAIRCHILD TROPICAL BOTANIC
GARDEN, INC., a non-profit corporation
organized under the laws of Florida,

By:  _____
Dr. Carl Lewis
Director

The foregoing was accepted and approved on the ____ day of _____,
2021 by Resolution No. _____ of the Board of County Commissioners of Miami-Dade
County, Florida.

Exhibit A-1	
EEL Managed Preserve Name	Address/Location
A.D. Barnes Park & Preserve	3775 SW 74 Ave.
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Castellow Hammock Park & Preserve	22301 SW 162 Ave.
Chernoff Hammock	SW 218 St. & SW 154 Ave.
County Line Scrub	NE 215 St & NE 4 Ave
Crandon Park & Preserve	7200 Crandon Blvd.
Cutler Wetlands	SW 196 St & SW 85 Ave
Cutler Wetlands Addition	SW 85 Ave & SW 210 St.
Deering Estate at Cutler Park & Preserve	16701 SW 72 Ave.
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Deering South Addition	SW 168 St & Old Cutler Rd
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Holiday Hammock	SW 400 St & SW 207 Ave
Ingram Pineland	SW 288 St & SW 167 Ave
John Farina Mangrove Preserve	NE 163 St & US 1
Larry & Penny Thompson Park & Preserve	12451 SW 184 St.

Little George	SW 152 Ave & Country Walk Dr
Loveland Hammock	SW 360 St & SW 222 Ave
Lucille Hammock	SW 352 St & SW 222 Ave
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Martinez Pineland (Richmond Pinelands)	SW 176 St & SW 137 Ave
Matheson Hammock Park & Preserve	9610 Old Cutler Rd.
Meissner Hammock	SW 302 St & SW 200 Ave
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Seminole Wayside Park Addition	SW 299 St & US 1
Silver Palm Groves Pineland	SW 232 St & SW 139 Ave
Silver Palm Hammock	SW 232 St & SW 152 Ave
South Dade Wetlands	Cardsound Rd/US 1/SW 344 St.
Sunny Palms Pineland (NW 42)	SW 364 St & SW 202 Ave
Tamiami Pineland Complex Addition	SW 136 St & SW 122 Ave
Tree Island Park	SW 10 St & SW 147 Ave
Trinity Pineland	SW 76 St & SW 73 Ave
Tropical Park & Preserve	7900 SW 40 St.
West Biscayne Pineland	SW 288 St & SW 190 Ave
Wilkins-Pierson Pineland	SW 180 St & SW 164 Ave

Exhibit A-2

PROS Managed Preserve Name	Address/Location
Alco Estates	SW 147 - 144 Ave. & SW 11 St. - 9 Terr.
Amelia Earhart	401 E 65 St.
Arch Creek (non-EEL)	1855 NE 135 St.
Black Point	24775 SW 87 Ave.
Camp Matecumbe (non-EEL)	13841 SW 120 St.
Camp Redland	15431 SW 256 St.
Chapman Field	13601 Old Cutler Rd.
Charles Burr Park	20200 SW 127th Ave.
Chateau Royal	SW 134 Pl. to 133 Ave. & SW 282 St. - 280 St.
Christopher Gardens	SW 282 St. - 284 St. & SW 132 Ave. - 134 Ct.
Colonial Drive Park	10750 SW 156 Terr.
Country Lake Park	NW 195 St & 87 Ave.
Dolphin Center - Linear Park	NW 183 St. & NW 27 Ave.
Dolphin Center - Scrub Oak Preserve	NW 195 St. & NW 24 Ave.
Emerald Lakes Estates	SW 149 - 147 Ave. & SW 10 St. - 8 St.
Everglades Archers Range	17001 SW 264 St.
Fairchild Garden Wetland Area	10901 Old Cutler Rd.
Gold Coast Railroad	12450 SW 152 St.
Grand Lakes	SW 8 St. - 26 St. & 149 Ave. - 152 Ave.
Greynolds (non-EEL)	17530 W Dixie Hwy.
Haulover Park	10800 Collins Ave.
Highland Oaks Park	20300 NE 24 Ave.
Homestead Bayfront Park	9698 SW 328 St.
Ives Estates	20901 NE 16 Ave.
Kendall Indian Hammocks	11395 SW 79 St.
Kendalwood	8140 SW 93 Ct.
Lago Mar	8165 SW 162 Ave.
Lake Frances 1st Addition	SW 280 St. & SW 133 Ave.
Lakes by the Bay	SW 216 St. & SW 85 Ave.
Lincoln City Park #2	SW 214 St. & 99 Ave.
Mangrove Preserve	26751 SW 97 Ave.
Milton (ME) Thompson	NW 166 St. & 177 Ave.
Oak Grove Park	690 NE 159 St.
Pelican Island Harbor Marina	1275 NE 79 St. Causeway
Pine Forest Park (Medsouth)	20751 SW 129 Ave.
Precious Forest	SW 157 Ave. - 155 Ave. & SW 179 St. - 182 St.
Rieumont Estates	SW 155 - 157 Ave. & 12 St. & 12 Terr.
Ron Ehman	10995 SW 97 Ave.

Seminole Wayside	29901 S Dixie Hwy.
Trail Glades Range	17601 SW 8 St.
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West Kendall Best	SW 162 Ave. from 80 St. - 85 St.
Whispering Pines	SW 188 St. & 88 Ct.
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EXHIBIT B-1

EXHIBIT B-1 - EEL
FAIRCHILD/ MIAMI-DADE COUNTY BIOLOGICAL MONITORING
BUDGET DETAIL

Agreement Funds - with 2% annual increase in personnel costs						
	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	TOTAL
Personnel	\$ 59,000	\$ 60,180	\$ 61,384	\$ 62,611	\$ 63,863	\$ 307,038
Program supplies & mileage	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 15,000
Overhead (51% salary & benefits)	\$ 30,090	\$ 30,692	\$ 31,306	\$ 31,932	\$ 32,570	\$ 156,590
TOTAL	\$ 92,090	\$ 93,872	\$ 95,689	\$ 97,543	\$ 99,434	\$ 478,628

EXHIBIT B-2

EXHIBIT B-2 - PROS
FAIRCHILD/ MIAMI-DADE COUNTY BIOLOGICAL MONITORING
BUDGET DETAIL

	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	TOTAL
<i>Personnel</i>	\$ 37,749	\$ 37,749	\$ 37,749	\$ 37,749	\$ 37,749	\$ 188,743
<i>Program supplies & mileage</i>	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 15,000
<i>Overhead (51% salary & benefits)</i>	\$ 19,252	\$ 19,252	\$ 19,252	\$ 19,252	\$ 19,252	\$ 96,259
TOTAL	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 300,000

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EXHIBIT B-2

EXHIBIT B-2 - PROS FAIRCHILD/ MIAMI-DADE COUNTY BIOLOGICAL MONITORING BUDGET DETAIL

	Yr 1	Yr 2	Yr 3	Yr 4	Yr 5	TOTAL
<i>Personnel</i>	\$ 37,749	\$ 37,749	\$ 37,749	\$ 37,749	\$ 37,749	\$ 188,743
<i>Program supplies & mileage</i>	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 3,000	\$ 15,000
<i>Overhead (51% salary & benefits)</i>	\$ 19,252	\$ 19,252	\$ 19,252	\$ 19,252	\$ 19,252	\$ 96,259
TOTAL	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 60,000	\$ 300,000




MEMORANDUM

(Revised)

TO: Honorable Chairman Jose "Pepe" Diaz
and Members, Board of County Commissioners

DATE: July 20, 2021

FROM: 
Gen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(L)(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
- ☐ Statement of social equity 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 present ☒, 2/3 membership ____, 3/5's ____, unanimous ____, CDMP 7 vote requirement per 2-116.1(3)(h) or (4)(c) ____, CDMP 2/3 vote requirement per 2-116.1(3)(h) or (4)(c) ____, or CDMP 9 vote requirement per 2-116.1(4)(c)(2) ____ 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(L)(4)
7-20-21

RESOLUTION NO. _____

RESOLUTION AUTHORIZING BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT AND PURSUANT TO SECTION 2-8.1(B)(3) OF THE CODE OF MIAMI-DADE COUNTY, FLORIDA, A DESIGNATED PURCHASE AGREEMENT FOR BIOLOGICAL MONITORING SERVICES FROM FAIRCHILD TROPICAL BOTANIC GARDEN, INCORPORATED, APPROVING THE TERMS OF THE BIOLOGICAL SERVICES AGREEMENT IN MIAMI-DADE COUNTY NATURAL AREA PRESERVES FOR A FIVE-YEAR PERIOD IN AN AMOUNT NOT TO EXCEED \$778,628.00; AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE THE AGREEMENT FOR AND ON BEHALF OF MIAMI-DADE COUNTY AND TO EXERCISE ALL RIGHTS CONFERRED THEREIN CONSISTENT WITH SECTION 2-8.1 AND ADMINISTRATIVE ORDER 3-38

WHEREAS, this Board has adopted section 2-8.1(b)(3) of the Code of Miami-Dade County ("County Code"), which creates and provides for a designated-purchase procedure in instances in which formal sealed bids for the purchase of services is not practicable; and

WHEREAS, this Board has authorized the use of the designated-purchase procedure for the purchases of unique professional services not governed by the Consultants' Competitive Negotiations Act, Section 287.055, Fla. Stat.; and

WHEREAS, the services to be performed by Fairchild Tropical Botanic Garden, Inc. under the Biological Monitoring Services Agreement (attached to the accompanying memorandum as Exhibit 1) are not governed by the Consultants' Competitive Negotiation Act; and

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

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that:

Section 1. This Board, by a two-thirds vote of the Board member presents and pursuant to the provisions of section 2-8.1(b)(3) of the County Code, authorizes the designated purchase of biological monitoring services from Fairchild Tropical Botanic Garden, Inc.

Section 2. This Board approves the Biological Services Agreement, in substantially the form attached to the accompanying memorandum as Exhibit 1 and made a part hereof, for a five-year period in an amount of up to \$778,628.00 for the purchase of biological monitoring services in Miami-Dade County natural area preserves.

Section 3. This Board further authorizes the County Mayor or County Mayor's designee to execute the Agreement and to exercise all rights conferred therein, including the amendment and termination provisions, consistent with section 2-8.1 of the County Code and Administrative Order 3-38.

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:

Jose "Pepe" Diaz, Chairman	
Oliver G. Gilbert, III, Vice-Chairman	
Sen. René García	Keon Hardemon
Sally A. Heyman	Danielle Cohen Higgins
Eileen Higgins	Joe A. Martinez
Kionne L. McGhee	Jean Monestime
Raquel A. Regalado	Rebeca Sosa
Sen. Javier D. Souto	

The Chairperson thereupon declared this resolution duly passed and adopted this 20th day of July, 2021. 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.

mjs

Melanie J. Spencer