

MEMORANDUM

Agenda Item No. 8(H)(3)

TO: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

DATE: January 22, 2025

FROM: Geri Bonzon-Keenan
County Attorney

SUBJECT: Resolution waiving competitive bidding and approving a non-competitive programming partnership operating agreement between the County and Fairchild Tropical Botanic Garden, Inc., a Florida not-for-profit entity, by a two-thirds vote of the Board members present for operation and programming at a Botanical Nursery Facility located within Matheson Hammock Park; and authorizing the County Mayor to execute same and exercise all provisions contained therein including termination

Resolution No. R-44-25

The accompanying resolution was prepared Parks, Recreation and Open Spaces Department and placed on the agenda at the request of Prime Sponsor Commissioner Raquel A. Regalado.



Geri Bonzon-Keenan
County Attorney

GBK/jp

Memorandum



Date: January 22, 2025

To: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

From: Daniella Levine Cava
Mayor 

Subject: Resolution approving a Programming Partnership Operating Agreement between Miami Dade County and Fairchild Tropical Botanic Garden, Inc by a two-thirds vote of the Board members present for operation and programming at a botanical nursery facility located within Matheson Hammock Park

Executive Summary

The purpose of this item is to gain approval by the Board of County Commissioners (Board) to waive competitive bidding procedures pursuant to Section 26-34 of the Miami-Dade County (County) Code applicable to programming partnerships and Section 5.03(D) of the Home Rule Charter, in order to approve a Programming Partnership Operating Agreement (“Agreement”) between the County and Fairchild Tropical Botanic Garden, Inc., (“Fairchild”), a Florida not-for-profit entity, by a two-thirds vote of the Board members present for operation and programming at a botanical nursery facility (“Nursery”), which includes a historic coral rock nursery and adjacent open air planting areas, located within Matheson Hammock Park (“Park”), west of Old Cutler Road. The Agreement (Attachment A) would allow Fairchild to operate the Nursery within the Park to produce plants in support of advancing the mutual goals of Fairchild and the Parks, Recreation and Open Spaces Department (“PROS”) with respect to forestry and urban landscapes, provide programming for Park patrons, and the delivery of environmental education to adults and children related to horticulture, botany, and conservation.

Fairchild plans to distribute trees, orchids, and other native and adaptive plants through its established channels, including tree giveaways to members of its Native Plant Network (2000+ Miami-Dade households) and schools that participate in its outreach programs (more than 300 local schools). Fairchild intends to work with PROS to identify other distribution channels for plants produced in the Nursery, prioritizing planting opportunities within Matheson Hammock Park and other County parks. Additionally, in collaboration with PROS, Fairchild may use outdoor, full-sun areas as demonstration plantings, providing visitors to Matheson Hammock Park with examples of native, adaptive, and resilient landscaping.

Fairchild intends to use the Nursery to propagate native species and varieties of landscape trees that are underrepresented or completely absent from commercial nurseries but are ideal for our climate. Producing these trees will increase urban biodiversity and the resilience of our local tree canopy, reducing the likelihood that future negative impacts will significantly impede progress toward Miami Dade County’s 30% tree canopy goal.

Recommendation

It is recommended that the Board of County Commissioners (Board) waive competitive bidding procedures pursuant to Section 26-34 of the Miami-Dade County (County) Code applicable to programming partnerships and Section 5.03(D) of the Home Rule Charter, in order to approve a

Programming Partnership Operating Agreement between the County and Fairchild Tropical Botanic Garden, Inc., a Florida not-for-profit entity, by a two-thirds vote of the Board members present for operation and programming at the Nursery located within Matheson Hammock Park, west of Old Cutler Road. The Agreement would allow Fairchild to operate the Nursery within the Park to produce plants in support of advancing the mutual goals of Fairchild and Parks, Recreation and Open Spaces Department with respect to forestry and urban landscapes, provide programming for Park patrons, and the delivery of environmental education to adults and children related to horticulture, botany, and conservation.

Scope

The Nursery is located within the County's Matheson Hammock Park, at 9800 Old Cutler Rd, Coral Gables, within County Commission District 7, which is represented by Commissioner Raquel A. Regalado. The Park serves all residents of Miami-Dade County therefore, the scope is county-wide.

Fiscal Impact/Funding Source

There is a fiscal benefit to the County. Fairchild will fund the operation, and maintenance of the Nursery, included in the Agreement. Fairchild will make a one-time, in-kind commitment of \$20,000 for the operational needs of the Nursery. As part of The Million Orchid Project community outreach, Fairchild will install \$10,000 worth of Native Orchids (1,000 orchids) throughout Matheson Hammock Park within one (1) year of the execution date of this agreement, in locations approved by PROS. Additionally, Fairchild will provide and install \$5,000 worth of Native Orchids (500 orchids) every other year for a period of ten (10) years to Miami-Dade County Parks, and annually for three (3) years upon each time Fairchild exercises the option to renew the term of the agreement. While there is no contractual obligation within this agreement for restoration of the nursery, PROS has plans to renovate it in the future. Upon completion of the renovation, Fairchild would operate the updated nursery.

Track Record/Monitor

Alejandro Zizold, Chief of Planning and Research in the Parks, Recreation and Open Spaces Department Planning, Design and Construction Excellence Division will oversee the execution of the agreement and will monitor the completion of design and construction of the Project.

Delegation of Authority

The County Mayor or County Mayor's designee shall have the authority to execute the Agreement and exercise all rights therein, including termination.

Background

Fairchild Tropical Botanic Garden, founded in 1936, is a world-class botanic garden renowned for its commitment to community outreach, scientific research, and environmental stewardship. As a living museum, a scientific laboratory, an educational institution, and a hub for sharing landscape plants, Fairchild's work is aligned with PROS's goals to improve tree canopy and resilience throughout Miami-Dade County; and in keeping with the historical nature of west Matheson Hammock Park as a botanical park.

Fairchild's strategic location adjacent to Matheson Hammock Park has fostered a robust partnership with Miami-Dade County, celebrated at Fairchild's dedication ceremony and continuing as a

cornerstone of its operations. This partnership was solidified when Fairchild donated 69 acres of land to the County between 1938-1940 to be developed into botanic garden landscapes for the benefit of County residents. These 69-acres, operated by Fairchild under a lease established by County Resolution R-349-97, in addition to 14-acres still owned by Fairchild, are part of the area commonly known as Fairchild Tropical Botanical Garden today. The botanical garden is a demonstration of aesthetic, iconic, and sustainable landscaping. Deed restrictions to the park require the land to be used as a botanical garden

With nine decades of innovation, service, and collaboration with PROS, Fairchild is an integral part of our local environmental and educational landscape. Fairchild's "City in a Garden" initiative is a testament to this legacy, aiming to transform Miami-Dade County into a verdant, biodiverse, and resilient urban ecosystem. Fairchild's pioneering programs in urban greening, botanical research, and education are driving this transformation, supported by its countywide outreach programs including the Native Plant Network, the Fairchild Challenge for local schools, the Million Orchid Project, and rare species management in 85 natural habitats including Matheson Hammock Park.

Fairchild and Miami-Dade County continue to work closely to achieve significant environmental and urban development objectives. A key component of this strategy is Miami-Dade County's ambitious goal to achieve a 30% tree canopy by 2030, aimed at enhancing the County's climate resilience and fortifying it against the growing threat of tropical storms and hurricanes. In this context, the expansion of Fairchild's nursery operations is pivotal. By ramping up the production of native and adaptive plant species, Fairchild directly supports the County's environmental objectives and vision, helping to expand green spaces throughout Miami-Dade by growing and distributing resilient and sustainable plants throughout Miami-Dade.

This project supports County Home Rule Charter Article 7, which provides that parks, aquatic preserves, and preservation lands in the County must be held in public trust for education, recreation, and enjoyment, must be maintained sustainably to ensure future generations can enjoy them, are protected against commercial development and exploitation, and must have their natural features (landscape, plants, animals, and scenic beauty) preserved. To further support the County's objective of 30% tree canopy by 2030, expanding Fairchild's nursery facilities is crucial. This expansion will enhance the production of a variety of native and adaptive plants, which are essential for increasing urban biodiversity, cooling neighborhoods, and supporting the local ecosystem. This effort is bolstered by a dedicated volunteer workforce skilled in plant propagation and nursery operations, complemented by a team of staff members with expertise in propagating plants for local conservation initiatives.

The Historic Coral Rock Nursery at Matheson Hammock Park, originally known as the Dade County Nursery, includes a 4,540 square-foot slat house for plant growth and public programming, and a 1,040 square-foot structure for office and administrative functions. These facilities are set for revitalization by the County based on the comprehensive document, Dade County Nursery at Matheson Hammock Park: Historic Structures Report and Conditions Assessment (Miami-Dade County Parks, Recreation and Open Spaces Department, February 2023). The report, prepared by R.J. Heisenbottle Architects and funded by the State of Florida Grant 22.h.sm.100.075, provides a detailed examination of the Nursery's history in supporting countywide urban greening and landscape

revitalization, along with recommendations for its restoration and future use. The report advocates re-engaging the space with the community akin to its historical use.

Fairchild is identified in the report as the potential user of the revitalized space for plant production, education, and community outreach (Source: Dade County Nursery at Matheson Hammock Park: Historic Structures Report and Conditions Assessment, page 42). The recommendations advocate for the Nursery to serve dual functions: preserving its historical essence while providing practical spaces for plant cultivation and community engagement, such as educational activities that enhance local agricultural knowledge and interest. This aligns with Fairchild's and PROS's existing programs and goals.

To scale up plant production and to help Miami-Dade County achieve its goals, Fairchild is proposing to manage the Historic Coral Rock Nursery and adjacent open spaces suitable for full-sun nursery production and demonstration gardens. Fairchild's proposed scope of services includes the propagation of native plants and trees, shrubs, orchids, palms, cycads, and tropical fruit trees, all chosen for their regional adaptability and potential environmental education, distribution and other use in the community outreach. As the Park contains areas managed by Miami-Dade County Environmentally Endangered Lands ("EEL") program, Fairchild agrees to seek the review and approval of RER-DERM's EEL program when formulating Fairchild's proposed scope of services. Non-native plant species selected for propagation will be coordinated with the EEL program to determine if propagation of the plant species poses a risk to the adjacent EEL managed areas, particularly propagation of exotic ferns, orchids and vines should be reviewed for risk potential. Noteworthy projects include the growth of orchids from a micropropagation lab for reintroduction into urban settings, the production of shade trees to mitigate urban heat, and the cultivation of rare species through tissue culture to ensure their survival and presence in local landscapes.

Moreover, Fairchild will use the Nursery to evaluate innovative growing techniques and plant varieties that could revolutionize urban horticulture in Miami-Dade. This includes trials with plants for urban agriculture and vertical gardening systems suitable for city environments. Such efforts aim to enhance food security and develop sustainable food sources within the county.

Fairchild's management of the Nursery is in keeping with the historical nature of west Matheson Hammock Park as a botanical park. Additionally, it aligns with Miami-Dade County's goals for environmental sustainability, educational outreach, and community engagement. By leveraging its scientific resources and horticultural expertise, Fairchild is poised to significantly contribute to the County's vision of a greener, more resilient urban landscape. This collaboration not only supports the County's environmental objectives but also ensures the enduring impact of the Fairchild's mission and legacy and the nearly 100-yearlong partnership between Fairchild and Miami-Dade County.

A waiver of competitive bidding for the selection of Fairchild is in the County's best interest and is recommended due to their specialized experience in providing these preservation and conservation services, their compatibility with the site's unique facilities and outdoor natural areas, and their commitment to renovating the park facility at their own expense. Additionally, Fairchild has a proven track record in running a successful botanical park combined with educational conservation and preservation programming for children and adults on a year-round basis in a healthy, safe, productive, and enjoyable environment.

Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners
Page No. 5

Attachment



Jimmy Morales
Chief Operating Officer



MEMORANDUM (Revised)

TO: Honorable Chairman Anthony Rodriguez
and Members, Board of County Commissioners

DATE: January 22, 2025

FROM: 
Glen Bonzon-Keenan
County Attorney

SUBJECT: Agenda Item No. 8(H)(3)

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 ☐, majority plus one ☐, 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) ☐, 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(H)(3)
1-22-25

RESOLUTION NO. _____ R-44-25

RESOLUTION WAIVING COMPETITIVE BIDDING AND APPROVING A NON-COMPETITIVE PROGRAMMING PARTNERSHIP OPERATING AGREEMENT BETWEEN THE COUNTY AND FAIRCHILD TROPICAL BOTANIC GARDEN, INC., A FLORIDA NOT-FOR-PROFIT ENTITY, BY A TWO-THIRDS VOTE OF THE BOARD MEMBERS PRESENT FOR OPERATION AND PROGRAMMING AT A BOTANICAL NURSERY FACILITY LOCATED WITHIN MATHESON HAMMOCK PARK; AND AUTHORIZING THE COUNTY MAYOR OR COUNTY MAYOR'S DESIGNEE TO EXECUTE SAME AND EXERCISE ALL PROVISIONS CONTAINED THEREIN INCLUDING TERMINATION

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. Incorporates and approves the foregoing recital as if fully set forth herein.

Section 2. This Board finds that it is in the best interest of Miami-Dade County to waive competitive bidding by a two-thirds vote of the Board members present in accordance with the provisions of section 5.03(D) of the Home Rule Charter and section 26-34 of the Code of Miami-Dade County, Florida to award Fairchild Tropical Botanic Garden, Inc., a Florida not for profit entity, an agreement to operate a nursery facility located within Matheson Hammock Park.

Section 3. This Board approves and authorizes the County Mayor or County Mayor's designee to, in substantially the form attached hereto as Attachment A, execute the Agreement between the County and the Fairchild Tropical Botanical Garden for the operation and programming at a botanical nursery facility located within Matheson Hammock Park, west of Old Cutler Road, and exercise all rights therein, including termination.

The foregoing resolution was offered by Commissioner **Danielle Cohen Higgins** , who moved its adoption. The motion was seconded by Commissioner **Kionne L. McGhee** and upon being put to a vote, the vote was as follows:

Anthony Rodriguez, Chairman	aye		
Kionne L. McGhee, Vice Chairman	aye		
Marleine Bastien	aye	Juan Carlos Bermudez	aye
Kevin Marino Cabrera	aye	Sen. René García	aye
Oliver G. Gilbert, III	aye	Roberto J. Gonzalez	aye
Keon Hardemon	absent	Danielle Cohen Higgins	aye
Eileen Higgins	aye	Raquel A. Regalado	aye
Micky Steinberg	aye		

The Chairperson thereupon declared this resolution duly passed and adopted this 22nd day of January, 2025. 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

JUAN FERNANDEZ-BARQUIN, CLERK

By: Basia Pruna
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.

A handwritten signature in black ink, appearing to read "mjs", is written over a horizontal line.

Melanie J. Spencer

ATTACHMENT A

PROGRAMMING PARTNERSHIP OPERATING AGREEMENT

THIS PROGRAMMING PARTNERSHIP OPERATING AGREEMENT (the "Agreement") made and entered into as of this _____ day of _____, 202__ ("Agreement Effective Date"), by and between Fairchild Tropical Botanic Garden, Inc., a not for profit corporation organized and existing under the laws of the State of Florida, having its principal office at 10901 Old Cutler Road, Coral Gables, Florida 33156, (hereinafter referred to as the "Operator"), and Miami-Dade County, a political subdivision of the State of Florida, having its principal office at 111 NW 1st Street, Miami, Florida 33128 (hereinafter referred to as the "County")

WITNESSETH:

WHEREAS, the County owns a plant Nursery (the "Nursery") within Matheson Hammock Park (the "Park") located at 9800 Old Cutler Rd, Coral Gables, Florida 33150, for plant production and public engagement, which facilities are administered for the County by its Director of the Parks, Recreation and Open Spaces Department, or designee (the "Department" or "PROS"); and,

WHEREAS, the Department is planning to restore the historic Nursery to its original function and appearance; and,

WHEREAS, the Operator manages programs throughout Miami-Dade County for plant conservation, urban beautification, environmental education, and public outreach, with Miami-Dade residents being the beneficiaries of these programs; and

WHEREAS, the Operator manages plant production shade houses within Fairchild Tropical Botanic Garden adjacent to the Park under Miami-Dade County Resolution R-349-97; and

WHEREAS, there is urgent demand for native and adaptive plants to be used in urban landscaping and greening initiatives throughout Miami-Dade County and the Operator is seeking a new facility to help it address that need; and

WHEREAS, the Operator has offered to operate the Nursery, fulfilling the Nursery's designated purposes, using the Operator's staff and volunteers; and

WHEREAS, the Operator's services in operating the Nursery will benefit Matheson Hammock Park by reactivating this historic facility and providing conservation programming within the park; and

NOW THEREFORE in consideration of the mutual covenants and provisions contained herein, the parties hereto agree as follows:

1. **Definitions:** The following words and expressions used in this Agreement shall be construed as follows, except when it is clear from the context that another meaning is intended:
 - A. "Nursery" shall mean the area delineated in Appendix "D" including the location of the "Historic Coral Rock Nursery" and adjacent open area which are designated as the "Joint Usage Area."

- B. "Joint Usage Area" shall mean the area so designated in Appendix "D."
- C. "Contract Date" shall mean the date on which this Agreement is effective, which shall be immediately following final execution of this Agreement.
- D. "Contract Manager," or "Park Manager" shall mean Miami-Dade County's Director, Department of Parks, Recreation and Open Spaces, or the duly authorized representative
- E. "Days" to mean Calendar Days
- F. "Deliverables" shall mean all documentation and any items of any nature submitted by the Operator to the Department's Contract Manager for review and approval pursuant to the terms of this Agreement
- G. "Agreement" shall mean collectively these terms and conditions, the Scope of Services (Appendix A) and Fairchild Considerations (Appendix B), and all associated addenda and attachments, and all other attachments hereto and all amendments issued hereto.
- H. "Operator" shall mean Fairchild Tropical Botanic Garden, Inc., and its permitted successors.
- I. "Scope of Services" to mean the document appended hereto as Appendix A, which details the services to be provided by the Operator.
- J. "Work," "Services," "Program," or "Project" to mean all matters and things required to be done by the Operator in accordance with the provisions of this Agreement.
- K. The words "directed," "required," "permitted," "ordered," "designated," "selected," "prescribed" or words of like import to mean respectively, the direction, requirement, permission, order, designation, selection or prescription of the Contract Manager; and similarly the words "approved," "acceptable," "satisfactory," "equal," "necessary," or words of like import to mean respectively, approved by, or acceptable or satisfactory to, equal or necessary in the opinion of the Contract Manager.

2. Services: The County seeks from the Operator, and the Operator hereby agrees to provide the County its operational and management expertise and services to operate the Nursery and conduct related activities within the Nursery and Joint Usage Area at the Park. Operator shall have the right and obligation to operate and use the Nursery and Joint Usage Area in accordance with the requirements set forth in this Agreement for the benefit of the public and in furtherance of the County's conservation, sustainability, resilience, and educational initiatives and goals and the Operator's approved business activities. The Operator shall provide educational programming and related activities at the Nursery and Joint Usage Area in accordance with the scope of services set forth in Appendix A and Appendix B, Fairchild Considerations, during the Agreement Term, as such term is defined in Paragraph 9 herein. The County shall have the right, without limitation, to monitor and test the quality of the work of the Operator. Except as otherwise set forth herein, Operator shall not provide any services without the prior written approval of the Department and such approval shall be granted or denied in the sole and absolute discretion of the Department. Any provisions of programs or services not specifically authorized by this Agreement or in writing by the Department Contract Manager shall constitute grounds for the Department to deliver written notice to the Operator to immediately discontinue the unapproved programs or services. Operator shall conduct its activities at all times in accordance with this Agreement, Operator further agrees that all activity and use shall be in accordance with Article 7 of the Home Rule Charter of Miami-Dade County "Charter." The County reserves the right to access the Nursery and Joint Usage Area at any time for safety, security, or emergency reasons, but not to unreasonably impact the operations of the Nursery and Joint Usage Area. The County also reserves the right to hold special events at the Nursery and Joint Usage Area provided the County provides two (2) weeks advance notice of such events to the Operator. At no time should the operation of the Joint Usage Area impede the use and enjoyment of the rest of Matheson Hammock Park by the general public.

3. Operations: Except when and to the extent that the Nursery and Joint Usage Area and/or the Park may be untenable by reason of damage by fire or other casualty, Operator shall provide programming and services according to the schedule in Appendix A and Considerations in Appendix B; and will have on the Nursery and Joint Usage Area adequately trained personnel for efficient service. Operator shall not discriminate against any person in pricing as among residents of Miami-Dade County, the selection of its members nor in the participation of the community in its activities. Operator shall conduct its activities by being as inclusive as possible of the community.

4. Limitations on Services and Use: Subject to Operator's obligations and rights to use the Nursery and Joint Usage Area for the purposes specified in Paragraph 2, Operator shall not suffer or permit the Nursery and Joint Usage Area or any part thereof to be used in any manner, or anything to be done therein, or suffer or permit anything to be brought into or kept therein, which would in any way (i) violate any legal requirements or insurance requirements; (ii) cause structural injury to the Nursery and Joint Usage Area or any part thereof; (iii) constitute a public or private nuisance; (iv) impair the appearance of the Nursery and Joint Usage Area; (v) materially impair or interfere with the proper and economic cleaning, heating, ventilating or air-conditioning of the Nursery and Joint Usage Area or the proper and economic functioning of any other common service facilities or common utility of the Nursery and Joint Usage Area; (vi) impair or interfere with the public use and enjoyment of the Park; or (vii) impair any of the Operator's other obligations under this Agreement; or (viii) violate Article 7 of the Charter.

5. Governmental Approvals: If any governmental license or permit shall be required for the proper and lawful conduct of Operator's activity at the Nursery and Joint Usage Area, or any part thereof, and if failure to secure such license or permit would in any way materially and adversely affect the County, then the Operator, at its expense, shall procure and thereafter maintain such license or permit and submit a copy of the same to the County. Operator shall at all times comply with the terms and conditions of each license and permit.

6. Nature of the Agreement

- A. The Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained in the Agreement. The parties agree that there are no commitments, agreements, or understandings concerning the subject matter of the Agreement that are not contained in this Agreement, and that this Agreement contains the entire agreement between the parties as to all matters contained herein. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written. It is further agreed that any oral representation or modifications concerning this Agreement shall be of no force or effect, and that this Agreement may be modified, altered or amended only by a written amendment duly executed by both parties hereto or their authorized representatives.
- B. The parties agree and understand that this agreement shall not be construed to provide any property rights or interest in the property including but not limited to a leasehold agreement.
- C. The Operator shall provide the work required of it as set forth in this Agreement and render full and prompt cooperation with the County in all aspects of the work performed hereunder.
- D. The Operator acknowledges that this Agreement requires the performance of all things necessary for or incidental to the effective and complete performance of all work required of

it under this Agreement. All things not expressly mentioned in this Agreement but necessary to carrying out its intent are required by the Agreement, and the Operator shall perform the same as though they were specifically mentioned, described and delineated.

- E. The Operator shall furnish all labor, materials, tools, supplies, and other items required to perform the work necessary for the completion of this Agreement.
- F. The Operator acknowledges that the County shall be responsible for making all policy decisions regarding the Scope of Services. The Operator agrees to provide input on policy issues in the form of recommendations. The Operator agrees to implement any and all changes in providing work hereunder as a result of a policy change implemented by the County. The Operator agrees to act in an expeditious and fiscally sound manner in providing the County with input regarding the time and cost to implement said changes and in executing the activities required to implement said changes.

7. Non-exclusivity: The services, rights and obligations to be provided by the Operator and the County under this Agreement relating to the Nursery and the Joint Usage Area are exclusive as to the Parties hereto.. The County retains the right to enter into other non-competing agreements with third parties that do not interfere with the Operator's services, rights and obligations.

8. Appendices: The Appendices listed in this Paragraph and attached to this Agreement are hereby incorporated in and made a part of this Agreement:

9. Term: The term of this Agreement is for twenty-five (25) years, unless earlier terminated.

10. Option to Renew: Provided that Operator is not in default under this Agreement, Operator shall have the option to renew the term of this Agreement for two (2) additional renewal terms of ten (10) years each. The Operator shall exercise its option to renew by giving the County written notice not later than six (6) and not earlier than twelve (12) months prior to the expiration of the then-current Term. If the Operator fails to exercise its option in the time period or in the manner provided herein, such option shall be deemed to have lapsed, terminated and shall be of no further force or effect without any further action or notice required on the part of County. All terms and conditions of this Agreement shall remain in full force and effect during any renewal Term. If the Operator exercises its options as set forth herein, the Termination Date shall be the last day of the renewal term then in effect, unless sooner terminated as provided herein. The initial term of this License, as extended by any renewal term, if applicable, shall hereinafter be referred to as the "Term."

11. Termination for Convenience. The County may terminate this Agreement with or without cause upon ninety (90) days written notification to Fairchild

12. Reporting Requirements: Annual evaluations are to take place in-person between the Operator and PROS Director or his/her designee. At this time, both parties will be able to discuss any issues or concerns that have occurred over the previous year.

- A. Operator shall complete the affidavit confirming compliance with the Shannon Melendi Act, codified in Chapter 26, Article III of the Miami-Dade County Code; and Chapter 2014-8, amending Section 942.0438, Florida Statutes, on a yearly basis.

- B. Operator shall complete the affidavit confirming compliance with the Americans with Disabilities Act of 1990, codified in Chapter 2, Article I, section 2-8.1.5 of the Miami-Dade County Code and Resolution R-182-00 amending R-385-95.
- C. Operator shall provide a list of all Officers, Directors, Managers, Staff, and Volunteers working at the Nursery, on a yearly basis or earlier, if and when updated by the Operator.
- D. Operator shall provide proof of U.S. Internal Revenue Service tax-exempt status under Sec 501(C)(3) of the I.R.C., proof of incorporation as a not-for-profit organization in the State of Florida.
- E. Operator shall provide on an annual basis to PROS, number of public programs per year, number of participants per program, and total number of attendants per year.
- F. Operator shall provide the Department the number of plants grown following each twelve (12) month period with details regarding how and where the plants were distributed.
- G. Operator shall provide current Certificates of Insurance (COI) thirty (30) days prior to expiration.
- H. Operator shall provide annually: review of completed background checks against staff list.

Upon review of documents obtained, the Department shall notify Operator in writing of non-compliant elements. The Operator shall resolve all non-compliant issues within thirty (30) days of notification.

13. Curtailment or Interruption of Service: The County reserves the right to interrupt curtail or suspend the provision of any utility service to which Operator may be entitled hereunder when necessary by reason of accident or emergency or for repairs, alterations, or improvements that in the reasonable judgment of County are desirable or necessary to be made, or due to difficulty in obtaining supplies or labor or for any other cause beyond the reasonable control of the County. The work of such repairs, alterations, or improvements shall be prosecuted with reasonable diligence. The County shall in no respect be liable for any failure of the utility companies or governmental authorities to supply utility service to Operator or for any limitation of supply resulting from governmental orders or directives. No damages shall be claimed by Operator by reason of the County's or other individual's interruption, curtailment or suspension of a utility service, nor shall this Agreement or any of Operator's obligations hereunder be affected or reduced thereby. Operator may, at its sole option, suspend or curtail its operations in whole or in part, during any such event.

14. Condition of Nursery: Following planned upgrades and improvements by County described in Paragraph 21, Operator hereby agrees to maintain the Nursery in a commercially reasonable and appropriate manner, with at least the same level of care as it maintains its other real property locations and in a same or better condition as the Department maintains its buildings (on average) at other park locations, excepting only reasonable wear and tear arising from the use thereof under this Agreement.

Upon the expiration of this Agreement, or its termination in any manner, Operator shall deliver the Nursery to the County in the same or better condition than at the commencement of this Agreement, loss by fire or other casualty and ordinary wear and tear excepted.

15. Assumptions, Parameters, Protections, Estimates, and Explanations: The Operator understands and agrees that any assumptions, parameters, projections, estimates, and explanations presented by the County were provided to the Operator for evaluation purposes only. However, since these assumptions, parameters, projections, estimates and explanations represent predictions of future events the County makes no representations or guarantees; and the County shall not be responsible for the accuracy of the assumptions presented; and the

County shall not be responsible for conclusions to be drawn therefrom; and any assumptions, parameters, projections, estimates and explanations shall not form the basis of any claim by the Operator. The Operator accepts all risk associated with using this information.

16. County Approval: The Operator agrees that it will obtain prior written approval from the County in all the following matters:

- A. Material changes from originally approved activities.
- B. Any use of the County's or the Park's name.
- C. Material changes from originally approved signage and graphics. The nature, size, shape and installation of Operator's signs within Matheson Hammock Park or on or adjacent to the Nursery must be approved in writing by PROS and such approval shall be granted or denied in the sole and absolute discretion of the Department. Signage must include Miami-Dade County logo and Department name. Said signage must also be approved by all governmental authorities having jurisdiction and must conform to Article 7 of the Charter. Any requests for changes must be made in writing to the Department and approved prior to installation. All signs shall be removed by the Operator at termination of this Agreement and any damage or unsightly condition caused to the Nursery because of or due to said signs shall be satisfactorily corrected or repaired by Operator.

Further it is understood by the Operator that should any of the above items be disapproved, Operator may offer alternative solutions to the County for review.

17. County Approval of Change: The County reserves the right with stated just and reasonable cause to require the Operator to change within a stated reasonable amount of time any and all items contained in Paragraph 22 it deems in need of change, despite previous approval of same.

18. County's Rights and Responsibilities: The County shall have the right to conduct an annual performance review at the end of each Agreement year to ensure adherence to contractual requirements as deemed applicable by the County. In the event of inclement weather, the Park Manager or on-site Park staff shall have the final decision concerning closing of Matheson Hammock Park, reopening of Matheson Hammock Park, and rescheduling of activities if applicable.

19. Hours of Operation: Standard operating hours by the Operator of the Nursery are from 7:00 a.m. to 7:00 p.m., seven days per week. Operating hours of public Nursery events may vary and should be determined by the Operator, subject to approval by the County, such approval not to be unreasonably withheld. The County may require a change in hours of operation, if, in the reasonable discretion of the County, such change is desirable in providing the best service to the public.

20. Personnel: The Operator shall provide County with the name and telephone number of a management person or persons of the Operator who will be on reasonable call, at all times, for emergencies, or other matters related to the operations under this Agreement. The Operator shall ensure that all its personnel performing services under this Agreement and having contact with the public are courteous and cooperative and present a neat, clean, and professional appearance at all times. Failure of an employee to do so shall be grounds for the County to demand his or her removal from duties at the Nursery. Operator must also ensure employees are distinctively uniformed or appropriately attired so as to be distinguishable as the Operator's

employees and not as employees of the County; and Operator's employees will not be considered agents of the County.

21. Operator's Manager/Designee: Throughout the term of this Agreement, the Operator shall employ a qualified full-time Manager or Managers having experience in the management of this type of operation, who shall be available during normal business hours and reasonably on-call at all times, and be delegated sufficient authority to ensure the competent performance and fulfillment of the responsibility of the Operator under this Agreement and to accept service of all notices provided for herein. The Operator's Manager shall coordinate with the Park Manager and PROS Operations staff regarding programming, events and on-going operational matters pertaining to the Park and the Nursery.

22. Equipment and Services Provided by County:

- a. The Nursery Building – Upon funding availability and allocation for the completion of renovations to the historical nursery, PROS will make available a historic coral rock Nursery building for Fairchild's operation and management., with water, sewer and electrical service.

23. Equipment and Services Provided by Operator: The Operator, at its sole cost shall provide all equipment and services required for the Operator to fulfill its obligations as set forth in this Agreement. The expenses of the following utilities and maintenance items are the responsibility of the Operator:

- A. Operator shall remove vegetation, which is invasive, dead, overgrown, or inhibiting the Operator's fulfillment of its obligations within the Nursery building and Joint Use Area, as set forth in this Agreement.
- B. Operator shall keep the Nursery and equipment clean at all times;
- C. Operator shall ensure maintenance and necessary repairs are done for all equipment exclusively serving the Nursery, which includes the Nursery building and related structures within the Joint Usage Area,
- D. Janitorial services and pest control services within the Nursery and Joint Usage Area;
- E. Landscape maintenance services for the Nursery and the Joint Usage Area;
- F. Removal and disposal of all types of waste generated by the Operator within the Nursery and Joint Usage Area including, plant and soil waste or any other debris;
- G. Opening/closing of the Nursery;
- H. Telecommunications Services;
- I. Electrical utilities solely used for the operation of the Nursery and Joint Usage Area
- J. Maintenance and repair of sewage systems serving the Nursery building and Joint Usage Area
- K. Installation, maintenance, and repair of irrigation systems to serve the Nursery and Joint Usage Area within western Matheson Hammock Park.
- L. Maintenance, repair and upkeep of the Nursery building, which may include an administrative office, restroom(s) and any facility within the Joint Usage Area
- M. Non-exclusive access to water via the existing pump located within Matheson Hammock Park, west of Old Cutler Road.
- N. Maintenance of the water pump located within Matheson Hammock Park, west of Old Cutler Road.

Additionally, see Appendix A, Scope of Services, and Appendix B, Fairchild Considerations for more specifically detailed related requirements.

24. Environmentally Endangered Lands: As the Park contains areas managed by Miami-Dade County's Environmentally Endangered Lands ("EEL") Program, Fairchild Tropical Botanic Garden shall obtain prior approval from DERM through its EEL Program for the propagation of any non-native species. DERM's review will be coordinated with the EEL program to determine if propagation of any non-native species could pose a risk to the adjacent EEL managed areas, including but not limited to propagation of non-native ferns, orchids and/or vines.

25. Equipment Installed by Operator: Operator shall furnish and install all furnishings, fixtures, and equipment necessary for the operation of the Nursery. All furnishings, fixtures, and equipment acquired for the Nursery shall be of a high quality as good as or better than that found at similar facilities.

Any equipment and furnishings installed by the Operator shall be in compliance with applicable law and Article 7 of the Charter and in keeping with the appropriate standards of decor at the Park.

Other than necessary repairs, Operator shall not materially and adversely alter or modify any portion of the Nursery, the Joint Usage Area, the improvements constructed therein, or construct any additional improvements; without first obtaining written approval from the County. All requests from the Operator for material modifications to the Joint Usage Area, the Nursery, or the improvements constructed therein must be submitted in writing to the Department with sufficient documentation to justify the request. Furthermore, nothing contained herein shall grant Operator any rights with respect to Matheson Hammock Park, other than the Nursery and the Joint Usage Area.

26. Security and Protection: Operator acknowledges and accepts full responsibility for the security and protection of its equipment, other personal property, and money used in connection therewith twenty-four (24) hours per day, seven (7) days per week, three hundred sixty-five (365) days per year. The County makes no warranties as to any obligation to provide security for the Nursery, Joint Usage Area or the Park. The County will not accept any responsibility for the Operator's equipment, supplies, other personal property, money, etc.

27. Damages or Destruction of Property: Operator shall, subject to other provisions of this Section, repair all damages to the Nursery, caused by the Operator, its employees, agents, or contractors. If the Nursery is partially damaged, or inoperable for the purposes of this Agreement the same shall with due diligence be repaired by the Operator from proceeds of the insurance coverage and/or at its own cost and expense. If the damage shall be so extensive as to render the Nursery inoperable for the purposes intended, but capable of being repaired within one hundred eighty (180) days following receipt of any applicable approvals and permits required therefor, the damage shall be repaired with due diligence by the Operator from the proceeds of the insurance coverage policy and/or at its own cost and expense. In the event said Nursery is completely destroyed or so damaged that it is not capable of being repaired within one hundred eighty (180) days following receipt of any applicable approvals and permits required therefor, through no fault of the Operator, its employees, agents, contractors or sub-consultants, the Operator and the County shall be under no obligation to repair and reconstruct the Nursery, and all adjustments which are proper including restoration of the site to a clean, neat and usable condition shall be made accordingly. However, at the option of the County, and

through negotiations pertaining to all matters for continuing the Nursery in an Agreement, the Operator may reconstruct the Nursery at its own costs.

28. Repairs, Alterations, and Additions by the County: The County, at its expense, has the right but not the obligation to make all repairs and replacements, structural and otherwise, necessary, or desirable in order to keep in good order and repair any area of the Park, including but not limited to, any foundations, roofs and structural soundness of floors and walls of any improvements, including the Nursery.

29. Diminution for County's Repair: There shall be no allowance to Operator for a diminution of rental value, loss or business, damages or any nature whatsoever and no liability to the County, its employees, agents, or contractors, whatsoever: (A) by reason of inconvenience, annoyance, or interference with Operator's business arising from the County or its agents making any repairs, replacements, alterations, decorations, additions or improvements in or to any portion of the Park, including the Nursery, or in or to fixtures, appurtenances or equipment thereof, provided the County takes such reasonable measures (except in case of emergency and to the extent practical) to minimize interference with Operator's use of the Nursery, and (B) during the making of such repairs, alterations, and additions, except for such damage caused by the sole negligence of the County, subject to the limitations of Section 768.28, Florida Statutes. It is understood and agreed that any interruption to Operator's business for seven continuous days or less resulting from any such repairs, improvements, additions, and maintenance shall not be deemed to be an acceptable interference with Operator's business.

30. Time Is of the Essence: Operator covenants at all times to perform promptly all of the obligations of Operator set forth in this Agreement.

31. Ingress and Egress: Subject to the terms of this Agreement governing the use of the Nursery, Operator, its employees, agents and servants, patrons, and invitees, and its suppliers of service and furnishers of materials shall have right of ingress and egress to and from the Nursery at all times during the Term, and any renewal of this Agreement. The Operator, its employees, agents and contractors shall access the Nursery and Joint Usage Area via the Park access from School House Road at the north side of (west) Matheson Hammock Park. At no time shall the Operator, its employees or contractors access the Joint Usage Area from the 'Pipeline Trail, or through the Banyan Drive entrance, on motorized vehicles, golf carts, or similar vehicles; extending from Old Cutler Road through the Park to the Nursery and Joint Usage Area.

32. Assignment, Sub-Contracting, and Successors In Interest:

- A. Operator shall not assign, mortgage, pledge, nor otherwise encumber this Agreement or any portion thereof, nor any property associated with this Agreement. Unapproved assignment, mortgaging, pledging, or encumbering shall be grounds for termination of this Agreement
- B. Operator shall not enter into any sub-contracting Agreement for services required to be provided under this Agreement.

33. Proprietary Information: As a political subdivision of the State of Florida, the County is subject to the stipulations of Florida's Public Records Law

- A. The Operator shall comply, and shall require its architect and contractors, consultants, sub-contractor, sub-consultants, materialmen and suppliers to comply with Public Records Laws, specifically to:

- (1) Keep and maintain all records required by the public agency to perform the service.
- (2) Upon request from the County Representative, 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 the Public Records Law or as otherwise provided by Applicable Law.
- (3) 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 Term, and following expiration of the Term or the earlier termination thereof, if the Operator does not transfer the records to the County.
- (4) Upon expiration of the Term, or the earlier termination thereof, transfer, at no cost, to the County all Public Records in possession of the Operator or keep and maintain for inspection and copying all Public Records in its possession. If the Operator, upon expiration of the Term, or the earlier termination thereof: (i) transfers all Public Records to the County, the Developer shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements; and (ii) keeps and maintains Public Records, the Operator shall meet all Applicable Law and 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.

- B. If the Operator fails to provide Public Records to the County within a reasonable amount of time, this may be subject to penalties under Florida Statutes Chapter 119 and shall be deemed an Event of Default under this Agreement.

IF THE OPERATOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE OPERATOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT (305) 755-7800, MDPROSCOM@MIAMIDADE.GOV, 275 NW 2nd STREET, MIAMI, FLORIDA 33128.

34. Ownership of License and Development: The Operator agrees to provide to the County an accurate list of all officers of the Not-for-Profit Corporation, and, any change of corporate name or corporate ownership.

35. County's Property Insurance: Any insurance the County may maintain shall not cover Operator's improvements and betterments, contents, or other property of Operator. Operator shall not (after receipt of true and correct copies of any and all such policies) violate, or permit the violation of, any condition imposed by any of the County's Insurance policies, and shall not do, or permit anything to be done, or keep or permit anything to be kept in the Nursery which would increase the fire or other property or casualty insurance rate on the other building or buildings in which the Nursery is located or property therein over the rate which would otherwise then be in effect.

36. Operator's Insurance: The Operator shall furnish to Miami-Dade County, Internal Services Department Risk Management Division, 111 NW 1st Street, Suite 2340, Miami, FL 33128, as well as Miami-Dade Parks, Recreation and Open Spaces Department, Contracts Management,

275 NW 2nd Street Miami, FL 33128, Certificate(s) of Insurance which indicate that insurance coverage has been obtained which meets the requirements as outlined below:

- A. Worker's Compensation Insurance for all employees of the Operator as required by Florida Statute 440 or any applicable law.
- B. Commercial General Liability Insurance on a comprehensive basis, in an amount not less than \$1,000,000 per occurrence \$2,00,000 aggregate to include products/completed operations and personal and advertising injury. Miami-Dade County must be included as an additional insured on this policy.
- C. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the work, in an amount not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage.
- D. Property insurance to cover contractor's improvement and betterments and business personal property. All risk or special perils basis including wind. Inland marine contractor's equipment coverage All Risk or Special Perils. Property insurance and contractor's equipment coverage shall provide for a waiver of subrogation in favor of Miami-Dade County.

All insurance policies required above shall be issued by companies authorized to do business under the laws of the State of Florida, with the following qualifications:

The company must be rated no less than "A" as to management, and no less than "Class VII" as to financial strength by Best's Insurance Guide, published by A.M. Best Company, Oldwick, New Jersey, or its equivalent, subject to the approval of the County Risk Management Division.

or

The company must hold a valid Florida Certificate of Authority as shown in the latest "List of All Insurance Companies Authorized or Approved to Do Business in Florida" issued by the State of Florida Department of Financial Services.

**CERTIFICATE HOLDER MUST READ: MIAMI-DADE COUNTY
111 NW 1ST STREET
SUITE 2340
MIAMI, FL 33128**

Miami-Dade County reserves the right, upon reasonable notice to request and examine the policies of insurance (including but not limited to policies, binders, amendments, exclusions or riders, etc.).

In the description box just above the certificate holder box, the name and address of the facility should be listed along with the contract number, if applicable. The insurance coverage required shall include those classifications, as listed in standard liability insurance manuals, which most nearly reflect the operations of the Operator.

Certificates will indicate that no modification or change in insurance shall be made without thirty (30) days written advance notice to the certificate holder.

Compliance with the foregoing requirements shall not relieve the Operator of any liability and obligation under this section or under any other section of this Agreement.

Commencement of this Agreement is contingent upon receipt from the Operator of insurance documents in the manner prescribed in this Agreement. The Operator shall be responsible for assuring that the insurance certificates required in conjunction with this Section remain in force for the duration of the contractual period, including any and all option years that may be granted by the County. If insurance certificates are scheduled to expire during the contractual period, the Operator shall be responsible for submitting new or renewed insurance certificates to the County a minimum of thirty (30) calendar days in advance of such expiration. In the event that expired certificates are not replaced with new or renewed certificates which cover the Agreement period, the County shall suspend the Agreement until such time as the new or renewed certificates are received by the County in the manner prescribed in this Agreement; provided, however, that this suspended period does not exceed thirty (30) calendar days. Thereafter, the County may, at its sole discretion, terminate this Agreement.

The Department reserves the right to reasonable amend the insurance requirements by the issuance of a notice in writing to the Operator. Modification or waiver of any of the aforementioned requirements is subject to approval of the County's Risk Management Division.

37. Release and Indemnification:

The Operator 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 Proposer or its employees, agents, servants, principals or subcontractors. The Operator 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. The Operator expressly understands and agrees that any insurance protection required by this Agreement or otherwise provided by the Operator 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.

38. Liability for Damage or Injury: The County shall not be liable for damage or injury to the person which may be sustained by any party or persons at the Nursery and Joint Usage Area other than the damage or injury to the person if and to the extent caused by the negligence of the County, its contractors, agents, or employees while in the course of County business, and as limited by Section 768.28, Florida Statutes. Nothing herein stated shall eliminate or alter the obligation of the County set forth in other provisions of this Agreement.

39. No Liability for Personal Property: All personal property placed or moved in the Property above described shall, except for the negligent act or omission of the County, its employee(s), agent(s), or contractor(s), be at the risk of Operator or the owner thereof. County shall not be liable to Operator or any third party for any damage to said personal property unless caused by negligence of the County, County's agents, employees, or contractors, subject to all limitations of Florida Statutes, Section 768.28.

40. Patent and Copyright Indemnification:

- A. The Operator warrants that all services provided hereunder shall not infringe on any copyrights, trademarks, service marks, trade secrets, patent rights, other intellectual property rights or any other third-party proprietary rights in the performance of the Scope of Services.
- B. The Operator shall be liable and responsible for any and all claims made against the County for infringement of patents, copyrights, service marks, trade secrets or any other third-party proprietary rights in the course of performance or completion of, or in any way connected with, the Work. Accordingly, the Operator at its own expense, including the payment of attorney's fees, shall indemnify, and hold harmless the County and defend any action brought against the County with respect to any such claim, demand, cause of action, debt, or liability herein described.
- C. In the event any Work or anything provided to the County hereunder, or portion thereof is held to constitute an infringement and its use is or may be enjoined, the Operator shall have the obligation to, at the County's option to (i) modify, or require that the applicable subcontractor or supplier modify, the alleged infringing item(s) at its own expense, without impairing in any respect the functionality or performance of the item(s), or (ii) procure for the County, at the Operator's expense, the rights provided under this Agreement to use the item(s).
- D. The Operator shall be solely responsible for determining and informing the County whether a prospective supplier or subcontractor is a party to any litigation involving patent or copyright infringement, service mark, trademark, violation, or proprietary rights claims or is subject to any injunction which may prohibit it from providing any Work hereunder. The Operator shall enter into agreements with all suppliers and subcontractors at the Operator's own risk. The County may reject any Work that it believes to be the subject of any such litigation or injunction, or if, in the County's judgment, use thereof would delay the Work or be unlawful.

41. Severability: If this Agreement contains any provision found to be unlawful, the same shall be deemed to be of no effect and shall be deemed stricken from this Agreement without affecting the binding force of this Agreement as it shall remain after omitting such provision.

42. Termination by County: The County shall have the right to terminate this Agreement if the Operator, materially and manifestly fails to keep, observe or perform any material covenant, agreement term or provision of this Agreement to be kept, observed, or performed by the Operator and such default continues for a period thirty (30) days after written notice thereof by County of the Operator; unless default cannot be cured within such thirty (30) day period, but in no event shall such default continue for a period greater than one hundred eighty (180) days. Notwithstanding, the foregoing, the County shall be entitled to automatically terminate this Agreement, upon fifteen (15) days prior written notice and opportunity to cure from the County, following (1) the institution of proceedings in voluntary bankruptcy or reorganization by the Operator; (2) the institution of proceedings in involuntary bankruptcy against the Operator, if such proceedings continue for a period of ninety (90) days; (3) the assignment by the Operator for the benefit of creditors without prior County notification and written approval; (4) the abandonment or discontinuation of operations without the County's written consent for a period exceeding fourteen (14) days (provided that this shall not apply to force majeure events); (5) the discovery of any material misstatement by the Operator inducing the County to enter into this Agreement; (6) the Operator's use of the Park for other than public park purposes in accordance

with Article 7 of the Charter; (7) failure of the Operator to maintain federally, tax-exempt not-for-profit status; and (8) any final judicial determination that litigation instituted by the Operator against the County was groundless. If the County terminates this Agreement for cause and in accordance with the applicable dispute resolution provisions of Paragraph 58 of the Agreement it is later determined that the County's termination was wrongful, then the Operator shall be entitled to continue to utilize the Park in the manner and for the remainder of the Term of this Agreement. Any dispute between the parties as to whether cause for termination exists shall be resolved by the dispute resolution provisions set forth in Paragraph 58 of this Agreement.

43. Termination by Operator: Operator shall have the right upon thirty (30) calendar days from receipt of written notice to the County by certified or registered mail to the address set forth in this Agreement to terminate this Agreement without penalty due to a business decision made by the Operator that the Program is not financially feasible or operationally practicable, and in that instance the Nursery and all infrastructure, but not the crops and equipment, becomes property of the County. Operator shall have the right upon thirty (30) calendar days from receipt of written notice to the County by certified or registered mail to the address set forth in this Agreement to terminate this Agreement at any time after the occurrence of one or more of the following events:

- A. A breach by the County of any of the terms, covenants or conditions contained in this Agreement and the failure of the County to remedy such breach for a period of ninety (90) calendar days after receipt of written notice sent by registered or certified mail, return receipt requested, from the Operator, of the existence of such breach. In the event of a termination by the Operator resulting from a breach by the County, the Operator shall retain all of its rights against the County in law or In equity.
- B. The assumption by the United States Government or any authorized agency thereof, or any other governmental agency, of the operation, control, or use of the Facility, or any substantial part, or parts, thereof in such a manner as to substantially restrict Operator's operations for a period of ninety (90) calendar days or more.

44. Surrender of the Nursery: At the expiration or earlier termination of the term of this Agreement, Operator shall peaceably surrender the Nursery in as good a condition as the Nursery was on the Effective Date of this Agreement ordinary wear and tear and damage by condemnation, fire or other casualty excepted; all improvements made by the Operator in connection with this Operator Agreement, excluding the crops and equipment, shall become the property of the County. Operator shall deliver all keys, as applicable, for the Nursery to the County and shall notify the County in writing of all combinations of locks, safes and vaults, if any, In the Nursery. Ordinary wear and tear shall be deemed not to include damage or injury caused by moving Operator's property or trade fixtures into or out of the Nursery. Operator's obligation to observe and perform the covenants set forth in this paragraph shall survive the expiration or earlier termination of the Term of this Agreement.

45. Mechanics', Materialmen's and Other Liens: Operator agrees that it will not permit any mechanic's or materialmen's, to stand against the Property for work or materials furnished to Operator; it being provided, however, that Operator shall have the right to contest the validity thereof. Operator shall immediately pay any judgment or decree rendered against Operator, with all proper costs and charges, and shall cause any such lien to be released off record without cost to County.

46. Lien: The County shall have a lien upon all personal property of the Operator on the Nursery, excluding the crops and equipment, to secure the payment to the County of any unpaid money accruing to the County under the terms of this Agreement.

47. Limiting Legislative or Judicial Action: In the event that any municipal, county, state, or federal body of competent jurisdiction passes any law, ordinance, or regulation in any way restricting or prohibiting the use of the Park for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. In the event that a referendum vote of the electorate of the County in any way restricts or prohibits the use of the Site for the purposes of this Agreement, this Agreement will be null and void and unenforceable by any party to this Agreement and the County shall have no further liability under this Agreement. If the County deems the Agreement null and void by function of this paragraph, the County will not be liable to the Operator for damages arising there from and the County shall have no further liability under this Agreement.

48. Property Disposition upon Termination of Agreement: Following the termination of this Agreement the Operator, within thirty (30) calendar days, shall forthwith remove all of its personal property, crops and equipment. Any personal property, equipment and/or crops of Operator not removed in accordance with this paragraph may be removed by the County for storage at the cost of the Operator or shall constitute a gratuitous transfer of title thereof to the County for whatever disposition is deemed to be in the best interests of the County. The County shall not be liable to Operator for the safekeeping of Operator's personal property or crops during or after termination of this Agreement. The County shall have the senior interest in the Operator's personal property. Operator shall not remove any fixtures within the Nursery at any time without pre-approval in writing from the County unless and except for the distribution of crops and equipment or the disposition of inventory or merchandise in the performance of Operator's services (including in connection with the disposal of property that is no longer needed in the operation of Operator's services at the Nursery or in connection with the replacement of property with comparable or better quality and utility.) Except as permitted in the foregoing sentence, Operator shall be liable to the County for the fair market value of any equipment supplies in bulk, or fixtures removed without County pre-approved written permission. Operator shall also be liable for any expenses incurred by the County in prosecuting any action against Operator following unapproved item removal described above. Operator shall also be liable to the County for any expenses incurred by the County in replacing any items wrongfully removed by Operator. It is the intention of the parties to this Agreement that all furnishings and equipment purchased or leased by the Operator, except those permanently affixed to buildings, as defined under the laws of the state of Florida, shall be the personal property of the Operator. Upon termination of this Agreement and the removal of all property and crops and equipment by Operator, the Operator shall deliver the Nursery to the County in the condition set forth in this paragraph. The Nursery building is and shall remain owned by the County. This agreement does not transfer ownership interest of the Nursery building to the Operator.

49. Non-Discrimination: During the performance of this Agreement, the Operator agrees to not discriminate against any employee or applicant for employment because of race, color, religion, ancestry, national origin, sex, pregnancy, age, disability, marital status, familial status, sexual orientation, gender identity or gender expression, status as victim of domestic violence, dating violence or stalking, or veteran status, and will take affirmative action to ensure that employees and applicants are afforded equal employment opportunities without discrimination. By entering

into the Agreement the Operator attests that it is not in violation of the Americans with Disabilities Act of 1990 (and related Acts) or Miami-Dade County Resolution No. R-385-95. If the Operator or any owner, subsidiary or other firm affiliated with or related to the Operator is found by the responsible enforcement agency or the County to be in violation of the Act or the Resolution, such violation shall render this Agreement void. This Agreement shall be void if the Operator submits a false affidavit pursuant to this Resolution or the Operator violates the Act or the Resolution during the term of this Agreement, even if the Operator was not in violation at the time it submitted its affidavit.

50. Press Release or Other Public Information: Under no circumstances shall the Operator without the express written consent of the County:

- a. Issue or permit to be issued any press release, advertisement or literature of any kind which refers to the County, or the work being performed hereunder, unless the Operator first obtains the written approval of the County. Such approval may be withheld only if the County reasonably believes that the publication of such information would be harmful to the public interest or is in anyway undesirable; and
- b. Except as may be required by law, the Operator and its employees, agents, subcontractors and suppliers will not represent, directly or indirectly, that any product or service provided by the Operator or such parties has been approved or endorsed by the County

51. No Waiver of Right to Enforce: The waiver by County of any breach of any term, covenant or condition herein contained shall not be deemed to be a waiver of such term, covenant, or any subsequent breach of the same or any other term, covenant, or condition herein contained.

52. Rules and Regulations: The Operator will observe, obey, and comply with all rules and regulations adopted by the County and all laws, ordinances and/or rules and regulations of the Parks, Recreation and Open Spaces Department or other governmental units and agencies having lawful jurisdiction, which may be applicable to Operator's operations under this Agreement. Failure to do so will constitute a breach of the Agreement.

53. Emergency Preparedness: The Operator shall prepare plan(s) for emergencies, including, but not limited to, fire, acts of nature, child injury, etc., and ensure that such plans are consistent with the County's emergency plan for the Park and implement the approved plan(s) if reasonably instructed to do so by the County.

54. Inspection by County: The County shall have the authority to make periodic reasonable inspections of all the Operator's equipment and operations during the normal operating hours thereof to determine if such are being maintained in a neat and orderly condition. The Operator shall be required to make any improvements in cleaning or maintenance methods reasonably required by the County. Such periodic inspections may also be made at the County's discretion to determine whether the Operator is operating in compliance with the terms and provisions of this Agreement.

55. Right of Entry: During the one hundred and eighty (180) days prior to the expiration of the term of this Agreement the County may show the Nursery to other prospective Operators. If during the last ninety (90) days of the term of this Agreement Operator shall have removed all or substantially all of Operator's property, crops and equipment therefrom, the County may immediately enter, alter, renovate, and redecorate the Nursery without elimination or abatement of fee or other compensation and such action shall have no effect upon this Agreement.

56. Equipment and Amplifiers: No voice or sound amplification or Public Address equipment will be used unless approved in writing by the Department.

57. Notices: Any notices submitted or required by this Agreement shall be sent by registered or certified mail, return receipt requested or delivery by hand, addressed to the parties as follows or to such other address as either party may designate in writing, and where receipt of same is acknowledged by the receiving party:

To the County: Parks Planning Division
Miami-Dade Parks, Recreation and Open Spaces
275 NW 2nd Street, 4th Floor
Miami, Florida 33128

Park Manager
Miami-Dade Parks, Recreation and Open Spaces
10301 SW 170 Terrace
Miami, Florida 33157

Department Director
Miami-Dade Parks, Recreation and Open Spaces
275 NW 2nd Street, 5th Floor
Miami, Florida 33128

To the Operator: Director
Fairchild Tropical Botanic Garden
10901 Old Cutler Road
Coral Gables, FL 33156

If attempted delivery of such notice by mail is thwarted by any avoidance of receipt or unavailability for receipt by the intended recipient that notice will have the effect of being constructively received by the recipient.

58. Interpretations: This Agreement and the appendices and attachments hereto, and other documents specifically referred to herein, shall be interpreted as a whole unit and paragraph headings are for convenience only. The Agreement shall not be construed in favor of one party or the other. All matters involving the Agreement shall be governed by Laws of the State of Florida.

59. Independent Operator Relationship: The Operator is, and shall be, in the performance of all work services and activities under this Agreement, an independent contractor, and not an employee, agent or servant of the County. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the Operator's sole direction, supervision and control. The Operator shall exercise control over the means and manner in which it and its employees and/or volunteers perform the work, and in all respects the Operator's relationship and the relationship of its employees and/or volunteers to the County shall be that of an independent Operator and not as employees and agents of the County. The Operator does not have the power or authority to bind the County in any promise, Permit or representation other than specifically provided for in this Agreement.

60. Dispute Resolution:

- a. In any event of any dispute related to this Agreement, or the performance of the Operator or the County thereunder, including without limitation a dispute between the County and Operator as to the operations of the Nursery or a dispute as to whether this Agreement may be terminated pursuant to terms of Paragraph 41, the Operator and the Director of the Parks, Recreation and Open Spaces department (the "Director") or his designee, who shall not be the Contract Manager or anyone associated with matters related to or on account of this Agreement, shall discuss the dispute and attempt to amicably resolve it.
- b. If the dispute cannot be settled through negotiation between parties within fifteen (15) days after the first meeting between the Operator and the Director or his designee, the parties agree first to act in good faith to settle the dispute under the Expedited Procedures of its Commercial Arbitration and Mediation Rules before resorting to some other dispute resolution procedure. All parties to the mediation shall share equally in its cost. The parties recognize that mediation is a non-binding process to assist them to resolve their disputes by making their own free and informed choices, and that the mediator will have no authority to impose a settlement on any party but only to discuss and suggest options for resolution. If the parties do not reach a mutually agreeable settlement within 15 days after initiation of mediation, they may pursue the actions as described in subsection (c), or they may mutually agree to extend the time for mediation. The mediation process will take place at a reasonably convenient location to be agreed upon by the parties or determined by the mediator.
- c. Anything to the contrary, notwithstanding, the County and the Operator agree that if after mediation as described in subsection (b), they cannot resolve their dispute, all claims, disputes, and other matters among them regarding this Agreement, such dispute, claim or matter shall be determined by Alternative Dispute Resolution provision set forth in Paragraph 59.
- d. In the event that under the foregoing procedures It is finally resolved that the Operator is liable, the Operator shall none the less not be liable if the Operator cures the matter within thirty (30) days after such final resolution, unless such matter cannot be cured within such thirty (30) day period, and the Operator has initiated efforts to cure within such thirty (30) day period, but in no event shall such matter continue for a period greater than one hundred eighty (180) days.

61. Alternative Dispute Resolution:

- a. Voluntary Trial Resolution: Any dispute or claim between Operator and the County (the "Parties") under this Agreement shall be submitted to voluntary trial resolution by a retired Miami-Dade County judge and otherwise in accordance with Fla. Stat. § 44.104 ("ADR"). Either Party may initiate ADR by written notice to the other Party, identifying the claim or dispute and the specific sections of this Agreement under which it arises ("an ADR Election Notice").
- b. ADR Procedure: The Parties agree that: (i) the speedy resolution of any disputes or claims between them pursuant to this Paragraph 59 is a mutual and material inducement to enter into this Agreement (ii) the Party initiating and filing for voluntary trial resolution shall pay all filing fees associated therewith; and (iii) after the Parties have exhausted the procedures set forth in Paragraph 59 (a) and (b) of the Agreement, voluntary trial resolution pursuant to this Paragraph 59 is Intended to be the sole and exclusive dispute resolution mechanism of the Parties with respect to disputes or claims between them under this Agreement. The Parties'

sole avenue for equitable or monetary relief shall be through the ADR process described in this Paragraph 59. Without limiting the foregoing, the Trial Procedures set forth in subsection (c) shall apply.

c. Trial Procedures:

- i. With respect to any voluntary trial resolution hereunder and regardless of any contrary provision of law, (A) such trial shall be conducted by a retired Miami-Dade County judge having no less than 5 years' Civil Division experience in such judge's final 10 years of his/her tenure; (B) the Parties hereby expressly retain all appeal rights afforded by law, provided, however, factual findings determined in the voluntary trial are not subject to appeal; and (C) if the Parties are unable to agree upon and appoint a retired judge within 30 days from the effective date of ADR Election Notice, then either Party may submit a request to the court for the appointment of the voluntary trial resolution judge pursuant to Fla. Stat § 44.104(4). Pending the appointment of voluntary trial judge under ADR, either Party, where warranted under the circumstances, may petition the appropriate court sitting in Miami-Dade County Florida for injunctive relief until the matter can be resolved pursuant to the ADR procedures described above.
- ii. The voluntary trial judge shall be bound by the provisions of this Agreement and shall not have the power to add to, subtract from or otherwise modify such provisions, and shall consider only the specific issues submitted to him/her for resolution.
- iii. Within ten (10) calendar days of the selection of a trial resolution judge, the trial resolution judge shall be required to consult with the Parties and issue a trial schedule setting forth deadlines for discovery, dispositive motions, and the final hearing, which final hearing shall occur no later than 180 days after the selection of the trial resolution judge. Unless otherwise agreed to by both Parties in advance and in writing, the final hearing shall not exceed two days in length, with one day allotted to each Party to present its case, including any opening and closing arguments.
- iv. The trial resolution judge shall issue written findings and conclusions of law and render a decision within thirty (30) calendar days after the trial resolution hearing. Any party may enforce a final decision rendered in the voluntary trial by filing a petition for final judgment in the circuit court in the circuit in which the voluntary trial took place. Upon entry of final judgment by the circuit court, any party may appeal to the appropriate appellate court. Factual findings determined in the voluntary trial are not subject to appeal. The trial resolution judge shall, in the written findings, allocate all or part of the costs and the trial, including the fees of the trial resolution judge and court reporter and the reasonable attorneys' fees of the prevailing Party; provided, however, the maximum amount that a prevailing Party may be allocated is \$40,000.00.

- d. Venue; Waiver of Jury Trial: If any claim or dispute between the Parties under this Agreement is found not to be subject to ADR, then each Party submits to the exclusive jurisdiction of any court of competent jurisdiction sitting in Miami-Dade County. Each Party hereby irrevocably waives, to the fullest extent permitted by law, any objection to venue in Miami-Dade County, including objections based on lack of personal jurisdiction or the doctrine of forum non conveniens. THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVE ANY RIGHT WHICH ANY PARTY MAY HAVE TO TRIAL BY JURY IN RESPECT OF ANY DISPUTE OR CLAIM SUBJECT TO ADR UNDER AGREEMENT.

62. Mutual Obligations:

- a. Nothing in this Agreement shall be construed for the benefit, intended or otherwise, of any third party.
- b. In those situations where this Agreement imposes an indemnity obligation on the Operator, the County may, at its expense, elect to participate in the defense if the County should so choose. Furthermore, the County may at its own expense defend or settle any such claims if the Operator fails to diligently defend such claims, and thereafter seek indemnity for costs from the Operator.

63. No Partnership or Agency: The County and the Operator are independent entities and the officers, employees, and agents of one are not, and shall not represent themselves to be, officers, employees, or agents of the other. This Agreement does not constitute and shall not be represented to constitute a partnership between the County and the Operator.

64. Choice of Venue and Law: Any litigation between the County and the Operator relating in any way to this Agreement shall be brought and presented exclusively in a Court located in Miami-Dade County, Florida, and governed by the laws of Florida.

65. Audits: Pursuant to County Ordinance No. 03-2, the Operator will grant access to the Commission Auditor to all financial and performance related records, property, and equipment purchased in whole or in part with government funds. The Operator agrees to maintain an accounting system that provides accounting records that are supported with adequate documentation, and adequate procedures for determining the allowability and allocability of costs.

66. Conflict of Interest: The Operator represents that:

- a. No officer, director, employee, agent, or other consultant of the County or a member of the immediate family or household of the aforesaid has directly or indirectly received from Operator or been promised by Operator any form of benefit, payment, or compensation, whether tangible or intangible, in connection with the award of this Agreement
- b. There are no undisclosed persons or entities interested with the Operator in this Agreement. This Agreement is entered into by the Operator without any connection with any other entity or person making a proposal for the same purpose, and without collusion, fraud or conflict of interest. The Operator agrees to abide by the County's Conflict of Interest and Code of Ethics set forth in Section 2-1 1.1 of the County Code, as applicable to Operator vis a vis its relationship with the County, its elected officials, the County Mayor and Mayor's designees, and other County employees.
- c. Neither the Operator nor any officer, director, employee, agency, parent, subsidiary, or affiliate of the Operator shall have an Interest which is in conflict with the Operator's faithful performance of its obligation under this Agreement provided that the County, in its sole discretion, may consent in writing to such a relationship, provided the Operator provides the County with a written notice, in advance, which identifies all the individuals and entities involved and sets forth in detail the nature of the relationship and why it is in the County's best interest to consent to such relationship.
- d. The provisions of this Paragraph are supplemental to, not in lieu of, all applicable laws with respect to conflict of interest. In the event there is a difference between the standards applicable under this Agreement and those provided by statute, the stricter standard shall apply.
- e. In the event Operator has no prior knowledge of a conflict of interest as set forth above and acquires information which may indicate that there may be an actual or apparent violation of any of the above, Operator shall promptly bring such information to the attention of the Contract Manager. Operator shall thereafter cooperate with the County's review and

investigation of such information and comply with the instructions Operator receives from the Contract Manager regarding remedying the situation.

67. Local, State, and Federal Compliance Requirements: Operator agrees to comply, subject to applicable professional standards, with the provisions of any and all applicable Federal, State and the County orders, statutes, ordinances, rules and regulations which may pertain to the Services required under this Agreement, including but not limited to:

- a. Prohibition against Liens. The Operator is prohibited from placing a lien on the County's property. This prohibition shall be placed in all Subcontractor contracts.
- b. Operator shall conduct background checks on all owners, staff, and volunteers pursuant to Miami-Dade County Ordinance No. 08-07 and ensure the safety of the patrons of the Park by meeting the requirements of Chapter 26 "Miami-Dade County Park and Recreation Department Rules and Regulations, Article 111, The Shannon Melendi Act.
- c. Miami-Dade County Commission Ordinance No. 16-58, regarding a ban on use of polystyrene (also known as Styrofoam) in Parks.

Notwithstanding any other provision of this Agreement, Operator shall not be required pursuant to this Agreement to take any action or abstain from taking any action if such action or abstention would, in the good faith determination of the Operator, constitute a violation of any law or regulation to which Operator is subject including but not limited to laws and regulations requiring that Operator conduct its operations in a safe and sound manner.

68. Inspector General Reviews:

Independent Private Sector Inspector General Reviews

Pursuant to Miami-Dade County Administrative Order 3-20, the County has the right to retain the services of an Independent Private Sector Inspector General (hereinafter "IPSIG"), whenever the County deems it appropriate to do so. Upon written notice from the County, the Operator shall make available to the IPSIG retained by the County, all requested records and documentation pertaining to this Agreement for inspection and reproduction. The County shall be responsible for the payment of these IPSIG services, and under no circumstance shall the Operator's prices and any changes thereto approved by the County, be inclusive of any charges relating to these IPSIG services. The terms of this provision apply to the Operator, its officers, agents, employees, subcontractors, and assignees. Nothing contained in this provision shall impair any independent right of the County to conduct an audit or investigate the operations, activities, and performance of the Operator in connection with this Agreement. The terms of this Paragraph shall not impose any liability on the County by the Operator or any third party.

Miami-Dade County Inspector General Review

According to Section 2-1076 of the Code of Miami-Dade County, 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 (1) percent 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 progress payments to the Operator. The audit cost shall also be included in all change orders and all contract renewals and extensions.

Exception: The above application of one quarter (1/4) of one percent fee assessment shall not apply to the following contracts: (a) IPSIG contracts; (b) contracts for legal services; (c) contracts for financial advisory services; (d) auditing contracts; (e) facility rentals and

Agreements; (f) concessions and other rental agreements; (g) insurance contracts; (h) revenue-generating contracts; (i) contracts where an IPSIG is assigned at the time the contract is approved by the Commission; (j) professional service agreements under \$1,000; (k) management agreements; (l) small purchase orders as defined in Miami-Dade County Administrative Order 3-38; (m) federal, state and local government-funded grants; and (n) interlocal agreements. Notwithstanding the foregoing, the Miami-Dade County Board of County Commissioners may authorize the inclusion of the fee assessment of one quarter (1/4) of one percent in any exempted contract at the time of award.

Nothing contained above shall in any way limit the powers of the Inspector General to perform audits on all County contracts including, but not limited to, those contracts specifically exempted above. The Miami-Dade County Inspector General is authorized and empowered to review past present and proposed County and Public Health Trust contracts, transactions, accounts, records and programs. In addition, the Inspector General has the power to subpoena witnesses, administer oaths, require the production of records, and monitor existing projects and programs. Monitoring of an existing project or program may include a report concerning whether the project is on time, within budget and in conformance with plans, specifications, and applicable law. The Inspector General is empowered to analyze the necessity of and reasonableness of proposed change orders to the Contract. The Inspector General shall have the power to audit investigate, monitor, oversee, inspect, and review operations, activities, performance, and procurement process, including but not limited to project design, specifications, proposal submittals, activities of the Operator, its officers, agents and employees, lobbyists, County staff and elected officials to ensure compliance with contract specifications and to detect fraud and corruption.

Upon written notice to the Operator from the Inspector General or IPSIG retained by the Inspector General, the Operator shall make all requested records and documents available to the Inspector General or IPSIG for inspection and copying. The Inspector General and IPSIG shall have the right to inspect and copy all documents and records in the Operator's possession, custody or control which, in the Inspector General's or IPSIG's sole judgment, pertain to performance of the contract, including, but not limited to original estimate files, change order estimate files, worksheets, proposals and agreements form and which successful and unsuccessful subcontractors and suppliers, all project-related correspondence, memoranda, instructions, financial documents, construction documents, proposal and contract documents, back-charge documents, all documents and records which involve cash, trade or volume discounts, insurance proceeds, rebates, or dividends received, payroll and personnel records, and supporting documentation for the aforesaid documents and records.

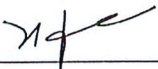
69. E-Verify: Operator acknowledges and agrees to utilize the U.S. Department of Homeland Security's E-Verify System to verify the employment eligibility of (a) all persons employed by the Operator to perform employment duties within Florida during the term of the Agreement; and (b) all persons (including subcontractors/subconsultants/subvendors) assigned by the Operator to perform Work pursuant to the Agreement with the County. The Operator acknowledges and agrees that use of the U.S. Department of Homeland Security's E-Verify System during the term of the Agreement is a condition of the Agreement with the County.

70. Access statement: To request material in accessible format, sign language interpreters, and/or any accommodation to participate in any Miami Dade County sponsored program or meeting, contact Mary Palacios at 305-755-7848 or Mary.Palacios@miamidade.gov at least 7 days in advance to Initiate your request. TTY users may also call 711 (Florida Relay Service).

71. Survival: The parties acknowledge that any of the obligations under this Agreement will survive the term, termination, and cancellation hereof. Accordingly, the respective obligations of the Operator and the County under this Agreement, which by nature would continue beyond the termination, cancellation, or expiration thereof, shall survive termination, cancellation, or expiration hereof.

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date herein above set forth. By the signatures below, each party hereby represents and warrants that each individual is duly authorized to enter into and execute this Agreement for and on behalf of the respective organizations.

Operator

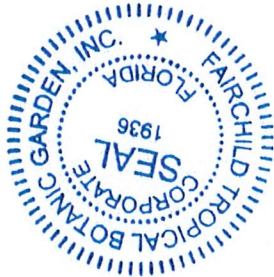
By: 
Name: Nannette Zapata
Title: Deputy Director
Date: November 4, 2024
Attest: 

Miami-Dade County

By: _____
Name: Jimmy Morales
Title: Chief Operating Officer
Date: _____
Attest: _____

Corporate Seal/Notary Seal

Approved by County Attorney as to
form and legal sufficiency



Appendix A-Scope of Services

2.1 Introduction/Background

Fairchild Tropical Botanic Garden (hereafter referred to as the Operator) will be expected to operate and manage the "Historic Coral Rock Nursery" and Joint Usage Area located within Matheson Hammock Park, to propagate and grow plants for use within PROS park sites, conservation, education, and urban greening initiatives. Fairchild will continue to work with PROS, EEL, RER and other County agencies to produce plants needed for specific areas.

2.1.1 Nursery Environment

The Nursery area includes a slat house space for plant growth and public programming, a full sun growing area, restrooms, administrative space and equipment storage.

2.2 Nursery Operation Requirements

2.2.1 The Nursery will provide space and infrastructure for plant propagation and production in support of the Operator's conservation initiatives.

2.2.2 The Nursery will be a place for plant growing and aligning with the objectives of enhancing park land utilization and maintenance enumerated in County Resolution R-349-97.

2.2.3 The Operator's staff and volunteers require access to the Nursery at all times.

2.2.4 All promotional materials and activities must include the Miami-Dade County logo, emphasizing the partnership's role in benefiting county residents and visitors.

2.2.5 Access and Parking

2.2.5.1 Designated parking within the Joint Usage Area will be provided for the Operator's staff as approved by the Department.

2.2.6 Waste disposal on the Nursery land and the Joint Usage Area shall be the responsibility of the Operator.

2.2.6.1 The Operator will be responsible for removing plant and soil waste and debris within the Nursery and Joint Usage Area.

2.2.7 The Operator and the County will meet as needed to coordinate Nursery operations and public activities.

2.3 Services to be Provided by the Operator

2.3.1 Propagation and growth of plants to support Miami-Dade County's parks, and Operator's urban greening initiatives and plant species and habitat conservation projects throughout Miami-Dade.

2.3.1.1 Production of a diverse array of regionally adapted plants, including but not limited to native plants and trees, for distribution to homeowners, businesses, and schools, supporting local ecosystems and promoting resiliency.

2.3.1.2 Growth of orchids, cultured in a micropropagation lab, for reintroduction into urban landscapes throughout Miami-Dade in support of species conservation and urban beautification. The Nursery will provide a controlled environment for orchid growth and acclimatization.

2.3.1.3 Production of regionally native and adaptive plants for enhancing County parks and public landscapes. The Nursery will produce plants

- that are well adapted to the local climate, improving landscape aesthetics and sustainability.
- 2.3.1.4 Production of a broad diversity of tropical fruit trees, including rare and heritage varieties, for planting in public landscapes and distribution to Miami-Dade residents.
- 2.3.1.5 Production of shade trees for planting in urban environments including roadways, sidewalks, and around buildings for the purpose of mitigating urban heat.
- 2.3.1.6 Growth of rare and endangered non-invasive species produced by tissue culture. Extraordinarily rare plant species will be rapidly multiplied to ensure their survival and representation in Miami-Dade landscapes.
- 2.3.1.7 Production of plants for distribution to Miami-Dade County Public Schools (MDCPS) students and teachers. The Nursery will supply plants to MDCPS schools to support educational projects including school gardens and neighborhood greening projects.
- 2.3.2 Evaluate innovative growing techniques and new plant varieties for improving urban horticulture in Miami-Dade.
 - 2.3.2.1 Evaluate vegetable varieties for urban food production. The Nursery will test and evaluate vegetable and tropical fruit varieties for improving food security and promote sustainable food sources within Miami-Dade.
 - 2.3.2.2 Evaluating plant varieties and equipment for urban vertical gardening. The Nursery will explore innovative solutions for urban greening. This includes assessing various plant species for their suitability in vertical installations and evaluating vertical growing systems that could be used in urban environments.
- 2.3.3 Serve as an educational facility in horticulture and botany, hosting public programs, students and citizen scientists.
 - 2.3.3.1 Provide internship and educational opportunities for MDCPS students and college students. The Nursery will offer hands-on learning experiences in plant science, conservation, and Nursery management.
 - 2.3.3.2 Work closely with Miami-Dade County Parks, Recreation and Open Spaces department to ensure these activities complement existing and future Park programming and contribute to the Department's overall mission.

Appendix B - Fairchild Considerations

1. Fairchild will make a one-time, in-kind commitment of \$20,000 for the operational needs of the Nursery. This will include any work or systems required to bring the Nursery to operational status, such as irrigation and shade cloth for sun protection.
2. Fairchild will undertake to apply for grants and other funding to continue the renovation and improvement of the Nursery on an ongoing basis. Fairchild will notify PROS of the intent to submit grant application(s) in support of the Nursery.
3. As part of The Million Orchid Project community outreach, Fairchild will install \$10,000 worth of Native Orchids (1,000 orchids) throughout Matheson Hammock Park within one (1) year of the execution date of this agreement, in locations approved by PROS. Additionally, Fairchild will provide and install \$5,000 worth of Native Orchids (500 orchids) every other year for a period of ten (10) years to Miami-Dade County Parks, and annually for three (3) years upon each time Fairchild exercises the option to renew the term of the agreement.
4. Fairchild will incorporate its community citizen science programs with the West Matheson Nursery. The programs may include hands-on training, lectures, field trips, internships and community events for City in a Garden, The Fairchild Challenge, the Native Plant Program, The Million Orchid Project, and Growing Beyond Earth, all of which are renowned for engaging students and community volunteers. As a result, the West Matheson Nursery will once again be a hub for plant sciences and horticulture in Miami-Dade County as follows:
 - The Nursery will play a critical role in helping Fairchild achieve its vision for a greener, more resilient, and more sustainable Miami-Dade County. As a cornerstone of this vision, the Nursery will serve as a hub for plant cultivation, research, public engagement, and education, driving forward initiatives that focus on urban green infrastructure, community connectivity, climate resilience, and biodiversity. By growing and evaluating plants suited for local urban environments, developing demonstration plantings, and hosting public programming, the Nursery will be instrumental in achieving Fairchild's vision and PROS's goals toward implementation of the department's Open Space Master Plan.
 - One of the key contributions of the Nursery will be its support for urban green infrastructure, particularly in enhancing canopy cover across Miami-Dade County. The Nursery will cultivate and supply a diverse array of trees and plants specifically chosen for their ability to thrive in local urban environments. These trees will play a pivotal role in expanding and maintaining the tree canopy, providing shade, reducing the urban heat island effect, and improving air quality. The Nursery will also experiment with innovative planting techniques that can be integrated into dense urban environments.
 - The Nursery will be a vital link between Fairchild and the wider community. By hosting public and school events and engaging community members in its activities, Fairchild will foster a sense of ownership and pride in local green spaces. Public accessibility and engagement are central to this effort, with the

Nursery providing a venue for community-led planting initiatives and educational workshops. Additionally, the Nursery will serve as a living archive for the preservation of indigenous plant species, helping to maintain Miami-Dade's ecological heritage.

- Climate resilience is another critical focus area where the Nursery will have a significant impact. The Nursery will cultivate native and adaptive species that require minimal water and resources. These plants will be distributed throughout the city to increase the resilience of urban landscapes, reduce the urban heat island effect, and enhance carbon sequestration. For example, the Nursery will grow shade trees and plants that are effective in reducing surface temperatures in urban areas, thereby contributing to heat mitigation efforts. By focusing on plants that can withstand increased temperatures and more frequent storms, the Nursery will help create a more resilient urban landscape.
 - Fairchild's vision calls for a dramatic increase in biodiversity and ecological integration throughout Miami-Dade. The Nursery will cultivate a wide variety of plants that support ecosystem resilience and provide habitat for local wildlife. Special attention will be given to endangered species, with the Nursery acting as a site where these plants can be propagated for reintroduction into the wild. As the plant production center for Fairchild's Native Plant Network, the Nursery will work to ensure that the plants it grows are integrated into Miami-Dade's broader regional ecology, supporting wildlife corridors and maintaining the city's ecological networks. Through these efforts, the Nursery will contribute to the overall health and vibrancy of Miami-Dade.
 - The Nursery will also play a crucial role in Fairchild's educational and scientific missions. Fairchild will include informational signage, digital interpretation, and guided tours. These will provide Park visitors with practical knowledge and valuable insights into the importance of biodiversity and conservation. Fairchild's network of more than 300 local schools will be given opportunities to visit the Nursery on field trips and. Additionally, the Nursery will serve as a living laboratory where scientists can conduct research on urban ecology and sustainable development. The data and insights gained from these studies will inform future conservation strategies and help refine Fairchild's approach to creating a sustainable Miami-Dade.
5. Integration of Fairchild Community Citizen Science Programs with PROS Conservation Education Programming - Fairchild Tropical Botanic Garden (FTBG) will incorporate its community citizen science programs with the West Matheson Nursery. These programs may include hands-on training, lectures, field trips, internships, and community events under initiatives such as City in a Garden, The Fairchild Challenge, the Native Plant Program, The Million Orchid Project, and Growing Beyond Earth, all of which are renowned for engaging students and community volunteers. To maximize community engagement, awareness, and educational impact, these programs will be fully integrated with PROS's educational and volunteer initiatives. This integration will be achieved through:

- FTBG and PROS will engage in joint planning sessions to align the goals, activities, and resources of both organizations. This collaboration will ensure that the citizen science programs are cohesively embedded within the existing and future PROS Conservation Education Programming.
- Joint signage and coordinated program recognition will be implemented at the West Matheson Nursery to visibly reflect the partnership between FTBG and PROS. This approach will enhance public recognition of the collaborative effort and reinforce the community's connection to the programs.
- FTBG and PROS will work together to coordinate community outreach efforts and volunteer engagement. This collaboration will include shared volunteer recruitment, training, and management strategies, as well as joint community events and educational initiatives, thereby strengthening the impact and reach of both organizations' programs.
- The success and impact of these integrated programs will be jointly evaluated by FTBG and PROS, with shared metrics and reporting structures. This evaluation will include feedback from participants, assessment of program outcomes, and identification of areas for improvement to ensure ongoing alignment with the community's needs and the strategic goals of both organizations.

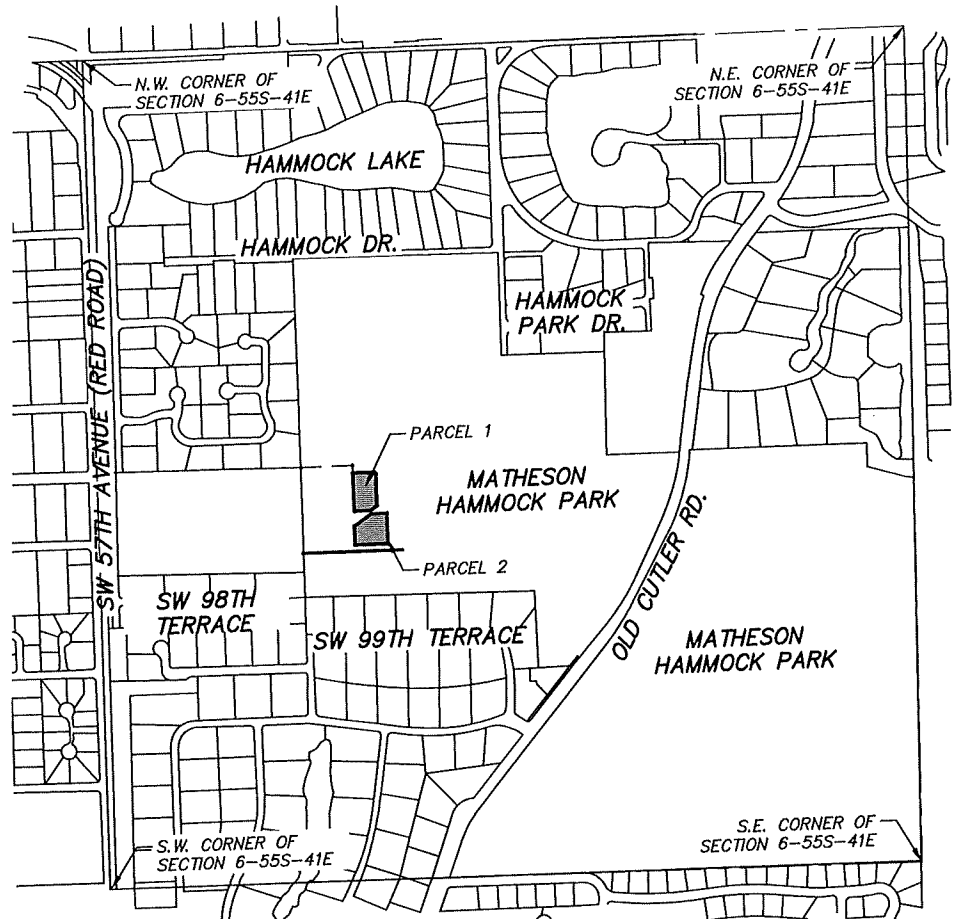
As a result, the West Matheson Nursery will serve not only as a hub for plant sciences and horticulture but also as a model of effective partnership and collaboration in Miami-Dade County. This integration will play a critical role in helping Fairchild and PROS achieve a shared vision for a greener, more resilient, and sustainable community. The Nursery's activities, including plant cultivation, research, public engagement, and education, will drive forward initiatives focused on urban green infrastructure, community connectivity, climate resilience, and biodiversity, in alignment with the department's Open Space Master Plan.

Appendix C: Joint Usage Area Map



Appendix D: Sketch and Legal Description of Joint Usage Area

LOCATION SKETCH
(NOT TO SCALE)



SURVEYOR'S NOTES:

- THIS IS NOT A BOUNDARY SURVEY.
- THIS SITE LIES IN SECTION 6, TOWNSHIP 55 SOUTH, RANGE 41 EAST, MIAMI-DADE COUNTY, FLORIDA.
- BEARINGS SHOWN HEREON ARE BASED ON THE NORTH AMERICAN DATUM OF 1983 (2011 ADJUSTMENT)
- SOURCES OF DATA:

- "THE AVOCADO LAND CO'S", (P.B. 2, PG. 44).
- "PALM VISTA, (P.B. 49, PG. 25).
- "KERRWOOD OAKS", (P.B. 78, PG. 16).
- DEED BOOK 1433, PG. 1.
- OFFICIAL RECORD BOOK 30772, PG. 712.

ALL OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA

-THIS SKETCH AND LEGAL DESCRIPTION CONSIST OF 4 SHEETS; NONE ARE FULL AND COMPLETE WITHOUT THE OTHERS.

SURVEYOR'S CERTIFICATION:

THIS IS TO CERTIFY THAT THE "SKETCH AND LEGAL DESCRIPTION" OF THE HEREIN DESCRIBED PROPERTY IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF AS SURVEYED UNDER MY DIRECTION ON JULY 26, 2024.

I FURTHER CERTIFY THAT THIS SURVEY MEETS THE STANDARDS OF PRACTICE REQUIREMENTS AS SET FORTH IN RULE 5J-17.051 AND 5J-17.052 AS ADOPTED BY THE FLORIDA BOARD OF PROFESSIONAL SURVEYORS AND MAPPERS PURSUANT TO CHAPTER 472.027 FLORIDA STATUTES.

NOTES:

1. SEE SHEET 1 OF 4 FOR LOCATION SKETCH AND NOTES.
2. SEE SHEET 2 OF 4 FOR LEGAL DESCRIPTION TO ACCOMPANY SKETCH.
3. SEE SHEET 3 AND 4 OF 4 FOR SKETCH TO ACCOMPANY LEGAL DESCRIPTION.

Scott A. Riggs

Professional Surveyor and Mapper LS#6160
State of Florida
Survey Map and Report or the copies thereof are not valid without the Signature and Original or Digital Seal of a Florida Licensed Surveyor & Mapper.



Miami Dade County
Transportation and
Public Works Department
Survey Section

111 N.W. First Street, Suite N° 1610
Miami, Florida 33128 (305-375-2657)

SKETCH AND LEGAL DESCRIPTION

Project Title:

MATHESON HAMMOCK PARK
FAIRCHILD JOINT USE AREA

Project Manager:		
Drawn: Pavel Perez Martinez		
Checked: Scott Riggs		
Survey:		
Revisions		
Nº	Date	Description

Project N°	
20240233	
Date	Scale
09/19/2024	NOT TO SCALE
SHEET N°	
1 of 4	
Field Book	Pages
3005	57-59

LEGAL DESCRIPTION:

PARCEL 1:

A PORTION OF THE NORTHEAST ONE QUARTER (1/4) OF THE SOUTHWEST ONE QUARTER (1/4) OF SECTION 6, TOWNSHIP 55 SOUTH, RANGE 41 EAST, MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF LOT 6, BLOCK 1, OF "KERRWOOD OAKS", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 78, PAGE 16, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA; THENCE RUN N 87°43'29" E, ALONG THE PROJECTION OF THE SOUTH LINE OF SAID "KERRWOOD OAKS", FOR A DISTANCE OF 337.69 FEET; THENCE RUN S 02°21'23" E FOR A DISTANCE OF 48.05 FEET TO THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL OF LAND; THENCE RUN N 87°43'29" E FOR A DISTANCE OF 142.29 FEET; THENCE RUN S 47°18'57" E FOR A DISTANCE OF 14.15 FEET; THENCE RUN S 02°21'23" E FOR A DISTANCE OF 206.68 FEET; THENCE RUN S 53°58'57" W FOR A DISTANCE OF 54.68 FEET; THENCE RUN S 86°38'07" W FOR A DISTANCE OF 106.80 FEET; THENCE RUN N 02°21'23" W FOR A DISTANCE OF 249.08 FEET TO THE POINT OF BEGINNING.

AND

PARCEL 2:

A PORTION OF THE NORTHEAST ONE QUARTER (1/4) OF THE SOUTHWEST ONE QUARTER (1/4) OF SECTION 6, TOWNSHIP 55 SOUTH, RANGE 41 EAST, MIAMI-DADE COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE NORTHEAST CORNER OF LOT 4, OF "PALM VISTA", ACCORDING TO THE PLAT THEREOF AS RECORDED IN PLAT BOOK 49, PAGE 25, OF THE PUBLIC RECORDS OF MIAMI-DADE COUNTY, FLORIDA, SAID POINT BEING ON THE WEST LINE OF THE NORTHEAST ONE QUARTER (1/4) OF THE SOUTHWEST ONE QUARTER (1/4) OF SAID SECTION 6; THENCE RUN N 01°52'07" W, ALONG SAID WEST LINE, FOR A DISTANCE OF 116.51 FEET; THENCE RUN N 87°48'42" E FOR A DISTANCE OF 339.36 FEET; THENCE RUN N 02°34'18" W FOR A DISTANCE OF 42.47 FEET TO THE POINT OF BEGINNING OF THE HEREINAFTER DESCRIBED PARCEL OF LAND; THENCE RUN N 02°34'18" W FOR A DISTANCE OF 121.69 FEET; THENCE RUN N 53°58'57" E FOR A DISTANCE OF 136.74 FEET; THENCE RUN N 88°16'44" E FOR A DISTANCE OF 104.74 FEET; THENCE RUN S 02°34'18" E FOR A DISTANCE OF 196.96 FEET; THENCE RUN S 87°48'42" W FOR A DISTANCE OF 218.83 FEET TO THE POINT OF BEGINNING.

CONTAINS ALL OF THE ABOVE DESCRIBED 75,891 SQUARE FEET / 1.74 ACRES, MORE OR LESS.

NOTES:

1. SEE SHEET 1 OF 4 FOR LOCATION SKETCH AND NOTES.
2. SEE SHEET 3 AND 4 OF 4 FOR SKETCH TO ACCOMPANY LEGAL DESCRIPTION.



Miami Dade County
Transportation and
Public Works Department
Survey Section
111 N.W. First Street, Suite N° 1610
Miami, Florida 33128 (305-375-2657)

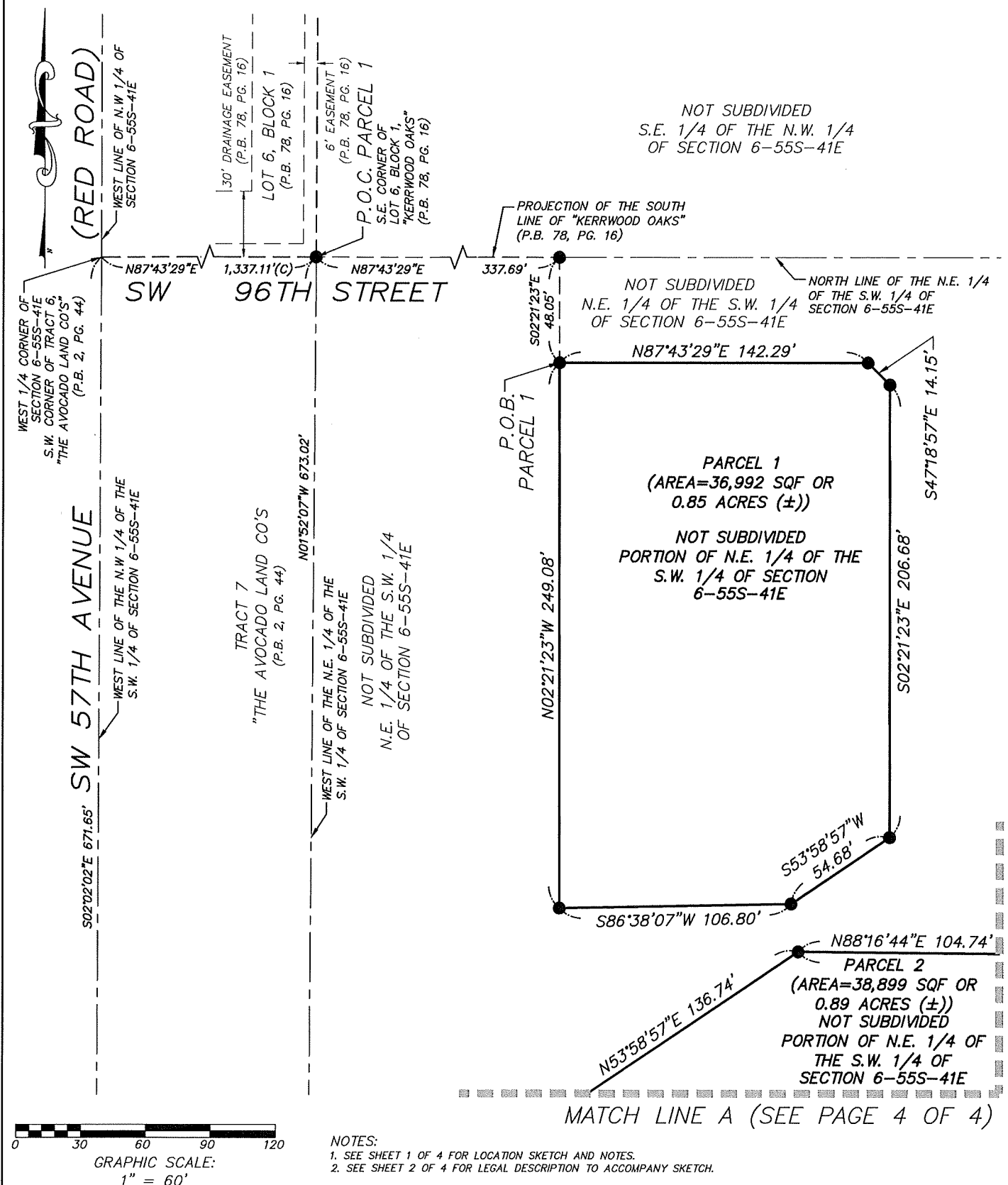
SKETCH AND LEGAL DESCRIPTION

Project Title:
MATHESON HAMMOCK PARK
FAIRCHILD JOINT USE AREA

Project Manager:		
Drawn: Pavel Perez Martinez		
Checked: Scott Riggs		
Survey:		
Revisions		
N°	Date	Description

Project N°	
20240233	
Date	Scale
09/19/2024	1" = 60'
SHEET N°	
2 of 4	
Field Book	Pages
3005	57-59

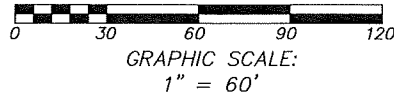
MDC041



Miami Dade County Transportation and Public Works Department Survey Section 111 N.W. First Street, Suite N' 1610 Miami, Florida 33128 (305-375-2657)	SKETCH AND LEGAL DESCRIPTION Project Title: MATHESON HAMMOCK PARK FAIRCHILD JOINT USE AREA		Project Manager: Drawn: Pavel Perez Martinez		Project N° 20240233													
			Checked: Scott Riggs Survey:		Date 09/19/2024													
	Revisions <table border="1"> <thead> <tr> <th>N°</th> <th>Date</th> <th>Description</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td></tr> </tbody> </table>		N°	Date	Description										Scale 1" = 60'		SHEET N° 3 of 4	
	N°	Date	Description															
Field Book 3005		Pages 57-59																

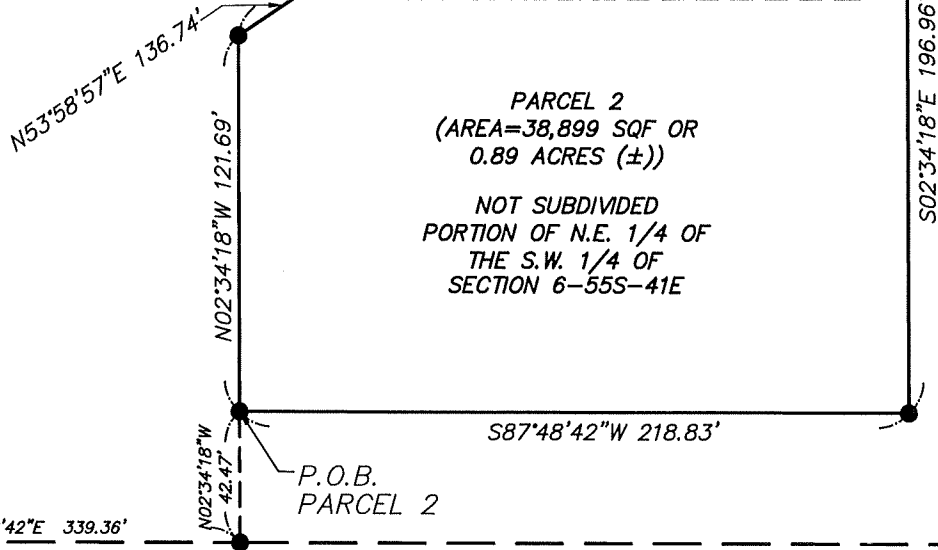
ABBREVIATIONS AND MEANINGS

P.O.B. = POINT OF BEGINNING
P.O.C. = POINT OF COMMENCE
P.B. = PLAT BOOK
PG. = PAGE
WPP = WOOD POWER POLE



NOTES:
1. SEE SHEET 1 OF 4 FOR LOCATION SKETCH AND NOTES.
2. SEE SHEET 2 OF 4 FOR LEGAL DESCRIPTION TO ACCOMPANY SKETCH.

MATCH LINE A (SEE PAGE 3 OF 4)



NOT SUBDIVIDED
N.E. 1/4 OF THE S.W. 1/4
OF SECTION 6-55S-41E

MATCH LINE B (SEE RIGHT BELOW)

N.W. CORNER OF THE N 1/2 OF THE S 1/2 OF
THE N.W. 1/4 OF THE S.W. 1/4 OF SECTION 6-55S-41E
SW 57TH AVENUE (RED ROAD)

S02°02'02"E 671.65'
WEST LINE OF THE N.W. 1/4 OF
THE S.W. 1/4 OF SECTION 6-55S-41E

N87°46'59"E

TRACT 7
"THE AVOCADO LAND CO'S
(P.B. 2, PG. 44)

LOT 4
"PALM VISTA"
(P.B. 49, PG. 25)

1,335.17'(C)

WEST LINE OF THE N.E. 1/4 OF THE
S.W. 1/4 OF SECTION 6-55S-41E
N01°52'07"W 116.51'

NOT SUBDIVIDED
N.E. 1/4 OF THE S.W. 1/4
OF SECTION 6-55S-41E

P.O.C. PARCEL 2
N.E. CORNER OF LOT 4
"PALM VISTA"
(P.B. 49, PG. 25)

NOT SUBDIVIDED
N.E. 1/4 OF THE S.W. 1/4
OF SECTION 6-55S-41E

N87°48'42"E 339.36'

MATCH LINE B (SEE LEFT ABOVE)



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