

PROFESSIONAL SERVICES AGREEMENT (SHORT FORM)
MILLION ORCHID PROJECT

THIS PROFESSIONAL SERVICES AGREEMENT (this "Agreement"), is made as of this 5th day of March, 2014, between the City of Coral Gables (hereinafter called the "CITY"), and Fairchild Tropical Botanic Garden, Inc. (hereinafter called the "CONTRACTOR").

1. **Services.** The CONTRACTOR agrees to perform as an independent contractor all the services described herein in the scope of services set forth in Exhibit A hereto (the "Services").

- a. **Changes in Services.** This Agreement cannot be modified except by written Change order (issued on CITY'S form) signed by both parties, and CONTRACTOR shall not rely on any alleged verbal or written statement to the contrary. If the CONTRACTOR believes it is entitled to additional compensation or additional time to perform its Services, CONTRACTOR shall notify CITY of such claim within fourteen (14) days of the event giving rise to the claim, or it shall be deemed waived by the CONTRACTOR.
- b. **Subconsultants/Assignment.** If CONTRACTOR desires to utilize the services of subconsultants or other third parties not identified in the Scope of Services attached as Exhibit A, such persons or parties must be approved in advance by the CITY. All agreements entered into with subconsultants by CONTRACTOR shall contain a provision binding the subconsultant to the terms of this Agreement. The duties and obligations of the CONTRACTOR under this Agreement may not be delegated to any other person or party, and the rights and privileges of CONTRACTOR under this Agreement may not be assigned to any other person or party. The CITY may assign its rights, together with its obligations hereunder.

2. **Schedule.** Time is of the essence of this Agreement. CONTRACTOR agrees to perform the Services in accordance with a schedule reasonably established by CITY after consultation with CONTRACTOR, or as specifically set forth in Exhibit A.

3. **Payment.** The CONTRACTOR shall be paid in accordance with the terms set forth in Exhibit A upon satisfactory completion of and acceptance by the CITY of the Services. There shall be no additional reimbursable expenses.

4. **Independent Contractor.** The CONTRACTOR acknowledges entering into this Agreement as an independent contractor, and the CONTRACTOR shall therefore be responsible for the deposit and payment of any Federal Income Taxes, FICA, Unemployment Taxes or any similar fees or taxes that become due, and shall be responsible for the collection and payment of all withholdings, contributions and payroll taxes relating to CONTRACTOR'S services, or those of employees of the CONTRACTOR. The CITY shall not withhold from sums payable to the CONTRACTOR, any amount whatsoever for Federal Income Taxes, FICA, Unemployment Insurance Taxes or any similar fees or taxes. The CONTRACTOR, its employees or agents, will not be considered as employees of the CITY or entitled to participate in plans, distributions, arrangements or other benefits extended to the CITY employees. The CONTRACTOR is an independent contractor. This Agreement does not create a joint venture,

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partnership, or other business enterprise between the parties. Nothing herein shall imply or shall be deemed to imply an agency relationship between the CITY and CONTRACTOR. The CONTRACTOR has no authority to bind the CITY to any promise, debt, default, or undertaking. The CONTRACTOR and the CITY agree that it is not intended that any provision of the Agreement establish a third party beneficiary giving or allowing any claim or right of action whatsoever by any third party under this Agreement.

5. **Indemnification and Hold Harmless.** To the fullest extent permitted by laws and regulations, the CONTRACTOR shall defend, indemnify, and hold harmless the City and its commissioners, attorneys, administrators, consultants, agents, and employees from and against all claims, damages, losses, and expenses direct, indirect, or consequential (including but not limited to fees and charges of attorneys and other professionals and court and arbitration costs) arising out of or resulting from the performance of the work and caused in whole or in part by either (i) any willful, intentional, reckless, or negligent act or omission of CONTRACTOR, any subconsultant, or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder and regardless of the negligence of any such indemnified party, or (ii) any willful, intentional, reckless, or negligent act or omission of any individual or entity not a party to this agreement, or (iii) any negligent act or omission of the City or the City's officers, agents, or employees. The parties expressly agree that this provision shall be construed broadly, and CONTRACTOR'S obligations to pay for the City's legal defense hereunder shall arise and be fully enforceable when CONTRACTOR (or any subconsultant or any person or organization directly or indirectly employed by CONTRACTOR) is alleged to have acted willfully, intentionally, recklessly, or negligently in the performance of the work required under this Agreement. Any failure of CONTRACTOR to comply with the terms of this provision shall be deemed a material breach of this Agreement and may subject CONTRACTOR to debarment from consideration for future award of city contracts pursuant to Section 2-952(4) of the City of Coral Gables Code of Ordinances.

In any and all claims against the City or any of its consultants, agents, or employees by any employee of CONTRACTOR, any subconsultant, any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, the indemnification obligation under the above paragraph shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for CONTRACTOR or any such subconsultant or other person or organization under workers' or workman's compensation acts, disability benefit acts, or other employee benefit acts. Moreover, nothing in this Indemnification and Hold Harmless provision shall be considered to increase or otherwise waive any limits of liability, or to waive any immunity, established by Florida Statutes, case law, or any other source of law.

6. **Insurance.** Without limiting CONTRACTOR'S indemnification of the CITY, and during the term of this Agreement, CONTRACTOR shall provide and maintain at its own expense the below described programs of insurance. Such programs and evidence of insurance shall be satisfactory to the CITY and shall be primary to and not contributing with any other insurance or self-insurance program maintained by the CITY. Certificates or other evidence of coverage shall be delivered to:

City of Coral Gables
Risk Management Division
2801 Salzedo Street, 2nd Floor
Coral Gables, Florida 33134

Such certificates or other evidence of coverage shall be delivered prior to commencing performance under this Agreement, and shall specifically identify this Agreement. All policies required herein must be endorsed to provide the CITY with thirty (30) days written notice of cancellation.

The CONTRACTOR shall maintain during the terms of this Agreement, except as noted herein, the following:

- a. Commercial General Liability Insurance with broad form endorsement or equivalent, completed operations and products liability, contractual liability, severability of interests with cross liability provision, and personal injury and property damage liability with limits no less than \$2,000,000 per occurrence for bodily injury and property damage, and \$3,000,000 in the aggregate. Such insurance shall be no more restrictive than that provided by the most recent version of the standard Commercial General Liability Form (ISO Form CG 00 01) as filed for use in the State of Florida. The City and the City's Commission Members, officials, officers and employees shall be included as "Additional Insureds" on a form no more restrictive than the latest edition of the ISO Form CG 20 10 (Additional Insured – Owners, Lessees, or Contractors – Scheduled Person or Organization Endorsement) and shall reflect the hold harmless provision contained herein.
- b. Worker's Compensation Insurance covering all employees of CONTRACTOR, such insurance shall be no more restrictive than that provided by the Standard Compensation Policy, as filed for use in Florida by the National Council on Compensation Insurance without restrictive endorsements, and employer's liability insurance with limits not less than, \$1,000,000.
- c. Automobile Liability Insurance covering all owned, non-owned and hired vehicles used in connection with the performance of the work in an amount not less than \$3,000,000 combined single limit per occurrence for bodily injury and property damage.
- d. Other (or increased amounts of) Insurance which CITY shall from time to time deem advisable or appropriate. Such new or additional insurance to be effective as of the sooner of ninety (90) days after notice thereof or the next annual renewal of any policy being increased (as applicable).

All policies shall contain waiver of subrogation against CITY where applicable, and shall expressly provide that such policy or policies are primary over any other collective insurance the CITY may have. All of the above insurance is to be placed with insurance companies with an A.M. Best Key Rating Guide, latest edition, or equivalent rating of "A-", "VI" or better, qualified to do business under laws of the State of Florida. The CONTRACTOR shall maintain coverage with equal or better rating as identified herein for the term of the contract. Until such coverage is no longer required by this Agreement, CONTRACTOR shall provide CITY with renewal or

replacement evidence of insurance at least thirty (30) days prior to the expiration or termination of such insurance.

The CITY shall be named as an additional insured on a primary and non-contributory basis under such policies. Said policies shall contain a "severability of interest or "cross liability" clause without obligation for premium payment of the CITY. The CITY reserves the right to request a copy of required policies for review.

Except as otherwise provided herein or where prior written approval has been obtained hereunder, the insurance maintained by CONTRACTOR shall apply on a first dollar basis without application of a deductible or self-insured retention. CONTRACTOR shall pay on behalf of the CITY or CITY's Commission Members, officials, officers and employees any deductible or self-insured retention applicable to a claim against CITY or CITY's Commission Members, officials officers and employees.

All insurance policies shall provide for thirty (30) days' [ten (10) days' for non-payment of premium] advance written notice to CITY prior to cancellation, non-renewal or material change.

The CONTRACTOR shall furnish Certificates of Insurance to the Risk Management Division of the Human Resources Department, for review and approval, prior to the commencement of operations or policy termination, which certificates shall clearly indicate that the CITY is named as an additional insured on a primary and non-contributory basis and that the CONTRACTOR has obtained insurance in the type, amount and classification required for strict compliance with this Section and that no material change, cancellation or non-renewal of this insurance shall be effective without thirty (30) days' [ten (10) days' for non-payment of premium] advance written notice to the CITY.

The CONTRACTOR shall furnish copies of insurance policies pertaining to this Agreement to the Risk Management Division of the Human Resources Department within ten (10) days of written request.

Notwithstanding anything to the contrary herein, failure on the part of the CONTRACTOR to obtain and maintain all required insurance coverage is a material breach upon which the CITY may, in its sole discretion, immediately suspend CONTRACTOR'S performance or terminate this Agreement.

CONTRACTOR covenants and agrees that CONTRACTOR shall require all volunteers who assist CONTRACTOR in performing the Services, prior to performing or assisting with any of the Services, to sign a waiver of liability indicating that such volunteer is aware of and assumes the risk of such work, and expressly waives all liability of CONTRACTOR, CITY, CITY'S commissioners, attorneys, administrators, consultants, agents and employees. Such waiver of liability shall be on a form acceptable to CITY and CONTRACTOR shall provide such form to CITY prior to performing the Services to allow CITY to perform a reasonable review of the form of waiver to be used by CONTRACTOR for such volunteers. CONTRACTOR further covenants and agrees that any waiver by a minor must be signed by a parent or legal guardian, and that no minor shall ride in or on the bucket truck or be on site during installation.

7. **Standard of Care.** The CONTRACTOR shall exercise the same degree of care, skill, and diligence in the performance of the services as is ordinarily provided by a comparable professional under similar circumstances and the CONTRACTOR shall, at no additional cost to the CITY, re-perform services which fail to satisfy the foregoing standard of care. The CONTRACTOR shall be responsible for the quality of all services performed by subconsultants or other third parties retained by CONTRACTOR. The CONTRACTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field.

8. **Compliance with Applicable Law.** In performance of the services, the CONTRACTOR will comply with applicable regulatory requirements, including federal, state, special district, and local laws, rules, regulations, orders, codes, criteria, and standards, including, but not limited to compliance with all local, state and federal Equal Employment Opportunity (EEO) and American Disabilities Act (ADA) requirements. It shall be the responsibility of the CONTRACTOR to obtain and maintain, at no cost to the CITY, any and all license and permits required to complete the services provided pursuant to this Agreement. CONTRACTOR warrants that it fully complies with all Federal statutes and regulations regarding the employment of aliens and others and that all employees performing work under this Agreement meet the citizenship or alien status requirements set forth in Federal statutes and regulations. CONTRACTOR shall indemnify, defend, and hold harmless CITY, its officers and employees from and against any sanctions and any other liability which may be assessed against CONTRACTOR or CITY in connection with any alleged violation of any Federal statutes or regulations pertaining to the eligibility for employment of any persons performing work hereunder.

9. **Equal Opportunity.** It is understood that the CONTRACTOR shall not discriminate against any employee in the performance or the contract with respect to hire, tenure, terms, conditions or privileges of employment, or any other matter directly or indirectly related to employment because of age, marital status, race, color, religion, national origin, sex, or disability.

10. **Policy Regarding Conduct.** All contractors, including CONTRACTOR, its employees, agents and subcontractors, must abide by the CITY'S policies regarding conduct. Discrimination, harassment, and/or violations of CITY policies will not be tolerated and are grounds for termination of the contract without liability to the CITY or its employees.

11. **Conflict of Interest.** Any potential or actual conflict between private interests and responsibilities under this Agreement shall be immediately disclosed to the CITY. The CONTRACTOR agrees that it will not enter into any agreements during the term of this Agreement to provide services for any person or corporation who applies for a permit or other development approval from the CITY. Upon request of the CONTRACTOR, and full disclosure of the nature and extent of the proposed representation, the City Manager shall have the authority to authorize such representation during the term of this Agreement.

12. **Confidentiality.** Subject to the requirements of Chapter 119 of the Florida Statutes, the CONTRACTOR agrees that any information received by the CONTRACTOR for the CITY and in providing services in accordance with this Agreement which is not publicly available, shall not be revealed to any other persons, firm or organizations, and that no reports, information, computer programs, documentation, and/or data given to or prepared or assembled

by the CONTRACTOR under this Agreement shall be made available to any individual or organization by the CONTRACTOR without prior written approval of the CITY.

13. **Ownership of Documents.** All right, title, and interest in and to all work performed under this Agreement, including without limitations all schematics, designs, plans, specifications, documents, records, disks, or other information (including electronic copies) produced or developed by the CONTRACTOR or sub-consultants may be used by the CITY for its use and/or distribution as may be deemed appropriate by the CITY; provided that any materials used by the CONTRACTOR and any sub-consultants for which a patent or copyright protection has previously been secured by them shall remain the property of the CONTRACTOR or sub-consultants. The CONTRACTOR shall be permitted to retain copies, including reproducible copies, solely for information and reference in connection with the CITY's use.

14. **Notice.** Any notice, request, instruction or other document required or permitted to be given hereunder by either party hereto to the other shall be in writing, and delivered personally, or sent by certified or registered mail, postage prepaid, return receipt requested, to the address set forth for such party at the bottom of this Agreement. Any notice so given shall be deemed received when personally delivered or rejected, or three (3) calendar days after mailing. Any party may change the address to which notices are to be sent by giving notice of such change of address to the other party in the manner herein provided for giving notice. Notice as the City of Coral Gables shall be to:

City Manager
City of Coral Gables
405 Biltmore Way
Coral Gables, FL 33134

cc: City Attorney

Notice as to CONTRACTOR shall be to:

Josefina Yespica
Chief Financial Officer
Fairchild Tropical Botanic Garden
10901 Old Cutler Rd.
Coral Gables, FL 33156

15. **Most Favored Public Entity.** CONTRACTOR represents that the prices charged to CITY in this Agreement do not exceed existing prices to other customers for the same or substantially similar items or services for comparable quantities under similar terms and conditions. If CONTRACTOR'S prices decline, or should CONTRACTOR, at any time during the term of this Agreement, provide the same goods or services to any other customer at prices below those set forth herein, then such lower prices shall be immediately extended to the CITY.

16. **Termination.** The CITY may terminate this Agreement without cause at any time by providing written notice to CONTRACTOR, and may terminate this Agreement for cause by providing five (5) days written notice to CONTRACTOR. In the event of a termination for cause, due to CONTRACTOR'S failure to perform in accordance with the terms of this Agreement, CONTRACTOR shall be paid any sums otherwise due and owing under this Agreement only after CITY has completed the work called for by this Agreement with other forces, and has deducted the cost of such work, and any other damages payable to CITY, from any contract balance otherwise due and owing to CONTRACTOR under this Agreement. In the event of a termination for convenience, the CONTRACTOR shall be paid for all services performed through the date of termination, based on the percentage of services completed (subject to applicable setoff rights), and CONTRACTOR shall not be entitled to any other compensation or damages from CITY. If, after notice of termination for cause, it is determined for any reason that the CONTRACTOR was not in default, the rights and obligations of the CITY and CONTRACTOR shall be the same as though the termination had been a termination for convenience. In no event shall the CITY be liable to the CONTRACTOR for lost profits on any work not performed, overhead, or any other type of consequential, special or indirect damages, and CONTRACTOR hereby waives same. The CONTRACTOR may terminate this Agreement due to the CITY'S failure to comply with the material terms of this Agreement after giving CITY thirty (30) days' notice of its default and an opportunity to cure. Upon termination of this Agreement, all schematics, designs, plans, specifications, documents, records, disks, or other information (including electronic copies) produced or developed by the CONTRACTOR or sub-consultants, whether finished or not, shall become CITY property. Failure to timely deliver the documentation shall be cause to withhold any payments due without recourse by the CONTRACTOR until all documentation is delivered to the CITY.

17. **Waiver of Consequential Damages.** CONTRACTOR waives claims against the CITY for consequential damages arising out of or related to this Agreement or its performance including, but not limited to, damages for lost income, profit, lost bonding capacity, financing, business and reputation, or for loss of management or labor productivity, damages incurred for principal office expenses, including the compensation of personnel stationed there, and for anticipated profit on any work not performed by CONTRACTOR.

18. **Sovereign Immunity.** CONTRACTOR acknowledges that the Florida Doctrine on Sovereign Immunity bars all claims by CONTRACTOR against the CITY other than claims arising out of this Agreement. Specifically, the CONTRACTOR acknowledges that it cannot and will not assert any claims against the CITY, unless the claim is based upon a breach by the CITY of this Agreement. The CONTRACTOR acknowledges that it has no right and will not make claim based upon any of the following:

- a. Claims based upon any alleged breach by the CITY of implied warranties or representations not specifically set forth in this Agreement, as the parties stipulate that there are no such implied warranties or representations of the CITY. All obligations of the CITY are only as set forth in this Agreement;
- b. Claims based upon negligence or any tort arising out of this Agreement;
- c. Claims upon alleged acts or inaction by the any CITY employee or agent of the City;

- d. Claims based upon an alleged waiver of any of the terms of this Agreement unless such waiver is in writing and signed by an authorized representative for the CITY and CONTRACTOR.

19. **Force Majeure.** Neither the CITY nor CONTRACTOR shall be considered to be in default of this Agreement if delays in or failure of performance shall be due to Force Majeure, the effect of which, by the exercise of reasonable diligence, the nonperforming party could not avoid. The term "Force Majeure" shall mean any event which results in the prevention or delay of performance by a party of its obligations under this Agreement and which is beyond the reasonable control of the nonperforming party. It includes, but is not limited to, fire, flood, earthquake, storm, lightening, epidemic, war, riot, civil disturbance, sabotage, and governmental action, but shall not include financial inability of the CONTRACTOR. The nonperforming party shall, within a reasonable time of being prevented or delayed from performance by an Force Majeure, give written notice to the other party describing the circumstances and Force Majeure preventing continued performance of the obligations of this Agreement.

20. **Financial records.** The CONTRACTOR shall maintain accurate and complete financial records of its activities and operations relating to this Agreement in accordance with generally accepted accounting principles. CONTRACTOR shall maintain adequate records to justify all charges and costs incurred in performing the services for at least three (3) years after completion of this Agreement. CONTRACTOR agrees that CITY, or its authorized representatives, shall have access to and the right to examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, or records relating to this Agreement during normal business hours. All such materials shall be maintained by CONTRACTOR at a location in Miami-Dade County, Florida; provided that if any such material is located outside Miami-Dade County, then, at CITY'S option CONTRACTOR shall pay CITY for travel, per diem, and other costs incurred by CITY to examine, audit, excerpt, copy or transcribe such material at such other location. In the event that an audit is conducted by CONTRACTOR specifically regarding this Agreement by any Federal or State auditor, or by any auditor or accountant employed by CONTRACTOR, then CONTRACTOR shall file a copy of the audit report with the CITY'S Auditor within thirty (30) days of CONTRACTOR'S receipt thereof, unless otherwise provided by applicable Federal or State law. CITY shall make a reasonable effort to maintain the confidentiality of such audit report(s).

21. **Miscellaneous.**

- a. **Modification.** This agreement may not be amended or modified unless in writing and signed by both parties.
- b. **Availability of funds.** The obligations of the CITY under this Agreement are subject to the availability of funds lawfully appropriated for its purpose by the City Commission.
- c. **Conflict of Interest.** CONTRACTOR covenants that no person employed by the CONTRACTOR which exercises any functions or responsibilities in connection with this Agreement has any personal financial interests direct or indirect with the CITY. CONTRACTOR further covenants that, in the performance of this Agreement, no person having a conflicting interest shall be employed. Any such interests on the part of CONTRACTOR or its employees must be disclosed in writing to CITY. CONTRACTOR is aware of the conflict of interest code of the City of Coral Gables, the



- Conflict of Interest and Code of Ethics of Miami-Dade County, Florida, Section 2-11.1 et seq., and the Ethics Laws of the State of Florida, and agrees that it shall fully comply in all respects with the terms of said laws.
- d. Background check/Drug and Alcohol Policy. CONTRACTOR agrees that all of its employees performing work on CITY property may be subject, at the CITY's discretion, to an annual "Level 2" background investigation in accordance with Chapter 435.04 of the Florida Statutes. If the CITY in its discretion determines that a specific employee of the CONTRACTOR should not perform work on CITY property, the CONTRACTOR will ensure that such employee does not perform work on CITY property. CONTRACTOR agrees to comply with the CITY's drug and alcohol policy. The CITY may waive all or part of this subsection d., in its discretion.
 - e. Federal and State taxes. The CITY is exempt from Federal Tax and State Sales and Use Taxes. Upon request, the CITY will provide an exemption certificate to the CONTRACTOR. The CONTRACTOR shall not be exempted from paying sales tax to its suppliers for materials to fulfill the contractual obligations with the CITY, nor shall the CONTRACTOR be authorized to use the CITY'S Tax Exemption Number in securing such materials.
 - f. Entirety of agreement. The CITY and the CONTRACTOR agree that this Agreement, as amended from time to time, sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. This Agreement supersedes all prior agreements, contracts, proposals, representations, negotiations, letters, or other communications, written or oral, between the CITY and the CONTRACTOR pertaining to the services. None of the provisions, terms, and conditions contained in this Agreement may be added to, modified, superseded, or otherwise altered, except by written instrument executed by the parties hereto.
 - g. Counterparts. This Agreement may be executed simultaneously in several counterparts, each of which will be an original, but all of which together will constitute one and the same instrument.
 - h. Waiver. A waiver by either the CITY or the CONTRACTOR of any breach of this Agreement shall not be binding upon the waiving party unless such waiver is in writing. In the event of a written waiver, such a waiver shall not affect the waiving party's rights with respect to any other or further breach. The making or acceptance of a payment by either party with knowledge of the existence of a default or breach shall not operate or be construed to operate as a waiver of any subsequent default or breach.
 - i. Severability. If any provision of this Agreement is found to be void and unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall nevertheless be binding upon the parties with the same effect as though the void or unenforceable provision had been severed and deleted.
 - j. Governing law and venue. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement will be held in Miami-

Dade County, and the Agreement will be interpreted according to the laws of Florida.

- k. Joint preparation. Preparation of this Agreement has been a joint effort of the CITY and the CONTRACTOR and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than any other.
- l. Headings. The headings contained in this Agreement are for reference purposes only and shall not affect the meaning or interpretation of the Agreement.
- m. Public Records Law, Florida Statutes Chapter 119. Records subject to the provisions of Public Record Law, Florida Statutes Chapter 119, shall be kept and maintained in accordance with such Statute. CONTRACTOR acknowledges that records and books, not subject to exemption under Chapter 119, may be disclosed and/or produced to third parties by the City in accordance with requests submitted under Chapter 119 or court orders without penalty or reprisal to the City for such disclosure and/or production. CONTRACTOR also agrees to assert, in good faith, any relevant exemptions provided for under Chapter 119 for records in its possession on behalf of the City. Furthermore, CONTRACTOR agrees to comply with the provisions outlined in Section 119.0701 of the Florida Statutes, the requirements of which are incorporated by reference herein.

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IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Approved as to insurance:

AS TO CITY:

Print Name: _____
Title: _____

Patrick G. Salerno
City Manager

Approved by
Department Director or head of
negotiations team as to
the negotiated business terms

ATTEST:

Print Name: _____
Department: _____

Walter J. Foeman
City Clerk

Approved as to compliance with
Applicable procurement requirements.

APPROVED AS TO FORM AND LEGAL
SUFFICIENCY:

Print Name: _____
Procurement Supervisor

Craig E. Leen
City Attorney

Approved as to funds appropriation:

Diana Gomez
Finance Director

ATTEST:

Joyce Burns 
Corporate Secretary
Print Name: Joyce Burns
(SEAL)

AS TO CONTRACTOR
FAIRCHILD TROPICAL BOTANIC
GARDEN, INC.


Name: Nannette M. Zapata
Title: Chief Operating Officer

(OR)
WITNESSES (2):

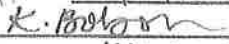

Print Name: Kenneth Setner

Print Name: Kimberly Bobson



EXHIBIT A

The following terms are subject to the above provisions of the Professional Services Agreement by and between Contractor and City.

Services: Propagation, Restoration and Installation of Orchids

The Contractor is propagating a million native orchid plants for restoration into South Florida's urban landscapes. Its new Micropropagation Laboratory is generating large quantities of native orchid plants from seed, with the assistance of students and volunteers from the local community. As part of this project the Contractor will be responsible for propagating, restoring, installing and maintaining 250,000 orchids throughout the City of Coral Gables over a five (5) year period, with 50,000 orchids being installed per year. The Orchid species that Contractor will install will include:

- 83,333 *Encyclia tampensis* (Florida Butterfly Orchid)
- 83,333 *Cyrtopodium punctatum* (Cowhorn Orchid)
- 83,334 *Prosthechea cochleata* (Cockleshell Orchid)

Maintenance and Warranty

The Contractor will exercise appropriate care to prevent damage and/or plant or botanical diseases that may result from Fairchild's activities under this Agreement, and shall take all necessary measures to prevent and/or remedy any such damages and diseases. Any corrective action shall be subject to the City's prior approval.

Term

Contractor will install the Orchids over a five (5) year period commencing on in 2014.

Schedule

The schedule for installation shall be arranged at times mutually agreeable to the parties hereunder.

Consideration

The City shall pay Contractor Thirty Thousand Dollars (\$30,000.00) per year, not to exceed One Hundred and Fifty Thousand Dollars (\$150,000.00) total over the five (5) year term. Payments shall be made upon percentage of orchids installed for each year, upon receipt of an invoice therefor and satisfactory completion of and acceptance by the City of the applicable portion of the Services.

In exchange for favorable pricing, the City will also provide as in-kind consideration the right for Contractor to use the City's bucket truck and driver. It is understood that Contractor assumes all of the risk with regard to use of the bucket truck hereunder, and that Contractor expressly agrees that the defense and indemnification obligations set forth above extend to all use of such equipment and personnel, and Contractor will evidence appropriate insurance covering such work and this indemnification.

Reporting

Contractor shall submit reports to the City, which shall include detailed information regarding the status and progress of the services and activities contemplated herein.

A handwritten signature in dark ink, appearing to be a stylized 'B' or similar monogram, located in the bottom right corner of the page.