

CITY OF CORAL GABLES, FLORIDA

RESOLUTION NO. 2009-345

A RESOLUTION APPROVING A MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF CORAL GABLES AND FAIRCHILD TROPICAL BOTANICAL GARDENS FOR FAIRCHILD TROPICAL BOTANICAL GARDENS TO JOIN THE CITY'S FIBER INSTITUTIONAL NETWORK OPERATIONS.

WHEREAS, by Ordinance No. 3278, passed in October 1997, and by Ordinance 2004-50, passed December 2004, the City has established a cable television franchise agreement whereby all governmental authorities, schools, or persons designated by the City are interconnected by an Institutional Network (I-Net); and

WHEREAS, Fairchild Tropical Botanical Gardens (FTBG) is one of those locations identified to be connected to the I-Net; and

WHEREAS, FTBG is a not-for-profit organization providing for many opportunities in education, conservation and research, and is known as a Coral Gables cultural landmark and tourist destination; and

WHEREAS, FTBG intends to use the I-Net connection for educational and institutional purposes and agrees that they will comply with the terms and conditions of the memorandum of understanding (MOU) for a three-year term; and

WHEREAS, The City will provide FTBG with an internet connection through the I-Net shared fiber network, and the fiber that provides the I-Net connectivity was installed and is operated and maintained at the sole expense of the cable television franchisee, and the electronics that will be used to provide the connectivity at the FTBG location will be purchased, installed, and maintained by the City; and

WHEREAS, FTBG will compensate the City for all equipment, connection, installation and maintenance with payments of \$532 per month for a three (3) year period at a sum of \$19,152, and this is for an enhanced service that includes network equipment to allow for routing and automatic failover through alternate links such as DSL lines;

NOW, THEREFORE, BE IT RESOLVED BY THE COMMISSION OF THE CITY OF CORAL GABLES:

SECTION 1. The forgoing "Whereas" clauses are hereby ratified and confirmed as being true and correct and are hereby made a specific part of this Resolution upon adoption herein.

SECTION 2. That the City Commission does hereby authorize the City Manager to adopt the attached Memorandum of Understanding and that the City enables Fairchild Tropical Botanical Gardens to connect to the City's fiber Institutional Network Operations and use the connection for educational and institutional purposes, and will comply with the terms of the MOU for a three (3) year term.

SECTION 3. That this Resolution shall become effective upon the date of its passage and adoption herein.

PASSED AND ADOPTED THIS FIFTEENTH DAY OF DECEMBER, A.D. 2009.

(Moved: Kerdyk / Seconded: Cabrera)

(Yea: Cabrera, Kerdyk, Withers, Anderson, Slesnick)

(Unanimous: 5-0 Vote)

(Agenda Item: C-21)

APPROVED:



DONALD D. SLESNICK II
MAYOR

ATTEST:



WALTER J. FOEMAN
CITY CLERK

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY



ELIZABETH M. HERNANDEZ
CITY ATTORNEY

**MEMORANDUM OF UNDERSTANDING BETWEEN
THE CITY OF CORAL GABLES
AND FAIRCHILD TROPICAL BOTANIC GARDEN**

FOR

FIBER I-NET OPERATIONS

THIS MEMORANDUM OF UNDERSTANDING ("MOU") is made and entered this 20th day of November, 2009, between the CITY OF CORAL GABLES ("CITY") and FAIRCHILD TROPICAL BOTANIC GARDEN ("FAIRCHILD").

WHEREAS, the CITY and FAIRCHILD are mutually interested in collaborating in education, government, research, and other non-commercial related activities; and

WHEREAS, the CITY and FAIRCHILD are entering into this MOU in light of the separate Cable Franchise Agreement with MediaOne of South Florida, Inc. ("Comcast") and a Letter of Understanding which also created an I-Net Agreement entered into on May 2, 2006, which are attached hereto as Composite Exhibit "A" and incorporated herein by reference; and

WHEREAS, the CITY and FAIRCHILD intend to use the I-Net Operations for educational purposes and the FAIRCHILD agrees that it will comply with the terms and conditions of the I-Net Agreement and will do nothing to jeopardize the I-Net Agreement between the CITY and COMCAST.

NOW THEREFORE, in consideration of the mutual terms, conditions and covenants herein contained, the parties hereby agree as follows:

ARTICLE I. TERM

- 1.01 The term of this MOU is for a period of three (3) years and may not be terminated by the FAIRCHILD until the cost of the Internet equipment, connection, installation and maintenance is paid in full as stated herein under Article II, Sections 2.04 or 2.05.

ARTICLE II. CONSTRUCTION AND COSTS

- 2.01 The CITY shall be responsible for the equipment, connection, installation and maintenance of the I-Net provided by COMCAST in the sites located on the FAIRCHILD property.
- 2.02 The FAIRCHILD shall be responsible for submitting a service change request for any additional special network communication services that require changes in the connection.
- 2.03 The FAIRCHILD shall provide adequate facilities to install the network equipment and the fiber cabling necessary for the CITY to provide its services, including, but not limited to, keeping adequate power and environmental conditions for the equipment to operate, keeping the facilities secured and prevent access and actions by unauthorized persons that may affect the equipment, fiber cabling and the service.
- 2.04 For Deluxe Internet Connection, the FAIRCHILD shall pay the CITY a rate of Five Hundred Thirty Two Dollars and 00/100 (\$532.00) per month or Six Thousand Three Hundred Eighty Four Dollars and 00/100 (\$6,384.00) per year for a total of Nineteen Thousand One Hundred Fifty Two Dollars and 00/100 (\$19,152.00) to compensate for equipment, connection, installation and regularly scheduled maintenance.

ARTICLE III. I-NET CONNECTION

- 3.01 All FAIRCHILD internet connections shall be through a shared network with an access speed of 10 Mbps (megabits per second) and is aggregated to a one (1) Gbps (gigabits per second) shared network backbone that is connected at a speed of 10 Mbps. It shall maintain as follows:
 - 3.01.1 interconnectivity between networks;
 - 3.01.2 research network connectivity;
 - 3.01.3 back-up infrastructure for emergency use;
 - 3.01.4 allocated shared systems to facilitate the exchange of information;
 - 3.01.5 access to information for specific institutions, departments, and/or divisions of the CITY and FAIRCHILD;
 - 3.01.6 participation in the CITY'S goal for wireless internet; and
 - 3.01.7 opportunities for collaborative grants and proposals.
- 3.02 The Deluxe Internet Connection is provided through an ISP (Internet Service Provider) interconnected with Comcast's fiber optic cable at a speed of 10 Mbps for connection which may decrease when other Customers are connected to the same shared network. It further offers a fail-over system designed to detect internet connectivity. When the primary connection system is lost, the system will automatically route all traffic to a DSL service provider. The design provides for system redundancy and high survivability should the primary connection be lost. The FAIRCHILD is responsible for procuring and maintaining DSL service from a provider in order to implement this connection.
- 3.03 The CITY shall provide no greater than eight (8) static IP addresses which shall be assigned, maintained and managed by the CITY. The CITY, in its sole discretion, may reassign the IP addresses if there are changes in the network that may require the reassignment. Any changes or reassignments shall be notified to the FAIRCHILD, in writing, at least thirty (30) days in advance.

ARTICLE IV. TITLE TO I-NET EQUIPMENT

- 4.01 Title of all equipment purchased with funds supporting the program conducted under this MOU shall be held by the CITY and/or COMCAST.

ARTICLE V. ACCESS

- 5.01 The FAIRCHILD shall provide the CITY access to the equipment on site twenty-four (24) hours a day, seven (7) days per week, and three hundred sixty five (365) days a year in order to provide service for mission critical applications.
- 5.02 The CITY shall notify the FAIRCHILD, in writing, of all regularly scheduled maintenance within a reasonable period of time prior to the maintenance.

ARTICLE VI. PERMITTED USES

- 6.01 The FAIRCHILD shall not undertake use of the I-Net which does not comply with the I-Net Agreement between the CITY and COMCAST, attached hereto as Exhibit "A".

- 6.02 Should the CITY or the FAIRCHILD violate the use of the I-Net pursuant to the I-Net Agreement, that party alone shall be responsible for any penalties or damages pursuant to the terms and condition of the I-Net Agreement.
- 6.03 The FAIRCHILD agrees that the I-Net shall not be sold, leased or otherwise provide outside services to other individuals or business entity (ies).
- 6.04 Any benefit from all programs of work jointly planned and conducted between FAIRCHILD and the CITY shall be mutually exchanged by FAIRCHILD and the CITY, while the sponsoring institution of each program shall maintain primary ownership of any relevant data.
- 6.05 The CITY shall be provided credit in any publications and presentations for its contribution to the I-NET program by adding the CITY logo to the sponsorship portion of the content.
- 6.06 The FAIRCHILD is solely responsible for all usage and applications performed through the Internet connections provided by the CITY, i.e. the content and nature of all internet browsing, electronic mail communications, unauthorized access, and other security threats.

ARTICLE VII. OPERATION & MAINTENANCE

- 7.01 The FAIRCHILD and CITY understands and acknowledges that CITY relies on Comcast to perform pursuant to the I-Net Agreement and, if Comcast fails to do so, the CITY will not be liable for any loss of communications, consequential damages, or any other matter resulting from such non-performance.
- 7.02 CITY is responsible for maintaining and operating all I-Net equipment and such I-Net equipment will conform to the standards established pursuant to this MOU.
- 7.03 FAIRCHILD is responsible for all other equipment owned by FAIRCHILD and not contemplated by this MOU.
- 7.04 The CITY is responsible for all other equipment owned by the CITY and not contemplated by this MOU.
- 7.05 All maintenance on I-Net equipment including hardware and software will be coordinated with all parties to insure minimal disruption of services.
- 7.06 If an I-Net outage occurs during normal business hours, it is to be reported to the CITY's IT Department Help Desk via telephone contact provided by the CITY to all parties.
- 7.07 The CITY will provide all parties with an emergency contact number to report I-Net outages that occur during non-business hours, i.e. evenings, weekends, and holidays).
- 7.08 The CITY will respond to reported I-Net outages in a timely manner and will report said outages to COMCAST and work with COMCAST to restore services in a timely manner.

ARTICLE VIII. DAMAGE, DESTRUCTION, OR TAKING OF PROPERTY

- 8.01 Any damage to the I-Net or its equipment due to cutting or destruction shall be replaced or repaired pursuant to the terms of the I-Net Agreement between the CITY and COMCAST, where such costs are not recoverable from a third party.
- 8.02 Should it be determined that the FAIRCHILD is at fault for any damage or destruction to the I-Net, the FAIRCHILD shall be responsible for the costs thereof, including labor costs.
- 8.03 FAIRCHILD shall be responsible for its own costs for replacing or repairing any part of its own equipment beyond that which is covered under this MOU.
- 8.04 The CITY shall be responsible for its own costs for replacing or repairing any part of its own equipment beyond that which is covered under this MOU.

ARTICLE IX. TERMINATION

- 9.01 The FAIRCHILD may withdraw from this MOU upon providing the CITY with one hundred eighty (180) days written notice of its withdrawal and upon payment of the full amount pursuant to Article II herein.
- 9.02 The CITY may withdraw from this MOU at its sole discretion if it is in the CITY's best interest, upon providing FAIRCHILD with thirty (30) days written notice of its withdrawal, and releasing FAIRCHILD of paying the remaining part of the amount pursuant to Article II herein from the time when the withdrawal is effective.
- 9.03 Should the FAIRCHILD choose to withdraw from this MOU, it will agree, in writing, that it may no longer use the I-Net, that its I-Net sites will no longer be maintained by the CITY as provided herein, and that it may not recover any costs associated with the installation and/or maintenance of its I-Net sites from the CITY up to the date of withdrawal.

ARTICLE X. MISCELLANEOUS PROVISIONS

- 10.01 The CITY and FAIRCHILD agree that they will not assign or transfer any portion of or interest in this MOU directly or indirectly. Any attempt assign or transfer any portion of this MOU shall be null and void and any assignee or transferee shall acquire no right or interest by reason of such attempted assignment or transfer.
- 10.02 If any sentence, phrase, paragraph, provision or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed an independent provision and such holding shall not affect the validity of the remaining portions hereto.
- 10.03 This Agreement constitutes the entire Agreement between the parties with respect to the specific matters contained herein and supersedes all previous discussions, understandings, and agreements. Any amendments to or waivers of the provisions herein shall be made by the parties in writing.
- 10.04 This agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, and all duly adopted

ordinances, regulations or policies of the CITY now in effect and those hereinafter adopted.

10.05 The location for settlement of any claims, controversies, disputes, arising out of or relating to any part of this Agreement, or any breach hereof, shall be in Miami-Dade County, Florida.

IN WITNESS WHEREOF, the CITY and FAIRCHILD have executed this MOU the day and year set forth hereinabove.

FAIRCHILD TROPICAL BOTANIC GARDEN

By

Josefina Yersee
JOSEFINA YERSEE
CONTROLLER & DIR. OF FINANCE

CITY OF CORAL GABLES

By

Patrick Salerno
Patrick Salerno
City Manager

Approved as to form and legal sufficiency:
APPROVED AS TO FORM:

Elizabeth M. Hernandez
Elizabeth M. Hernandez

City Attorney

ATTEST:

By

Walter Foeman
Walter Foeman
City Clerk