

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Capital Expenditures					
Operating Costs	<u>\$ 12,031</u>	<u>\$50,529</u>			
External Revenues	<u>(7,881)</u>	<u>(33,096)</u>			
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	<u>\$4,150</u>	<u>\$17,433</u>			
# ADDITIONAL FTE	<u>1</u>	<u>1</u>			
POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes X No
 Budget Account No.: Fund 0001 Dept. 310 Unit 1400
 Object Various
 Program

REVENUE: 0001 - 310 - 1400 - 6600

B. Recommended Sources of Funds/Summary of Fiscal Impact:
 FMBG will fund 65.5% of the annual salary including fringe benefits of \$62,560 - \$40,977. The County will be responsible for the remaining 34.5% or \$21,583. The term of this agreement is July 19, 2010 to July 19, 2011.

C. Departmental Fiscal Review:

Joan N. McEhee

III. REVIEW COMMENTS

A. OFMB Budget and/or Contract Dev. and Control Comments:

[Signature]
 OFMB/Budget

Shirley L. Jacobowitz / E. Jones 9/23/10
 Contract Development and Control

B. Legal Sufficiency:

mcb 9/22/10
SN 9/24/10
9/21/10

This Contract complies with our contract review requirements.

Anne DeLeonard 9/24/10
 Assistant County Attorney

C. Other Department Review:

 Department Director

AGREEMENT BETWEEN PALM BEACH COUNTY AND THE FRIENDS OF MOUNTS
BOTANICAL GARDEN, INC. FOR FUNDING OF A HORTICULTURIST POSITION

This Agreement, is made and entered into the ____ day of _____, 2010, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter referred to as "County"), and the Friends of the Mounts Botanical Garden, Inc., a Florida Corporation, not-for-profit (hereinafter referred to as "Friends").

WITNESSETH

WHEREAS, County owns and operates the Mounts Botanical Garden (hereinafter referred to as "Garden"); and

WHEREAS, on January 7, 1992, County entered into an agreement with the Friends (hereinafter referred to as "1992 Agreement") whereby the Friends agreed to cooperate and assist in the operation and management of the Garden, a copy of which is attached hereto and incorporated herein by reference as Exhibit "A"; and

WHEREAS, the 1992 Agreement provides that the Friends may provide funds to County to supplement the Garden's staff with additional employees, who will be hired and managed in accordance with County personnel rules with funding provided by Friends; and

WHEREAS, Friends desires at this time to fund a horticulturist position at the County, with the position being filled by an individual deemed a County employee; and

WHEREAS, County desires to receive and use such funds for a horticulturist position at the Garden; and

WHEREAS, the acceptance and use of such funds will enhance the operation of the Garden and promotes a public purpose.

NOW, THEREFORE, in consideration of the mutual covenants and agreements expressed herein, the parties agree as follows:

1. The above recitals are true and correct and are incorporated herein by reference.
2. Friends shall provide County funding for one horticulturist position in an amount not to exceed Twenty-Eight Thousand, Eight Hundred and Twenty Dollars (\$28,820.00) plus Twelve Thousand, One Hundred and Fifty-Seven Dollars (\$12,157.00) for fringe benefits for a total amount not to exceed Forty Thousand Nine Hundred and Seventy-Seven Dollars (\$40,977.00), or Sixty-Five point Five percent (65.5%) for a horticulturist at the Garden, whichever is greater. County shall fund an amount not to exceed Fifteen Thousand, One Hundred and Eighty Dollars (\$15,180.00) plus Six Thousand, Four Hundred and Three Dollars (\$6,403.00) for fringe benefits for a total amount not to exceed Twenty-One Thousand Five Hundred and Eighty-Three Dollars (\$21,583.00), or Thirty-Four point Five percent (34.5%) for a horticulturist at the Garden, whichever is greater. The total amount to be paid by County and the Friends for the horticulturist position shall be Sixty-Two Thousand Five Hundred and Sixty Dollars (\$62,560.00).
3. The Friends shall pay the County the amount stated above by equal monthly installments due and payable on the first day of each month, beginning on the date this Agreement is entered into. The first payment shall be retroactive, beginning on July 19, 2010

and include the months August, September and October. The Friends shall make all payments to County without notice from County.

4. County shall continue to employ one (1) full-time county horticulturist position at the Garden with the funding mentioned above, to assist with increased Garden maintenance.

5. County shall continue to assume sole and exclusive responsibility for the hiring, termination, performance appraisal, and payment of wages as described above to the individual filling the position of the horticulturist at the Garden. The horticulturist shall be supervised by the Garden Curator and Director of Cooperative Extension Department, and shall be managed in accordance with County personnel rules.

6. The term of this Agreement shall be for one year commencing on July 19, 2010 and terminating on July 18, 2011.

7. The County's performance and obligation to pay under this Agreement for subsequent fiscal years is contingent upon annual appropriations for its purpose by the Board of County Commissioners.

8. This Agreement may be renewed upon mutual written agreement of the parties.

9. Nothing herein shall be construed to require County to continue the position provided for, should Friends cease funding of said position.

10. County agrees that the funding provided by Friends shall be used solely for those purposes stated herein unless written approval by the Friends allows otherwise.

11. Friends may terminate this Agreement for any breach thereof by County provided Friends gives thirty (30) days written notice to County. County may terminate this Agreement with or without cause provided County gives sixty (60) days written notice to Friends. In the event of a termination, County shall remit to Friends all unused funding, without interest, within thirty (30) days of the effective date of termination.

12. This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce this Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity, by statute or otherwise. No single or partial exercise by any party of any right, power or remedy hereunder shall preclude any other or further exercise thereof.

13. Palm Beach County has established the Office of Inspector General in Ordinance 2009-049, as may be amended, which is authorized and empowered to review past, present and proposed County contracts, transactions, accounts and records. The Inspector General has the power to subpoena witnesses, administer oaths and require the production of records, and audit, investigate, monitor and inspect the activities of the Friends, its officers, agents, employees and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud. Failure to cooperate with the Inspector General or interference or impeding any investigation shall be in violation of Ordinance 2009-049, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

14. If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

15. The County and Friends agree that this Agreement including the terms of the 1992 Agreement sets for the entire agreement between the parties and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement or the 1992 Agreement may be added to, modified, superseded or otherwise altered, except by written instructed executed by the parties hereto.

16. All notices required hereunder shall be in writing and shall be addressed to the following representatives of the parties:

For the Grantors: President, Friends of the Mounts Botanical Garden, Inc.
559 N. Military Trail
West Palm Beach, FL 33415

For the County: Director, Cooperative Extension Service
559 N. Military Trail
West Palm Beach, FL 33415

The remainder of this page is intentionally left blank.

IN WITNESS WHEREOF, County and Friends hereby set their hands and seals on the date first written above.

SHARON R. BOCK, CLERK & COMPROLLER

PALM BEACH COUNTY, FLORIDA, BY ITS BOARD OF COUNTY COMMISSIONERS

By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chair

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: _____
County Attorney

By: Audrey R. Noeman
Department Director

THE FRIENDS OF THE MOUNTS BOTANICAL GARDEN, INC.

[Signature]
Witness

By: [Signature]
President

[Signature]
Witness

Date: 9/20/10

*Aur Pejer on behalf of
and with the permission of
Mike Zimmerman*

EXHIBIT A

MOUNTS BOTANICAL GARDEN AGREEMENT

THIS AGREEMENT is made and entered into this

JAN 7 1992

, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter referred to as "COUNTY"), and The Friends of the Mounts Botanical Garden, Inc., a Florida corporation not-for-profit (hereinafter referred to as "CORPORATION").

W I T N E S S E T H

WHEREAS, The COUNTY has established and operates the Mounts Botanical Garden (hereinafter referred to as "Garden"); and,

WHEREAS; the CORPORATION was established as a private citizen support group to assist in the operation and maintenance of the Garden, and

WHEREAS, the COUNTY and the CORPORATION have cooperated in the operation and management of the Garden since 1983; and,

WHEREAS, the parties recognize the necessity to memorialize their understanding and roles each plays in the operation and management of the Garden.

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

I. Management of the Garden

A. The Garden as it currently exists makes up the campus of the Agriculture Department's headquarters. A master plan has been prepared with the final document to be delivered in December 1991. As the Garden develops and expands according to the master plan, as it may be revised from time to time, it is the intent of the parties that this Agreement shall control the participation of the CORPORATION in such development and expansion.

B. The parties acknowledge that it is the intent of the COUNTY, subject to the availability of funding, to permanently fund and operate the Garden for the benefit of the citizens of Palm Beach County. The parties further acknowledge that it is the intent of the CORPORATION to provide assistance and guidance to the COUNTY on a permanent basis in the operation of the Garden, and to continue to provide funding for the operation of the Garden which the COUNTY does not have to provide on a continuing basis.

C. The Board of Directors (hereinafter referred to as "DIRECTORS") of the CORPORATION shall be selected by the CORPORATION according to the by-laws of the CORPORATION. The Garden Curator shall serve as an ex officio and nonvoting member of the DIRECTORS.

1. The DIRECTORS shall be allowed to provide assistance in the implementation of policies and guidelines for the operation of the Garden and they may appoint an Executive Committee in order to address urgent matters on a timely basis.

2. The DIRECTORS shall be allowed to provide assistance in the development of Garden programs, including education programs, the development and implementation of a collection policy; the publicity, planning and implementation of special events; and all other requirements necessary to operate the Garden as an accreditable public garden facility.

3. The DIRECTORS shall be authorized to purchase personal property for the Garden, including plants for the collection. All such property purchased with funds of the CORPORATION shall become the property of the COUNTY.

4. The DIRECTORS shall be responsible for assisting with the coordination of the use of volunteers and docents at the Garden, with such use to be under the supervision of the Garden Curator.

D. The Garden Curator, as an employee of and funded by the COUNTY and reporting directly to the Director of the Agriculture Department, shall manage the operation of the Garden pursuant to the guidelines and policies established by the Agriculture Department Director and in accordance with all applicable COUNTY policies. The Garden Curator shall be charged with establishing standards for operating the Garden in accordance with the professional standards of the American Association of Botanical Gardens and Arboreta, so that the Garden is operated as an accreditable public garden facility.

E. All employees shall be supervised by the Garden Curator who shall comply with all COUNTY personnel rules in supervising and administering employees of the Garden. The CORPORATION, with the approval of the Director of the Agriculture Department, may provide funds to the COUNTY to supplement the Garden staff with additional employees. These employees will be hired and managed in accordance with County personnel rules and will all necessary funding from the CORPORATION.

F. The Board of County Commissioners of Palm Beach County shall have the authority to resolve any conflict between the CORPORATION and the Director of the Agriculture Department with regard to the operation of the Garden.

II. Funding and Budget

A. The CORPORATION shall share in providing funding for collections, education programs, and events. All funds raised from public or private sources by the CORPORATION shall be used in their entirety to support the Garden and its programs as stated in the CORPORATION'S bylaws. The CORPORATION shall provide funding for promotion of membership. The CORPORATION may provide funding in other areas at its discretion. The CORPORATION shall prepare an annual budget and provide the COUNTY with copies of said budget. Additionally, the CORPORATION shall provide the COUNTY with an annual independent audit of income and expenses for the Garden and the COUNTY shall have access to the books and records of the CORPORATION for inspection during normal business hours.

B. Subject to funding availability, the COUNTY shall be responsible for providing operating personnel, maintenance personnel and security for the Garden, and shall be responsible for providing and paying for all maintenance, security, and utility services for the Garden. Those services paid for by the CORPORATION shall be in addition to those paid by the COUNTY. The COUNTY shall provide such services and utilities in accordance with the recommendations of the Garden Curator, and in such a manner that the Garden shall be operated in accordance with criteria established by the American Association of Botanical Gardens and Arboreta, subject to funding availability and in accordance with the County budgeting process. The CORPORATION shall have the authority to supplement the cost of operation, maintenance and security at the request of the Garden Curator. Such costs paid for by the CORPORATION shall be in addition to those paid by the COUNTY.

C. The Garden Curator, with the advice and guidance of the DIRECTORS, shall prepare and submit to the Director of the Agriculture Department an annual operating budget request, as a part of the Department's budget, which shall be subject to the approval of the COUNTY as part of its normal budgeting process. The Garden Curator shall submit the proposed budget as required to meet the budgetary time constraints of the COUNTY. The COUNTY shall identify the funds allocated for the Garden within the Agriculture Department budget and this information will be available to the CORPORATION.

III. Use of Garden Facility

A. The Garden Curator, shall administer the use of the Garden. The CORPORATION acknowledges that the Garden shall be open to all County residents on an equal, nondiscriminatory basis.

B. All revenues generated by the use of, or programs held at, the Garden, other than those generated by the Agriculture Department's ongoing educational programs, shall be paid to the CORPORATION. The CORPORATION shall use these funds to meet the financial requirements imposed on the CORPORATION by the terms of this Agreement.

C. The DIRECTORS shall have the authority to grant concessions at the Garden during special events, including plant sales, and shall establish a policy for concessionaires and the granting of concessions, which policy shall be subject to the review of the Director of the Agriculture Department. Any revenues generated by such concessions which are paid to the CORPORATION shall be used by the CORPORATION to meet its financial responsibilities under the terms of this Agreement.

D. Should space become available, the CORPORATION shall have the exclusive right to establish and operate a garden shop in the Garden. All revenues generated by the garden shop shall be used by the CORPORATION to meet its financial responsibilities under the terms of this Agreement.

IV. Master Plan and Expansion and Development of Garden

A. The CORPORATION, with the assistance of the COUNTY, has prepared a Master Plan for the proposed expansion and development of the Garden. The parties agree that the CORPORATION shall be consulted as the Master Plan is implemented or revised, and that any proposal presented to the Board of County Commissioners shall have the opinion of the DIRECTORS attached.

V. Garden Curator

A. The Director of the Agriculture Department shall be responsible for the appointment and dismissal of the Garden Curator and shall retain supervisory responsibility in accordance with County personnel rules.

B. Should it be necessary at any time to replace the Garden Curator, the COUNTY agrees that a member of the DIRECTORS shall sit on the selection committee.

VI. Term of Agreement

A. This Agreement shall remain in effect for such time as the COUNTY owns the Garden, unless sooner terminated by mutual written agreement of the parties. Parties hereto agree that a termination shall not be effective until 60 days from the date of receipt of written notice to terminate.

B. At any time in the future should the COUNTY decide, for whatever reason, that it no longer will operate the Garden then it is agreed that the CORPORATION will have first opportunity to assume responsibility for its operation and management.

VII. Additional Provisions

A. This Agreement contains the complete agreement of the parties, and may not be amended except in writing executed by both parties.

B. The CORPORATION shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The CORPORATION further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Contract.

PALM BEACH COUNTY, FLORIDA,
BY ITS BOARD OF COUNTY
COMMISSIONERS

By: [Signature]
Chair

Date: JAN 7 1992

FRANK T. BAUER, CLERK
Board of County Commissioners

By: [Signature]
DEPUTY CLERK

ATTEST:

JOHN B. DUNKLE, CLERK

By: [Signature]
Deputy Clerk

[Signature]
Witness

[Signature]
Witness

THE FRIENDS OF THE MOUNTS
BOTANICAL GARDEN, INC.

By: [Signature]
President

Date: 11/20/91

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

By: [Signature]
County Attorney