

PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: June 23, 2015

☒ Consent ☐ Regular  
☐ Workshop ☐ Public Hearing

Department: Cooperative Extension Service

Submitted By: Cooperative Extension Service

I. EXECUTIVE BRIEF

**Motion and Title:** Staff recommends motion to approve:

**A)** Fifth Amendment to the Agreement (R 2010-1582) with Friends of the Mounts Botanical Garden, Inc. to extend the term of the Agreement from July 16, 2015 to September 30, 2015 to coincide with the start of the new fiscal year; and

**B)** A Budget Amendment in the General Fund (Fund 0001) in the amount of \$11,630; and

**C)** An Agreement with Friends of the Mounts Botanical Garden, Inc. from October 1, 2015 through September 30, 2016 for funding of a horticulturist position to assist in the care and maintenance of The Mounts Botanical Garden of Palm Beach County.

**Summary:** The Fifth Amendment provides that the Friends of the Mounts Botanical Garden, Inc. (FMBG) will provide funding to the County in amount not to exceed \$11,630 (65.5%) of a horticulturist (Pay Grade 25) position beginning July 16, 2015 and ending on September 30, 2015. The County will be funding the remaining \$6,126 (34.5%) for a total of \$17,756. The Agreement provides that FMBG will provide funding to the County in amount not to exceed \$45,786.47 (65.5%) of a horticulturist (Pay Grade 25) position for the period October 1, 2015 and ending on September 30, 2016. The County will be funding the remaining \$24,116.53 (34.5%) for a total of \$69,903.00. The position will continue to support The Mounts Botanical Garden of Palm Beach County. The Amendment is to provide funding through the end of FY15 and the new Agreement is to provide funding for FY16. This will change the funding of this position to coincide with the County's fiscal year. This position will be eliminated when grant funding is discontinued. District 7 (AH)

**Background and Justification:** (Continued on Page 3).

**Attachments:**

1. Fifth Amendment to Agreement with FMBG
2. Budget Amendment
3. Agreement with FMBG

Recommended By:

Department Director

3 JUNE 2015

Date

Approved By:

Assistant County Administrator

6/16/15

Date

## II. FISCAL IMPACT ANALYSIS

### A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>
Capital Expenditures					
Operating Costs	<u>\$17,756</u>	<u>69,903</u>			
External Revenues	<u>\$11,630</u>	<u>45,787</u>			
Program Income (County)					
In-Kind Match (County)					
NET FISCAL IMPACT	<u>\$6,126</u>	<u>24,117</u>			
# ADDITIONAL FTE	<u>0</u>	<u>0</u>			
POSITIONS (Cumulative)					

Is Item Included in Current Budget? Yes ☐ No ☒

Budget Account No.: Fund 0001 Dept. 310 Unit 1400 Object Various  
Revenue: Fund 0001 Dept. 310 Unit 1400 Rev. Source 6694

### B. Recommended Sources of Funds/Summary of Fiscal Impact:

There is sufficient budget available in the Department's approved FY15 budget to meet the match requirements. Amounts for FY16 will be included in the proposed budget.

### C. Departmental Fiscal Review:

John McGehee rcb

This is a continuation of an existing FTE. The term of the Amendment is from July 16, 2015 to September 30, 2015 and the Agreement is from October 1, 2015 to September 30, 2016.

## III. REVIEW COMMENTS

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

Sheng Bo  
6/10/15  
6/14/15  
OFMB/Budget

Ar. J. Jacobson 6/12/15  
Contract Development and Control  
6-12-15 B. Wheeler

### B. Legal Sufficiency:

Anne Delgado 6-16-15  
Assistant County Attorney

### C. Other Department Review:

\_\_\_\_\_  
Department Director

This summary is not to be used as a basis for payment.

**Background and Policy Issues:**

The support of the FMBG has grown along several lines, one of which is the funding of personnel to support the efforts of the FMBG and those of the Garden. The FMBG have agreed to continue their support for salaries and fringe benefits for this County position through annual funding. This type of support started in FY96 and continued into FY14. The Agreement was originally amended on May 17, 2011, on June 19, 2012, on July 2, 2013, and again on July 1, 2014 so FMBG can continue funding the horticulturist position. This funding is renewable annually at the discretion of the FMBG and the Palm Beach County Board of County Commissioners by written amendment entered into by the County and FMBG.

FIFTH AMENDMENT TO AGREEMENT BETWEEN PALM BEACH COUNTY AND  
FRIENDS OF THE MOUNTS BOTANICAL GARDEN, INC. FOR FUNDING  
OF A HORTICULTURIST POSTION

This Fifth Amendment is made and entered into the \_\_\_\_ day of \_\_\_\_\_, 2015, by and between Palm Beach County, a political subdivision of the State of Florida (hereinafter referred to as "County"), and Friends of the Mounts Botanical Garden, Inc., a Florida Corporation, not-for-profit (hereinafter referred to as "Friends").

WITNESSETH

WHEREAS, on October 5, 2010, County entered into an agreement (R 2010-1582) with the Friends, which was later amended on May 17, 2011 (R2011-0767), June 19, 2012 (R 2012-0918), July 2, 2013 (R2013-0836) and July 1, 2014 (R2014-0953), herein referred to collectively as "Agreement", whereby the Friends and County agreed to jointly fund a horticulturist position at the County, with the position being filled by an individual deemed a County employee; and

WHEREAS, Friends and County desire to continue to jointly fund a horticulturist position at the County; and

WHEREAS, County and Friends desire to extend the term of said Agreement; and

WHEREAS, entering into this Amendment serves 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. Section 2 of the Agreement is amended to state: Friends shall provide County funding for one horticulturist position in an amount not to exceed Seven Thousand and Fifty Seven Dollars (\$7,057.00) plus Four Thousand Five Hundred and Seventy Three Dollars (\$4,573.00) for fringe benefits for a total amount not to exceed Eleven Thousand Six Hundred and Thirty Dollars (\$11,630.00), or Sixty-Five and a half (65.5%) percent for a horticulturist at the Garden, whichever is greater. County shall fund an amount not to exceed Three Thousand Seven Hundred and Seventeen Dollars (\$3,717.00) plus Two Thousand Four Hundred and Nine Dollars (\$2,409.00) for fringe benefits for a total amount not to exceed Six Thousand One Hundred and Twenty Six Dollars (\$6,126.00), or Thirty-Four and a half (34.5%) percent for a horticulturist at the Garden, whichever is greater. The total amount to be paid by County and the Friends for the horticulturist position for the period July 16, 2015 through September 30, 2015 shall be Seventeen Thousand Seven Hundred and Fifty Six Dollars (\$17,756.00).
3. Section 6 of the Agreement is amended to state: "The term of this Agreement shall be extended from July 16, 2015 to September 30, 2015 to coincide with the new fiscal year.
4. Section 18 is added to the Agreement to state: Friends warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

Friends has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the Friends do not have a written non-discrimination policy or one that

conforms to the County's policy, it has acknowledged through a signed statement provided to County that Friends will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

5. Section 19 is added to the Agreement to state: The Friends shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The County shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Friends' place of business.

6. All provisions of said Agreement, dated October 5, 2010, as amended, are hereby confirmed and, except as provided herein, are not otherwise altered or amended and shall remain in full force and effect.

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 &  
COMPTROLLER

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

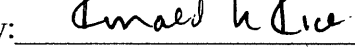
By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Shelley Vana, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

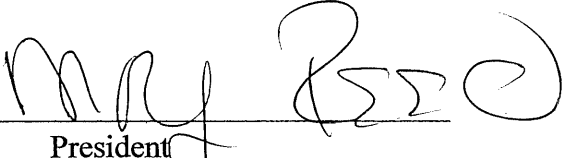
APPROVED AS TO TERMS AND  
CONDITIONS

By: \_\_\_\_\_  
County Attorney

By:   
Department Director

\_\_\_\_\_  
Witness

THE FRIENDS OF THE MOUNTS  
BOTANICAL GARDEN, INC.

By:   
President

Date: 6/3/10

**BOARD OF COUNTY COMMISSIONERS  
PALM BEACH COUNTY, FLORIDA  
BUDGET AMENDMENT**

BGRV  
BGEX

**FUND 0001 GENERAL FUND**

ACCT.NUMBER	ACCOUNT NAME	ORIGINAL BUDGET	CURRENT BUDGET	INCREASE	DECREASE	ADJUSTED BUDGET	EXPENDED/ ENCUMBERED 5/26/2015	REMAINING BALANCE
<b><u>REVENUES</u></b>								
0001-310-1400-6694	Grants From Oth Non-Govt	0	46,373	11,630	0	58,003		
<b>Total Receipts and Balances</b>		<b>1,122,421,771</b>	<b>1,136,011,774</b>	<b>11,630</b>	<b>0</b>	<b>1,136,023,404</b>		
<b><u>EXPENDITURES</u></b>								
0001-310-1400-1201	Salaries & Wages Regular	415,326	415,326	7,057	0	422,383	260,618	161,765
0001-310-1400-2101	Fica-Taxes	26,658	26,658	438	0	27,096	16,161	10,935
0001-310-1400-2105	Fica Medicare	6,222	6,222	102	0	6,324	3,780	2,544
0001-310-1400-2201	Retirement Contributions-Frs	34,983	34,983	794	0	35,777	20,751	15,026
0001-310-1400-2301	Insurance-Life&Health	104,436	104,436	3,239	0	107,675	46,317	61,358
<b>Total Appropriations &amp; Expenditures</b>		<b>1,122,421,771</b>	<b>1,136,011,774</b>	<b>11,630</b>	<b>0</b>	<b>1,136,023,404</b>	<b>727,282,605</b>	<b>408,740,799</b>

Office of Financial Management & Budget  
INITIATING DEPARTMENT/DIVISION

Administration/Budget Department Approval

OFMB Department - Posted

Signatures & Dates

*Ernest H. Ric* 3 June 2015

By Board of County Commissioners  
At Meeting of

Deputy Clerk to the

Board of County Commissioners

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

This Agreement, is made and entered into the \_\_\_\_ day of \_\_\_\_\_, 2015, 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 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 an amount not to exceed \$45,786.47 (Forty-Five Thousand Seven Hundred Eighty-Six Dollars and Forty-Seven Cents) for 65.5% of the total estimated costs of \$69,903.00 (Sixty-Nine Thousand Nine Hundred Three Dollars and Zero Cents) for salaries and benefits for one Horticulturist position for the period October 1, 2015 through September 30, 2016. The County shall provide the remaining 34.5% of the funding in an amount not to exceed \$24,116.53 (Twenty-Four Thousand One Hundred Sixteen Dollars and Fifty-Three Cents).
3. County shall invoice the Friends on a monthly basis beginning on the date this Agreement is entered into. The Friends shall make all payments to County without further 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 October 1, 2015 and terminating on September 30, 2016.

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 the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. The Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to 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 interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, 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 Friends: 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

17. No provision of this Agreement is intended to, or shall be construed to, create any third party beneficiary or to provide any rights to any person or entity not a party to this Agreement, including, but not limited to, any citizen or employees of the County and/or Friends.

18. Friends warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, disability, sex, age, national origin, ancestry, marital status, familial status, sexual orientation, gender identity and expression, or genetic information.

Friends has submitted to County a copy of its non-discrimination policy which is consistent with the above paragraph, as contained in Resolution R-2014-1421, as amended, or in the alternative, if the Friends do not have a written non-discrimination policy or one that conforms to the County's policy, it has acknowledged through a signed statement provided to County that Friends will conform to the County's non-discrimination policy as provided in R-2014-1421, as amended.

19. The Friends shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Contract. The County shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the Friends' place of business.

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

SHARON R. BOCK, CLERK &  
COMPTROLLER

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

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Shelley Vana, Mayor

APPROVED AS TO FORM AND  
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND  
CONDITIONS

By: \_\_\_\_\_  
County Attorney

By: \_\_\_\_\_  
Department Director

\_\_\_\_\_  
Witness

THE FRIENDS OF THE MOUNTS  
BOTANICAL GARDEN, INC.

By: May 1520  
President

Date: 5/3/15