

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date: September 13, 2016 [X] 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: First Amendment to the Agreement (R2015-0802) with the Friends of Mounts Botanical Garden, Inc. (FMBG) for continued funding of a horticulturist position to assist in the care and maintenance of the Mounts Botanical Garden of Palm Beach County (Garden).

Summary: FMBG will continue to provide funding to the County in amount not to exceed \$46,045 (\$32,439 for salary and \$13,606 for fringe benefits) to support 65.5% of an existing horticulturist position beginning October 1, 2016 and ending on September 30, 2017. Palm Beach County will be funding the remaining \$24,253 (\$17,086 for salary and \$7,167 for fringe benefits) at a funding level of 34.5% for a total of \$70,298. The position will continue to support the Garden. District 7 (AH)

Background and Justification: One area of support of the FMBG is the funding of personnel to support the efforts 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. This funding is renewable annually at the discretion of the FMBG and the Palm Beach County Board of County Commissioners.

Attachments:

1. First Amendment to Agreement with FMBG
2. Agreement with FMBG

Recommended By:  22 AUGUST 2016
 Department Director Date

Approved By:  8/31/16
 Assistant County Administrator Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

| Fiscal Years | <u>2017</u> | <u>2018</u> | <u>2019</u> | <u>2020</u> | <u>2021</u> |
|--------------------------|-----------------|-------------|-------------|-------------|-------------|
| Capital Expenditures | _____ | _____ | _____ | _____ | _____ |
| Operating Costs | <u>\$70,298</u> | _____ | _____ | _____ | _____ |
| External Revenues | <u>(46,045)</u> | _____ | _____ | _____ | _____ |
| Program Income (County) | _____ | _____ | _____ | _____ | _____ |
| In-Kind Match (County) | _____ | _____ | _____ | _____ | _____ |
| NET FISCAL IMPACT | <u>\$24,253</u> | _____ | _____ | _____ | _____ |
| # ADDITIONAL FTE | <u>1</u> | _____ | _____ | _____ | _____ |
| POSITIONS (Cumulative) | _____ | _____ | _____ | _____ | _____ |

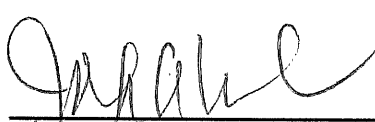
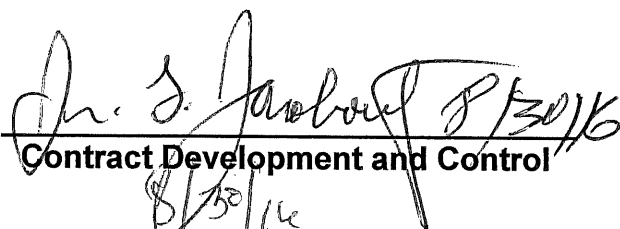
Is Item Included in Current Budget? Yes X No _____
 Budget Account No.: Fund 1482 Dept. 310 Unit 1405 Object Various
 Revenue: Fund 1482 Dept. 310 Unit 1405 Rev. Source 6694

B. Recommended Sources of Funds/Summary of Fiscal Impact:
 FMBG will fund 65.5% of the annual salary including fringe benefits of \$46,045. The County will be responsible for the remaining 34.5% or \$24,253. The term of this agreement is October 1, 2016 to September 30, 2017.

C. Departmental Fiscal Review: Joan N. McYee

III. REVIEW COMMENTS

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

| | |
|--|--|
|  _____ ✓ 8/23 OFMB/Budget 5/23 ASD 8/23 |  _____ Contract Development and Control 8/30/16 |
|--|--|

B. Legal Sufficiency:

Anne Helgen 8/30/16
 Assistant County Attorney

C. Other Department Review:

 Department Director

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

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

This First Amendment ("Amendment"), is made and entered into the ____ day of _____, 2016, 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, on June 23, 2015, County entered into an Agreement (R2015-0802) ("Agreement") with the Friends whereby the Friends agreed to jointly fund a horticulturist position at the County, with the position being filled by an individual deemed a County employee; and

WHEREAS, County and Friends desire to extend the term of the Agreement and continue to jointly fund the horticulturist position.

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 hereby amended by adding the following language as the second paragraph: "Friends shall provide County funding for one horticulturist position in an amount not to exceed Thirty-Two Thousand, Four Hundred and Thirty-Nine Dollars (\$32,439.00) plus Thirteen Thousand, Six Hundred and Six Dollars (\$13,606.00) for fringe benefits for a total amount not to exceed Forty-Six Thousand and Forty-Five Dollars (\$46,045.00), or Sixty-Five and a half percent (65.5%) for a horticulturist at the Garden, whichever is greater. County shall fund an amount not to exceed Seventeen Thousand and Eighty-Six Dollars (\$17,086.00) plus Seven Thousand, One Hundred and Sixty-Seven Dollars (\$7,167.00) for fringe benefits for a total amount not to exceed Twenty-Four Thousand, Two Hundred and Fifty-Three Dollars (\$24,253.00), or Thirty-Four and a half 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 for the period of October 1, 2016 through September 30, 2017 shall be Seventy Thousand, Two Hundred and Ninety-Eight Dollars (\$70,298.00)."
3. Section 6 of the Agreement is hereby deleted and replaced with the following language: "This Agreement shall commence on June 23, 2015 and shall terminate on September 30, 2017."
4. All provisions of the Agreement 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 &
COMPTRROLLER

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

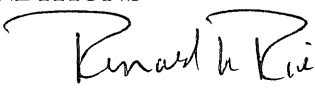
By: _____
Deputy Clerk

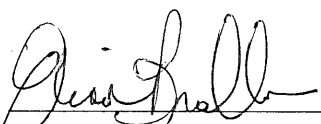
By: _____
Mary Lou Berger, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

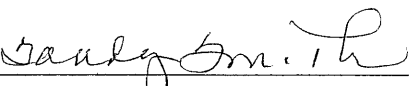
APPROVED AS TO TERMS AND
CONDITIONS

By: _____
County Attorney

By: 
Department Director


Witness

THE FRIENDS OF THE MOUNTS
BOTANICAL GARDEN, INC.

By: 
Secretary and President Elect

Date: August 10, 2016

(C)

R2015 10802

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 JUN 23 2015, 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.

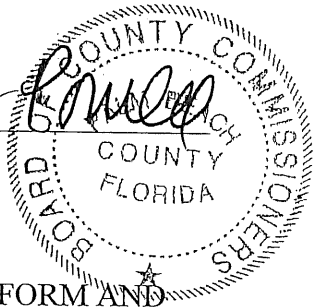
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IN WITNESS WHEREOF, County and Friends hereby set their hands and seals on the date first written above.

SHARON R. BOCK, CLERK & COMPROLLER

R 2015 10802 JUN 23 2015
PALM BEACH COUNTY, FLORIDA, BY
ITS BOARD OF COUNTY
COMMISSIONERS

By: Marcy Kowal
Deputy Clerk



By: Shelley Vana
Shelley Vana, Mayor
Mary Lou Berger
Mary Lou Berger Vice Mayor

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND CONDITIONS

By: Anne Delzyant
County Attorney

By: Donald H. Kiv
Department Director

Elisa Bralle
Witness

THE FRIENDS OF THE MOUNTS BOTANICAL GARDEN, INC.

By: Mary [Signature]
President

Date: 6/3/15