

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: September 12, 2023 **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: An Agreement with the Friends of Mounts Botanical Garden, Inc. (FMBG) from October 1, 2023 through September 30, 2024 for continued partial funding of \$42,650 for a gardener position to assist in the care and maintenance of The Mounts Botanical Garden of Palm Beach County (MBG).

Summary: FMBG will continue to provide funding to the County in an amount not to exceed \$42,650 (\$27,672 for salary and \$14,978 for fringe benefits) to support 60% of an existing gardener position beginning October 1, 2023 and ending on September 30, 2024. Palm Beach County will be funding the remaining \$28,433 (\$18,448 for salary and \$9,985 for fringe benefits) at a funding level of 40% for a total of \$71,083. The total amount of funding increased from last year because there was a 6% increase in salary and a 3.1% increase in benefits. The position will continue to support the MBG. District 2 (AH)

Background and Justification: One area of support of the FMBG is the funding of personnel to support the efforts of the FMBG and those of the MBG. 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 Fiscal Year 1996. This funding is renewable annually at the discretion of the FMBG and the Palm Beach County Board of County Commissioners.

Attachments:
1. Agreement with FMBG

Recommended By:	<u>Ronald W Tice</u>	<u>08/30/2023</u>
	Department Director	Date
Approved By:	<u>[Signature]</u>	<u>8/23</u>
	Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2023	2024	2025	2026	2027
Capital Expenditures					
Operating Costs		71,083			
External Revenues		(\$42,650)			
Program Income(County)					
In-Kind Match(County)					
* NET FISCAL IMPACT		\$28,433			
#ADDITIONAL FTE					
POSITIONS (CUMULATIVE)					

Is Item Included in Proposed Budget? Yes X No
 Does this item include the use of federal funds? Yes No X

Budget Account No:

Exp: Fund	Agency	Organization	Object
<u>1482</u>	<u>310</u>	<u>1403</u>	<u>Various</u>
Rev: Fund	Agency	Organization	Object
<u>1482</u>	<u>310</u>	<u>1403</u>	<u>6694</u>

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

Recommended Sources of Funds/Summary of Fiscal Impact:
 FMBG will fund 60% of the annual salary including fringe benefits of \$42,650. The County will be responsible for the remaining 40% of \$28,433. The term of this Agreement is October 1, 2023 to September 30, 2024.

C. Departmental Fiscal Review:

III. REVIEW COMMENTS:

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

<p style="text-align: center;"><u>ECB ASD 9/1/23</u> OFMB MD 9/1</p>	<p style="text-align: center;"><u>Jan S - Audited 9/10/23</u> Contract Dev. & Control 7/16 9/5/23</p>
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B. Legal Sufficiency

Anne Adkins 9/6/23
Assistant County Attorney

C. Other Department Review

Department Director

(THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT.)

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

This Agreement, is made and entered into the ____ day of _____, 2023, 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, County owns and operates the Mounts Botanical Garden of Palm Beach County (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; 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 gardener 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 gardener 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 \$42,650 (Forty Two Thousand Six Hundred and Fifty Dollars) for 60% of the total estimated costs of \$71,083 (Seventy One Thousand and Eighty Three Dollars) for salaries and benefits for one gardener position for the period October 1, 2023 through September 30, 2024. The County shall provide the remaining 40% of the funding in an amount not to exceed \$28,433 (Twenty Eight Thousand Four Hundred and Thirty Three Dollars).
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 employ one (1) full-time county gardener 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 gardener at the Garden. The gardener 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 commence on October 1, 2023 and terminate on September 30, 2024.

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 interference 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 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

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 Contract, including but not limited to any citizen or employees of the County or the Friends.

18. The County is committed to assuring equal opportunity in the award of contracts and complies with all laws prohibiting discrimination. Pursuant to Palm Beach County Resolution R2017-1770, as may be amended, Friends warrant and represent that throughout the term of the Agreement, including any renewals thereof, if applicable, 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 or expression, or genetic information. Failure to meet this requirement shall be considered default of this Agreement.

As a condition of entering into this Agreement, Friends represents and warrants that it will comply with the County's Commercial Nondiscrimination Policy as described in Resolution 2017-1770, as amended. As part of such compliance, Friends shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall Friends retaliate against any person for reporting instances of such discrimination. Friends shall provide equal opportunity for subcontractors, vendors and suppliers to participate in all of its public sector and private sector subcontracting and supply opportunities, provided that nothing contained in this clause shall prohibit or limit otherwise lawful efforts to remedy the effects of marketplace discrimination that have occurred or are occurring in the County's relevant marketplace in Palm Beach County. Friends understands and agrees that a material violation of this clause shall be considered a material breach of this Agreement and may result in termination of this Agreement, disqualification or debarment of the company from participating in County contracts, or other sanctions. This clause is not enforceable by or for the benefit of, and creates no obligation to, any third party. Friends shall include this language in its subcontracts.

19. 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 Agreement. 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 Friend's place of business.

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.

ATTEST:

JOSEPH ABRUZZO CLERK OF THE
CIRCUIT COURT & COMPTROLLER

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

By: _____
Deputy Clerk

By: _____
Gregg K. Weiss, Mayor

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS AND
CONDITIONS

By: Anne Idgent
County Attorney

By: Robert E. Quei
Department Director

FRIENDS OF THE MOUNTS
BOTANICAL GARDEN, INC.

[Signature]
Witness

By: [Signature]
President

[Signature]
Witness

Date: 8/17/23