

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY

Meeting Date: February 2, 2021

☒ Consent

☐ Regular

☐ Ordinance

☐ Public Hearing

Department: Facilities Development & Operations

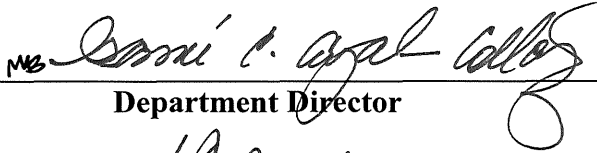
I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: an Agreement for Services (“Agreement”) dated October 20, 2020 with Aqua Escapes, Inc., to design, fabricate and install garden statues at Mounts Botanical Garden.

Summary: In accordance with County PPM CW-O-051, all delegated contracts, agreements and grants must be submitted by the initiating Department as a receive and file agenda item. Pursuant to PPM CW-F-072, Acquisition of Artwork, the attached Agreement, after review and approval by the County Attorney’s office, has been fully executed on behalf of the Board of County Commissioners (“Board”) by the County Administrator or designee. The Agreement was for the design, fabrication and installation of garden statues at the Mounts Botanical Garden, which was approved by the Palm Beach County’s Art in Public Places Program. The donation for the Agreement was provided by the Friends of the Mounts Botanical Garden, Inc., and approved by the Board on August 25, 2020, Agenda 3P-1. This executed document is now being submitted to the Board to receive and file. **(FDO Admin) Countywide (MWJ)**

Background & Justification: PPM CW-F-072, which provided the authority for the County Administrator or designee to execute this type of agreement, was designed to establish quality control over and streamline the process for the acquisition of temporary or permanent artwork.


Attachments: Agreement for Services.

Recommended By: 

Department Director

1-05-21

Date

Approved By: 

County Administrator

1/13/21

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

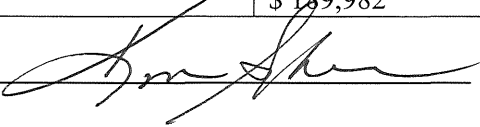
Fiscal Years	2021	2022	2023	2024	2025
Capital Expenditures					
Operating Costs	\$189,982				
External Revenues	(\$189,982)				
Program Income					
(County)					
In-Kind Match (County)					
NET FISCAL IMPACT	0.00	0.00	0.00	0.00	0.00
# ADDITIONAL FTE POSITIONS (Cumulative)					
Is Item Included in Current Budget:	Yes	X	No		
Does this item include the use of federal funds?	Yes		No	X	

Budget Account No:								
Fund	1482	Dept	310	Unit	1409	Object	3401	\$189,982
Fund	1482	Dept	310	Unit	1409	Revenue Source	6600	\$189,982

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

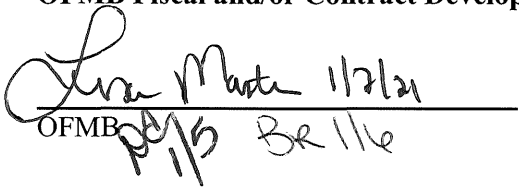
There is no fiscal impact associated with this item. The Friends of Mounts Botanical Garden, Inc. donated the funds for this agreement.

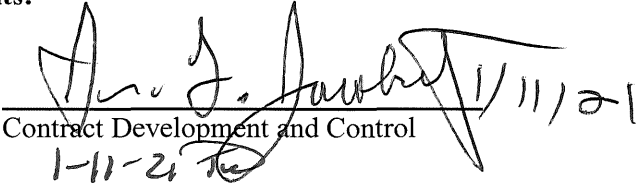
CONSTRUCTION	\$ 186,497
STAFF COSTS	\$ 3,485
TOTAL	\$ 189,982

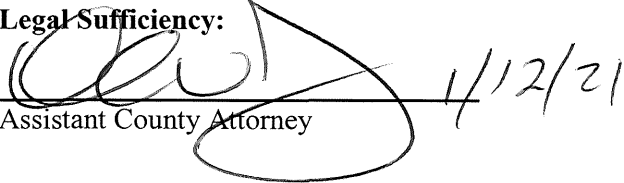
C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development Comments:


OFMB
11/21/21


Contract Development and Control
1-11-21

B. Legal Sufficiency: 
Assistant County Attorney
11/21/21

C. Other Department Review:

Department Director

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

AGREEMENT FOR SERVICES

THIS AGREEMENT is made and entered into this day October 20, 2017 by and between the Palm Beach County, a political subdivision of the State of Florida ("COUNTY") and Aqua Escapes, Inc. ("VENDOR").

RECITALS

WHEREAS, the COUNTY is the owner of certain real property known as the Mounts Botanical Garden of Palm Beach County (MOUNTS); and

WHEREAS, in furtherance of its charitable purposes, the Friends of Mounts Botanical Garden, Inc. ("Friends") offered to donate funds to the COUNTY conditioned upon the use by the COUNTY of the donation for garden statues fabricated and installed by VENDOR (the "Garden Statues"); and

WHEREAS, the COUNTY received and accepted such donation and its conditions; and

WHEREAS, in accordance with the conditions of the donation, the COUNTY desires to contract with the VENDOR to fabricate and install the Garden Statues for MOUNTS; and

WHEREAS, the VENDOR's services under this Agreement shall include the design, execution, fabrication, and installation of the Garden Statues, including the hiring of a Florida-licensed Contractor ("Contractor"), a Florida-licensed Engineer ("Engineer"), and a statue consultant ("Statue Consultant") to assist in performing the fabrication, permitting, and installation of the Garden Statues; and

WHEREAS, the VENDOR is willing and able to perform these services for the COUNTY on the terms and conditions set forth below; and

WHEREAS, the COUNTY and the VENDOR wish to enter into this AGREEMENT for the VENDOR'S services.

NOW THEREFORE, in accordance with the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE I RECITALS & REPRESENTATIVES

Section 1.01 Recitals

The parties affirm and incorporate the recitals set forth above.

Section 1.02 Representatives

The VENDOR'S Representative for this Agreement shall be Mike McKenzie.

The COUNTY’S Representative for this Agreement shall be the Art in Public Places Administrator. Any work performed by the VENDOR without proper authorization from the COUNTY is performed at the VENDOR’S risk and the COUNTY shall have no obligation to compensate the VENDOR for such work.

ARTICLE II
SCOPE OF SERVICES

Section 2.01 Services

The VENDOR shall perform, or cause to be performed, all services and furnish all supplies, materials and equipment necessary for the design, fabrication, and installation of the Garden Statues. The Garden Statues shall consist of three Moai statues, of differing heights, and two Top Knot statues. A more detailed description and photo depiction of the Garden Statues is attached as **Exhibit 1** (“Vendor Proposal”) and incorporated herein by this reference in its entirety. The Garden Statues shall be installed at 531 N. Military Trail, West Palm Beach, Florida 33415, more commonly known as the Mounts Botanical Garden of Palm Beach County, within the “Tropical Forest,” identified as site #1 in the “Artist in the Garden Master Plan,” as further depicted in **Exhibit 2** (“Work Site”), which is attached hereto and incorporated herein. Upon completion of the installation of the Garden Statues, the VENDOR shall present the Garden Statues to the Art in Public Places Administrator for approval and acceptance (“Final Acceptance”). The VENDOR’S services shall not be considered complete until Final Acceptance by the Art in Public Places Administrator.

Section 2.02 Materials

The VENDOR shall determine the material, texture, color, and method of fabrication of the Garden Statues in conformity with the description and depiction in **Exhibit 1** and subject to the design requirements contained in **Exhibit 3** (“Design Requirements”), attached hereto and incorporated herein, and the approval of the COUNTY.

Section 2.03 Coordination Meetings

The VENDOR shall attend pre-construction and/or progress coordination meeting(s) at the Work Site as necessary to ensure proper and timely execution of the Garden Statues. In conjunction with the COUNTY, VENDOR shall periodically determine, monitor and inform the COUNTY of the requirements for the delivery, storage and/or installation of the Garden Statues including, but not limited to, site preparation, anchoring and/or supports, lighting, testing and/or other appurtenances. Additionally, the VENDOR shall promptly inform the COUNTY of any pertinent corrective/remedial work to be performed to the Work Site.

Section 2.04 Site Inspections and Staging Requirements

Prior to installation of the Garden Statues, the VENDOR and/or its contractor shall visit and inspect the Work Site. Subsequent to such inspection and prior to installation of the Garden Statues, the VENDOR shall have sole responsibility for learning the nature and location of the Work Site and the general local conditions. In particular the VENDOR will identify conditions that affect the:

1. transportation, access, disposal, handling and storage of materials; and
2. availability, quantity and quality of labor; and

3. availability of water and electric power; and
4. availability and condition of roads; and
5. climatic conditions; and
6. location of underground utilities as depicted on contract documents and as verified by local utility companies and the COUNTY; and
7. physical conditions of existing construction; and
8. subsurface materials to be encountered; and
9. nature of the ground water conditions; and
10. equipment and facilities needed preliminary to and during performance of this Agreement; and
11. other matters which can in any way affect the performance or cost of this Agreement.

The failure of the VENDOR to identify any described condition shall not relieve the VENDOR of responsibility for properly estimating either the difficulties or costs of successfully and timely fabricating and installing the Garden Statues. Throughout installation of the Garden Statues, the VENDOR shall have sole responsibility for having determined to its satisfaction, the conformation of the ground, the character and quality of the substrata, the types and quantity of materials to be encountered, the nature of the groundwater conditions, the character of the equipment and facilities needed preliminary to and during the execution of the Garden Statues and the general and local conditions of the Work Site that affect the VENDOR's performance of the work under this Agreement.

Section 2.05 Design Review, Project Schedule and Milestones

The VENDOR shall provide detailed drawings, plans and specifications of the Garden Statues and a project schedule with milestones, which shall be reviewed and approved by COUNTY in accordance with **Exhibit 4** ("Project Schedule with Milestones"), attached hereto and incorporated herein, depicting the activities contemplated to occur and their sequence.

Employees of and contractors and consultants hired by the VENDOR are all subject to prior and continuous approval of the COUNTY. If at any time during the term of this Agreement, an individual performing services on behalf of the VENDOR is, for any reason, unacceptable to the COUNTY, VENDOR shall replace the unacceptable personnel with personnel acceptable to the COUNTY.

Section 2.06 Proposed Materials

The VENDOR shall provide a detailed list of all proposed materials, attached hereto as **Exhibit 5** ("Proposed Materials") and incorporated herein, to be utilized by the VENDOR including, but not limited to, the style, type, and color of all materials.

Section 2.07 Permits

The VENDOR, at VENDOR's cost, shall research and obtain all necessary permits required by the local, state and/or federal jurisdiction in which the Garden Statues are located.

Section 2.08 Bill of Sale

Upon completion of the installation of the Garden Statues and final acceptance by the COUNTY, the VENDOR shall execute and deliver a bill of sale to the COUNTY.

Section 2.09 Final Documents

Upon installation of the Garden Statues and on or before submittal of a final payment invoice, the VENDOR shall deliver digital images and “as built” drawings, and other documents to the Art in Public Places Administrator. Digital photographs shall be of acceptable professional quality in the determination of the Art in Public Places Administrator and shall be properly marked to include the name of the VENDOR, title of the Garden Statues, and location, medium and dimension of the Garden Statues. The VENDOR’S documents shall include the following:

1. One (1) CD with 300dpi JPEG images of at least (5) different viewpoints of the completed Garden Statues; and
2. One (1) full set of "as built" drawings as well as any and all construction, fabrication and installation specifications, drawings or other documentation pertaining to the Garden Statues.

Section 2.10 Public Education and Special Events

The VENDOR is to ensure that its Statue Consultant Dennis MacDonald shall support the COUNTY’S community outreach program by providing an educational lecture/tour to the public about the process of designing, fabricating, and installing the Garden Statues. The VENDOR shall ensure that its Statue Consultant Dennis MacDonald attends the “Ribbon Cutting” or “Grand Opening” event as coordinated by the COUNTY.

ARTICLE III COMPENSATION

Section 3.01 Firm Fixed Price

The COUNTY shall pay the VENDOR a fixed fee of \$186,497 for all materials and services to be performed and furnished by the VENDOR under this Agreement including the VENDOR’S fee, and including any charges incurred by the Vendor under Sections 4.05, 4.06, and 4.07. The COUNTY shall not, nor is it obligated to, pay more than this fixed fee. If VENDOR believes additional monies are owed for any reason, including, but not limited to, VENDOR agreeing to perform additional work at the Friends’ request, VENDOR shall seek such compensation directly from the Friends and shall have no cause of action against COUNTY for such compensation.

Section 3.02 Method of Payment

The COUNTY shall at intervals set forth in **Exhibit 6** (“Schedule of Contract Values”), make progress payments to the VENDOR. The VENDOR shall request such payments by submitting:

1. A properly completed invoice for progress payment consistent with the Schedule of Contract Values (**Exhibit 6**) submitted in detail sufficient for audit

purposes; and

2. Photographic evidence of the stage of completion for work performed off-site; and
3. An updated Schedule of Contract Values indicating labor performed and materials incorporated into the Garden Statues for each subdivision of the schedule during the period for which the invoice is prepared.

The invoices and updated Schedule of Contract Values shall be submitted to the COUNTY'S Art in Public Places Administrator. VENDOR invoices and Schedule of Contract Values which have to be returned because of preparation errors will result in a delay in payment. Upon verification by the COUNTY'S Art in Public Places Administrator and approval of the Director of Facilities Development & Operations, the COUNTY will process the invoices for payment.

Final payment by the COUNTY shall be withheld until receipt of the final release, attached hereto as **Exhibit 7** ("Final Release") and incorporated herein, and completion of the public education and special events described in Section 2.10 of this Agreement, as verified by the Art in Public Places Administrator.

Section 3.03 Budgetary Funding

The parties recognize and acknowledge that this project is to be funded by a donation from the Friends pursuant to its July 11, 2020 donation letter to COUNTY, directing that VENDOR be commissioned to create the Garden Statues. A copy of the donation letter is attached hereto and incorporated herein as **Exhibit 8** ("Donation Letter").

Section 3.04 VENDOR Payment Rights

The COUNTY shall make payment to VENDOR in accordance with the requirements found in Section 218.70, Florida Statutes, the Local Government Prompt Payment Act.

ARTICLE IV CONDUCT OF WORK

Section 4.01 Time of Performance

Services by the VENDOR and the VENDOR'S contractor in connection with the Garden Statues shall commence upon a "Notice to Proceed" issued by the COUNTY'S Art in Public Places Administrator. Installation of the Garden Statues shall be completed within 120 days of the Notice to Proceed and in accordance with the Project Schedule and Milestones approved by the COUNTY. Reasonable extensions may be granted by the COUNTY in the event that conditions beyond the VENDOR'S control, or Acts of God, render compliance with the Project Schedule impossible. The COUNTY shall be the sole judge of what conditions are beyond the VENDOR'S control.

Section 4.02 On-Site Supervision

The VENDOR shall personally supervise all phases of the Garden Statues development, fabrication and installation.

The VENDOR or an employee of the VENDOR, shall be present at the Work Site at all times to supervise when installation is in progress. During periods when installation is suspended, the VENDOR shall provide a method of communication, acceptable to the COUNTY, to authorize any emergency work which may be required.

Section 4.03 Inspection

The COUNTY shall have the right to review the progress of the Garden Statues during the fabrication and installation thereof and to receive progress reports from the VENDOR.

Section 4.04 Code Compliance

Fabrication and installation of the Garden Statues shall be performed in compliance with all applicable codes of the state of Florida, Palm Beach County and local municipality in which the Garden Statues are located.

Section 4.05 Use of a Licensed Engineer

The VENDOR shall engage (prepare, negotiate, and enter into contract with) a properly Florida-licensed Engineer to assist VENDOR with the permitting, fabrication and installation of the Garden Statues. The cost of the Engineer is a part of VENDOR'S fee for services.

Section 4.06 Use of a Statue Consultant

The VENDOR shall engage (prepare, negotiate, and enter into contract with) Statue Consultant Dennis MacDonald to assist VENDOR with the fabrication and installation of the Garden Statues. The cost of the Statue Consultant is a part of VENDOR'S fee for services.

Section 4.07 Licensed Contractor

The VENDOR represents and warrants that its owner Mike McKenzie is a Florida-licensed pool contractor, and shall serve as the primary contractor on this project. As the primary contractor, Vendor shall provide:

- A. A payment and performance bond, where required by Florida Statutes §255.05 on the COUNTY's form and from a surety meeting the COUNTY's requirements.
- B. Name the COUNTY as additional insured and/or third party beneficiaries to all insurance policies and co-obligees on all bonds.

4.07.1 Use of Licensed General Contractor

The VENDOR shall engage (prepare, negotiate, and enter into contract with) a properly Florida-licensed general contractor to assist VENDOR with the permitting, fabrication and installation of the Garden Statues. The cost of the general contractor is a part of VENDOR'S fee for services. The VENDOR shall have the right to negotiate, to

approve and to execute in its name, the contract(s) for the installation of the Garden Sculptures with the general contractor ("Installation Contract"). At a minimum, any Installation Contract shall:

- A. Require the contractor(s) to provide insurance coverage in accordance with COUNTY standards set forth in Section 9.1 herein.
- B. Indemnify and hold harmless the COUNTY using standard indemnity provisions set forth in Section 9.2 herein.

Section 4.08 Changes to Garden Statues

VENDOR may not reduce the scope of the Garden Statues or materially alter the original design or intent without written approval of COUNTY.

Section 4.09 Responsibility for Work Security

VENDOR shall, at his/her expense, conduct operations under this Agreement in a manner to avoid risk of loss, theft or damage by vandalism, sabotage or other means to COUNTY property.

Section 4.10 Protection of Work in Progress, Materials and Equipment

VENDOR shall promptly take all reasonable precautions necessary and adequate to avoid conditions which involve a risk of loss, theft or damage to property, materials or equipment connected to the Garden Statues. VENDOR shall continuously inspect its work, materials, equipment and facilities to discover and determine any such conditions and shall be solely responsible for discovery, determination and correction of any such condition. VENDOR shall prepare and maintain accurate reports of incidents of loss, theft or vandalism and furnish these reports to COUNTY within three (3) days of each incident.

VENDOR shall bear all risk of loss or damage to the Garden Statues in progress, the materials delivered to the Work Site, and the materials and equipment involved in the Garden Statues until completion and Final Acceptance of the Garden Statues by the COUNTY. The Garden Statues shall be delivered to the COUNTY in proper, whole and unblemished condition. The VENDOR shall not bear any responsibility for any loss or damage which results solely from the negligence of the COUNTY or its representatives.

Section 4.11 Protection of Existing Property

VENDOR shall not damage, close, or obstruct any utility installation, highway, road or other property unless permits have been obtained. If any facility or property is closed, obstructed, damaged or rendered unsafe by VENDOR, VENDOR shall, at VENDOR'S expense, timely make such repairs and provide temporary guards, lights and other signals as necessary or required for safety and as acceptable to COUNTY and/or its Insurance Representative.

VENDOR shall not damage any existing building or structures. The VENDOR shall verify that the means and methods of construction used inside, adjacent to, under or over existing buildings will not cause damage. The VENDOR shall provide protection methods which are acceptable to the COUNTY and/or its Insurance Representative.

Unless specifically provided in this Agreement, VENDOR shall not do any work that would disrupt or otherwise interfere with the operation of any pipeline, telephone, electric, radio, gas, transmission line, ditch or other structure, nor enter upon lands in their natural state until approved by COUNTY. After obtaining approval, VENDOR shall give due notice to COUNTY of its intention to start such work before it begins the work. VENDOR shall not be entitled to any extension of time or any extra compensation on account of postponement, interference or delay caused by any such line, ditch or structure on or adjacent to the Work Site.

VENDOR shall preserve and protect all cultivated and planted areas and vegetation such as trees, plants, shrubs and grass on or adjacent to the Work Site which, as determined by COUNTY, do not reasonably interfere with the VENDOR'S services. VENDOR shall be responsible for damage to such areas and vegetation including, without limitation, damage from operating equipment or stockpiling materials. VENDOR shall also be responsible for unauthorized cutting of trees and vegetation. All cost in connection with any repairs or restoration necessary or required by such damage or unauthorized cutting shall be borne by VENDOR.

Section 4.12 Restricted "Off" Work Hours

Where applicable, the VENDOR and/or VENDOR'S contractor shall observe and comply with any Restricted "Off" Work Hours requirements. VENDOR shall submit to the Art in Public Places Administrator any request(s) to perform services at times other than "normal work hours" (8 a.m. to 5 p.m.) and said request shall be subject to approval by COUNTY.

ARTICLE V WARRANTIES

Section 5.01 Warranty of Title

The VENDOR warrants that the Garden Statues in this Agreement shall be the result of the workmanship and effort of the VENDOR, but that the Garden Statues are not unique nor of a limited edition. The VENDOR shall deliver the Garden Statues free and clear of any liens, claims or other encumbrances of any type arising from the acts of the VENDOR. Upon delivery of the Garden Statues, the VENDOR shall furnish a signed and sworn warranty of title, attached hereto as **Exhibit 8** ("Warranty of Title") and incorporated herein.

Section 5.02 Warranty of Quality

The VENDOR warrants the Garden Statues shall be free of defects in material and workmanship and that the VENDOR shall correct, at the VENDOR'S expense, any defects which appear within one (1) year of final acceptance of the Garden Statues by the COUNTY. VENDOR shall require its Contractors to provide customary warranties of quality, will enforce said warranties and will name the COUNTY as a third party beneficiary of all such warranties. The foregoing notwithstanding, the VENDOR shall be obligated to enforce the provisions of each Installation Contract as set forth herein. This Section shall survive termination or expiration of this Agreement.

Section 5.03 Risk of Loss

The VENDOR shall bear the full risk of loss of, or damage to, the Garden Statues until all services have been completed and the Garden Statues are accepted by the COUNTY. The VENDOR shall take such measures as are necessary to protect the Garden Statues from loss or damage.

**ARTICLE VI
ASSIGNMENT AND SUBCONTRACTING**

Section 6.01 Assignment, Transfer or Subcontracting

A material element of this Agreement is the personal skill, judgment and creativity of the VENDOR’s Statue Consultant Dennis MacDonald. Therefore, the VENDOR shall not assign, transfer or subcontract the creative portions of the Garden Statues to another party without the express prior written approval of the COUNTY.

**ARTICLE VII
RIGHTS OF OWNERSHIP**

Section 7.01 Ownership of Documents

The VENDOR shall deliver to the COUNTY, for acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Agreement.

The COUNTY and the VENDOR shall comply with the provisions of Chapter 119, Florida Statutes (Public Records Law).

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representation made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

Upon Final Acceptance by the COUNTY, all materials developed by the VENDOR and submitted to the COUNTY for the purpose of this Agreement shall become the property of the COUNTY. VENDOR shall maintain ownership of their copyrights. This Section shall survive termination or expiration of this Agreement.

Section 7.02 Ownership of Materials and Work Product

When the VENDOR submits progress payment applications for materials used in the design and/or fabrication process of the Garden Statues prior to permanent installation on a COUNTY property, and the Art in Public Places Administrator verifies that the materials are being used by the VENDOR and stored in a secure location, the materials become the property of the COUNTY.

Section 7.03 Title to the completed Garden Statues

Title to the completed Garden Statues shall vest in the COUNTY at the time of Final Acceptance by the COUNTY. This Section shall survive termination or expiration of this Agreement.

Section 7.04 Right of Ownership

VENDOR's Statue Consultant Dennis MacDonald shall retain every right available to him under the Federal Copyright Act to control the making or dissemination of copies or reproductions of the designed Garden Statues, except the rights which are limited by this Agreement. Vendor's Statue Consultant Dennis MacDonald shall retain ownership of the molds used to create the Garden Statues as well as the right to reproduce such statues.

VENDOR represents that its Statue Consultant Dennis MacDonald has acknowledged that the Garden Statues are not unique, nor a limited edition, and do not qualify as a work of visual art under the Visual Artists Rights Act of 1990 ("VARA"). VENDOR further represents that its Statue Consultant Dennis MacDonald has acknowledged that COUNTY, upon Final Acceptance and payment, may utilize the Garden Statues in any manner it chooses.

In the event that VENDOR prevails in any dispute with the COUNTY over the ownership or display of the Garden Statues, VENDOR agrees that VENDOR'S sole and exclusive remedy shall be to have COUNTY permit the VENDOR to remove the Garden Statues and, upon returning to the COUNTY any consideration given by the COUNTY for the Garden Statues, retain possession of the Garden Statues.

VENDOR may utilize photographs or other reproductions of the Garden Statues in marketing materials or as representative samples of the VENDOR's work. VENDOR agrees to include on or in any form of reproduction of the designed Garden Statues initiated or authorized by the VENDOR, a credit to the COUNTY, stating that the designed Garden Statues were commissioned by the COUNTY and owned by the COUNTY. COUNTY retains the right to publish and distribute photographs, drawings or other forms of reproductions of the designed Garden Statues as installed and formally accepted by the COUNTY, for reference, promotional, educational and scholarly purposes.

The terms of this Section 7.04 shall survive termination or expiration of this Agreement.

Section 7.05 Ownership and Use of Instruments of Service

During the performance of this Agreement, the VENDOR specifically grants to the COUNTY the right to make presentations of the Garden Statues in progress and/or to photograph or otherwise reproduce faithful images of the Garden Statues in progress for presentational purposes. Presentation(s) of the Garden Statues in progress to COUNTY officials/employees and/or the public may be conducted by the Art in Public Places Administrator or his/her designee without specific approval of the VENDOR.

Section 7.06 Alteration of Garden Statues

VENDOR acknowledges that the designed Garden Statues will be installed at MOUNTS

The COUNTY may, at its discretion and without notice to VENDOR, alter, relocate, modify or change the Garden Statues. VENDOR acknowledges COUNTY's right to make any and all changes to the Garden Statues it deems appropriate.

The terms of this Section 7.06 shall survive termination or expiration of this Agreement.

ARTICLE VIII REPAIRS AND MAINTENANCE

Section 8.01 Maintenance of the Garden Statues

The VENDOR shall complete the documentation worksheet, attached hereto as **Exhibit 10** ("Documentation Worksheet") and incorporated herein, to provide detailed written instructions for routine maintenance and long-term conservation of the Garden Statues.

The COUNTY recognizes that although normal maintenance of the Garden Statues will involve simple and relatively inexpensive procedures, such maintenance on a regular basis is essential to the integrity and authenticity of the Garden Statues. The COUNTY shall provide such regular maintenance according to the written specifications of the VENDOR and shall protect and maintain the Garden Statues against the ravages of time, vandalism and the elements. To the extent practicable, the COUNTY shall make all significant repairs and restorations of the Garden Statues in accordance with the Documentation Worksheet. Notwithstanding any provision in this Agreement to the contrary, the COUNTY shall have no obligation to protect or maintain the Garden Statues against COUNTY-approved renovation to or demolition of the building in or around which the Garden Statues is located if the Garden Statues cannot reasonably, in the sole discretion of the COUNTY, be salvaged or relocated prior to the renovation or demolition. This Section shall survive termination or expiration of this Agreement.

Section 8.02 Repairs & Restorations of the Garden Statues.

The COUNTY shall have the right, in its sole discretion, to determine when and if repairs and restorations to the Garden Statues will be made. The COUNTY may repair or restore the Garden Statues or it may request that Vendor repair or restore the Garden Statues. The VENDOR may be paid a reasonable fee for such repairs provided both parties agree to the fee, in writing, prior to the execution of services. This Section shall survive termination or expiration of this Agreement.

ARTICLE IX INSURANCE/INDEMNIFICATION

Section 9.01 Insurance

VENDOR shall, during the entire Term hereof, keep in full force and effect General Liability Insurance in an amount not less than \$1,000,000 per occurrence combined single limit bodily injury and property damage liability and Workers Compensation insurance covering all employees in accordance with Chapter 440 Florida Statutes. The General Liability policy shall include coverage for Premises - Operations, Contractual and Product Liability, Independent

Contractors, Contractual Liability and Personal Injury, and Broad Form Property Damage Liability coverages.

VENDOR shall add the COUNTY to the commercial general liability as an “additional insured” with a CG 2026 Additional Insured-Designated Person or Organization endorsement or similar endorsement. The additional insured endorsement shall read “Palm Beach County Board of County Commissioners, a political subdivision of the State of Florida, its officers, employees and agents, c/o Facilities Development & Operations Department”. The additional insured endorsement shall provide coverage on a primary basis. Such insurance shall be with an insurance company licensed to do business in the State of Florida and subject to the approval of the COUNTY's Risk Management Department.

VENDOR shall also name the COUNTY as a Certificate Holder. The Certificate Holder shall read “Palm Beach County Board of County Commissioners, c/o FDO, 2633 Vista Parkway, West Palm Beach, Florida 33411-5603”.

A Certificate of Insurance evidencing such insurance coverage shall be provided to the COUNTY at least fifteen (15) days prior to the Commencement Date, such Certificate indicating at least ten (10) days prior notice of cancellation or adverse material change in coverage.

In no event shall the limits of said insurance policies be considered as limiting the liability of VENDOR under this Agreement. In the event that VENDOR shall fail to obtain and maintain in full force and effect any insurance coverage required to be obtained by VENDOR under this Agreement, COUNTY shall have the right of injunction, or COUNTY may immediately terminate this Agreement, notwithstanding any provisions herein to the contrary. Notwithstanding the foregoing, VENDOR shall and does nevertheless indemnify, defend and hold COUNTY harmless from any loss or damage incurred or suffered by COUNTY from VENDOR's failure to maintain such insurance.

In the event of loss or damage, the VENDOR shall look solely to any insurance in its favor without making any claim against the COUNTY, and the VENDOR shall obtain and deliver to the COUNTY, from the insurer under each policy of such insurance, an agreement whereby such insurer waives subrogation of any claim against the COUNTY for loss or damage within the scope of the insurance, and the VENDOR, for itself and its insurers, waives all such insured claims against the COUNTY.

Section 9.02 Indemnification

VENDOR shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of VENDOR's performance of the terms of this Agreement or due to the acts or omissions of VENDOR.

The provisions of this Section 9.02 shall survive the termination or expiration of this Agreement.

ARTICLE X LENGTH OF TERM AND TERMINATION

Section 10.01 Length of Term and Commencement Date

This Agreement shall take effect upon execution by both parties (“Commencement Date”) and remain in effect for a period of 120 days for VENDOR to complete performance and for Final Acceptance of the Garden Statues by the COUNTY, unless extended in accordance with Section 4.01 of this Agreement.

Section 10.02 Termination For Cause

This Agreement may be terminated by the VENDOR upon twenty (20) days’ prior written notice to the COUNTY in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Agreement through no fault of the VENDOR. It may also be terminated, in whole or in part, by the COUNTY, with cause, upon five (5) business day’s written notice to the VENDOR or without cause upon ten (10) business day’s written notice to the VENDOR. Unless the VENDOR is in breach of this Agreement, the VENDOR shall be paid for services rendered to the COUNTY’s satisfaction through the date of termination. After receipt of a Termination Notice, except otherwise directed by the COUNTY, in writing, the VENDOR shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in progress, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE XI MISCELLANEOUS

Section 11.01 Publicity and News Releases

The VENDOR shall not, during the term of this Agreement, disseminate publicity or news releases or submit for awards regarding the Garden Statues without prior written approval from the COUNTY. All reproduction by the COUNTY shall contain a credit to the VENDOR.

Section 11.02 Pledge of Credit

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

Section 11.03 Federal and State Taxes

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The VENDOR shall not be exempt from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the VENDOR authorized to use the COUNTY’S Tax Exemption Number in securing such materials.

The VENDOR shall be responsible for payment of its own and its share of its employees' payroll, payroll taxes, and benefits with respect to this Agreement.

Section 11.04 Entirety of Agreement

The COUNTY and the VENDOR agree that this Agreement sets forth 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 may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto.

Section 11.05 Notices

All communications relating to the day-to-day activities shall be exchanged between the VENDOR and the Art in Public Places Administrator. All notices required in this Agreement shall be sent by certified mail, return receipt requested, hand delivery or other delivery service requiring signed acceptance. If sent to the COUNTY, notices shall be addressed to:

Director, Facilities Development & Operations
2633 Vista Parkway
West Palm Beach, FL 33411-5603

With copy to:
Palm Beach County Attorney's Office
301 North Olive Ave.
West Palm Beach, FL 33401

If sent to the VENDOR, notices shall be addressed to:
Michael McKenzie
Aqua Escapes, Inc.
8155 Chelsea Ct, Unit #C
West Palm Beach, FL 33406

Section 11.06 Access and Audits

The VENDOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least five (5) 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 VENDOR'S place of business.

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 VENDOR, 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.

Section 11.07 Severability

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.

Section 11.08 Remedies

This Agreement shall be governed by the laws of the State of Florida. Any legal action necessary to enforce the Agreement will be held in a court of competent jurisdiction located in Palm Beach County, Florida. 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.

Section 11.09 No Third Party Beneficiary

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 VENDOR.

Section 11.10 Public Records

Notwithstanding anything contained herein, as provided under Section 119.0701, Florida Statutes, if the VENDOR: (i) provides a service; and (ii) acts on behalf of the COUNTY as provided under Section 119.011(2), the VENDOR shall comply with the requirements of Section 119.0701, as it may be amended from time to time. The VENDOR is specifically required to:

A. Keep and maintain public records required by the COUNTY to perform services as provided under this Agreement.

B. Upon request from the COUNTY's Custodian of Public Records, provide the COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119 or as otherwise provided by law. The VENDOR further agrees that all fees, charges and expenses shall be determined in accordance with Palm Beach County PPM CW-F-002, Fees Associated with Public Records Requests, as it may be amended or replaced from time to time.

C. Ensure that public records that are exempt, or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the contract term and following completion of the Agreement, if the VENDOR does not transfer the records to the public agency.

D. Upon completion of the Agreement the VENDOR shall transfer, at no cost to the COUNTY, all public records in possession of the VENDOR unless notified by COUNTY's representative/liaison, on behalf of the COUNTY's Custodian of Public Records, to keep and maintain public records required by the COUNTY to perform the service. If the VENDOR transfers all public records to the COUNTY upon completion of the Agreement, the VENDOR shall destroy any duplicate public records that are exempt, or confidential and exempt from public records disclosure requirements. If the VENDOR keeps and maintains public records upon completion of the Agreement, the VENDOR shall meet all applicable requirements for retaining public records. All records stored electronically by the VENDOR must be provided to COUNTY, upon request of the COUNTY's Custodian of Public Records, in a format that is compatible with the information technology systems of COUNTY, at no cost to COUNTY.

Failure of the VENDOR to comply with the requirements of this article shall be a material breach of this Agreement. COUNTY shall have the right to exercise any and all remedies available to it, including but not limited to, the right to terminate for cause. VENDOR acknowledges that it has familiarized itself with the requirements of Chapter 119, F.S., and other requirements of state law applicable to public records not specifically set forth herein.

IF THE VENDOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE VENDOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, PLEASE CONTACT: BUSINESS AND COMMUNITY AGREEMENTS MANAGER, FACILITIES DEVELOPMENT & OPERATIONS, 2633 VISTA PARKWAY, WEST PALM BEACH, FL 33411, OR BY E-MAIL AT FDORECORDSREQUEST@PBCGOV.ORG, OR BY TELEPHONE AT 561-233-5252.

Section 11.11 Public Entity Crimes

As provided in section 287.132-133, Florida Statutes, by entering into this Agreement or performing any work in furtherance thereof, the VENDOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months immediately preceding the date hereof. This notice is required by section 287.133(3)(a), Florida Statutes.

Section 11.12 Independent Contractor

The VENDOR is, and shall be, in the performance of all work services and activities under this Agreement, and Independent Contractor, and not an employee, agent, or servant of the COUNTY. All persons engaged in any work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the VENDOR's sole discretion, supervision, and control. The VENDOR shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the VENDOR's relationship and the relationship

of its employees to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY.

The VENDOR does not have the power or authority to bind the COUNTY in any promise, agreement or representation.

Section 11.13 Non-Discrimination

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, the VENDOR warrants and represents 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 and expression, or genetic information. Failure to meet this requirement shall be considered default of the Agreement.

As a condition of entering into this Agreement, the VENDOR 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, the VENDOR shall not discriminate on the basis of race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability, or genetic information in the solicitation, selection, hiring or commercial treatment of subcontractors, vendors, suppliers, or commercial customers, nor shall the VENDOR retaliate against any person for reporting instances of such discrimination. The VENDOR 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. The VENDOR 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. VENDOR shall include this language in its subcontracts.

Section 11.14 Regulations; Licensing Requirements

The VENDOR shall comply with all laws, ordinances and regulations applicable to the services contemplated herein. The VENDOR is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

Section 11.15 Scrutinized Companies

A. As provided in section 287.135, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the VENDOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies that boycott Israel List, or is engaged in a boycott of Israel, pursuant to section 215.4725, Florida Statutes. Pursuant to section 287.135(3)(b), Florida Statutes, if VENDOR is found to have been placed on the Scrutinized Companies that Boycott Israel List or

is engaged in a boycott of Israel, this Contract may be terminated at the option of the COUNTY.

B. When contract value is greater than \$1 million: As provided in section 287.135, Florida Statutes, by entering into this Agreement or performing any work in furtherance hereof, the VENDOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the Scrutinized Companies With Activities in Sudan List or Scrutinized Companies With Activities in The Iran Petroleum Energy Sector List created pursuant to section 215.473, Florida Statutes, or is engaged in business operations in Cuba or Syria.

If the COUNTY determines, using credible information available to the public, that a false certification has been submitted by VENDOR, this Agreement may be terminated and a civil penalty equal to the greater of \$2 million or twice the amount of this Agreement shall be imposed, pursuant to section 287.135, Florida Statutes. Said certification must also be submitted at the time of Contract renewal, if applicable.

Section 11.16 E-Verify - Employment Eligibility

VENDOR warrants and represents that it is in compliance with section 448.095, Florida Statutes, as may be amended. No later than January 1, 2021, VENDOR shall: (1) register with and use the E-Verify System (E-Verify.gov), to electronically verify the employment eligibility of all newly hired workers; and (2) verify that all of the VENDOR's subcontractors/subconsultants performing the duties and obligations of this Contract are registered with and use the E-Verify System to electronically verify the employment eligibility of all newly hired workers.

VENDOR shall obtain from each of its subcontractors/subconsultants an affidavit stating that the subcontractor/subconsultant does not employ, contract with, or subcontract with an Unauthorized Alien, as that term is defined in section 448.095(1)(k), Florida Statutes, as may be amended. VENDOR shall maintain a copy of any such affidavit from a subcontractor/subconsultant for, at a minimum, the duration of the subcontract and any extension thereof. This provision shall not supersede any provision of this Agreement which requires a longer retention period.

County shall terminate this Agreement if it has a good faith belief that VENDOR has knowingly violated Section 448.09(1), Florida Statutes, as may be amended.

If County has a good faith belief that VENDOR's subcontractor/subconsultant has knowingly violated Section 448.09(1), Florida Statutes, as may be amended, County shall notify VENDOR to terminate its contract with the subcontractor/subconsultant and VENDOR shall immediately terminate its contract with the subcontractor/subconsultant.

If County terminates this Agreement pursuant to the above, VENDOR shall be barred from being awarded a future contract by County for a period of one (1) year from the date on which this Agreement was terminated. In the event of such contract termination, VENDOR shall also be liable for any additional costs incurred by County as a result of the termination.

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, this AGREEMENT has been fully executed on behalf of the parties hereto by its duly authorized representatives, as of the date first written above.

ATTEST:

By: [Signature]
Facilities Dev. & Ops. Fiscal Manager

PALM BEACH COUNTY

By: [Signature]
Dir. Facilities Development & Operations

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

/s/ Michael W. Jones
Assistant County Attorney

[Signature]
Witness (signature)
Marsha Torso
Witness (print name)

[Signature]
Vendor
By: Michael McKenzie
Its: owner

Exhibit 1
VENDOR Proposal

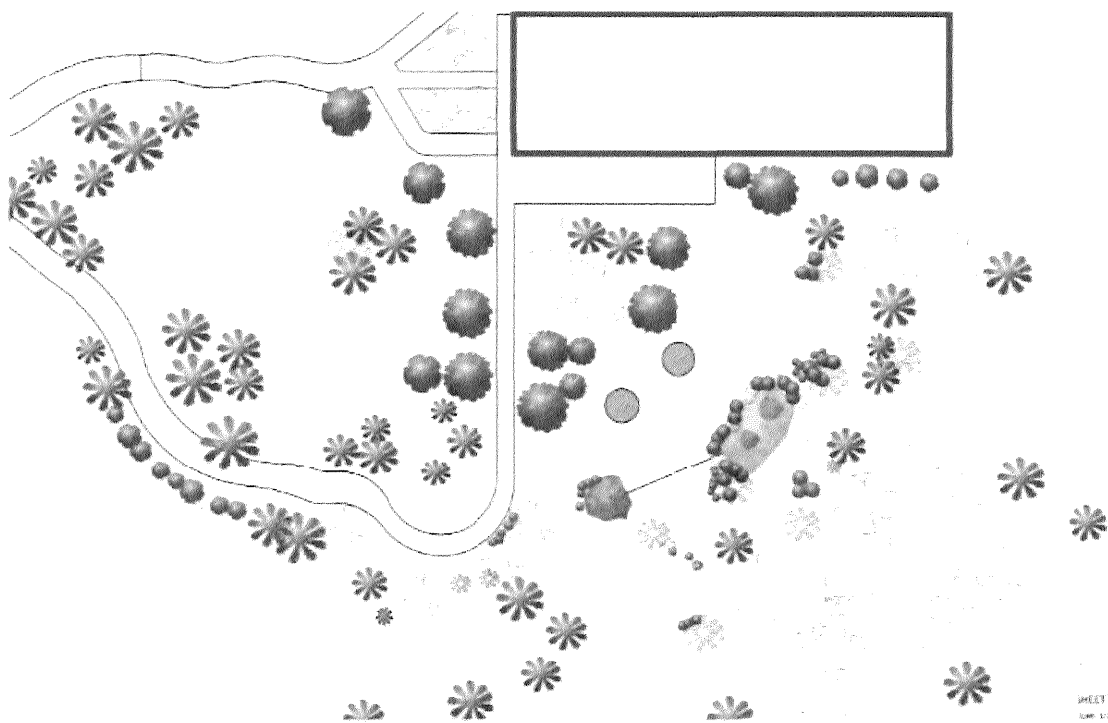
The construction of the Maoi, Easter Island statues, was one of the world's greatest human feats in history so what is their significance to Mounts and the Mounts vision of the future? Easter Island, and the Rapa Nui people, are also a story of one of the greatest human cultural and ecological disasters. In the end, it is a story of our need to preserve, protect our environment and resources; our potable water, our ocean and sea life, our forests, native wildlife and our fertile farmland. Mounts, like many urban green spaces, helps filter and cool our air, generate oxygen and provide habitat for diminishing native wildlife. In other words, help combat the adverse effects of over-urbanization, pollution and changing climatic conditions. The Moai at Mounts are not only a reminder of what greatness we can achieve but also the consequences those achievements can yield.

- One Large Moai Concrete Sculpture approximately 20' tall
- Two medium Moai concrete statues approximately 8' tall
- Four top knot concrete hats
- One concrete platform to resemble natural rock, the two medium Moai are constructed on top of this rock platform. Platform measures approximately 12'L x 8'W x 4'H
- Includes excavation of footer locations. Excavated material to be left on site
- Includes installation of (14) helical piles per engineered plans
- Includes two mats #5 rebar spaced 6" OCEW in footer. #5 Rebar 12" OCEW in center column with #5 hoops per engineered drawings. Minimum grade 60 rebar
- Includes installation of FRP fiberglass molds around structural steel prior to pouring concrete. Forms to be removed and will not remain on site
- Includes application of 3500 PSI minimum concrete in footer, columns, and molds
- Includes two coats of integral pigmented flexcrete cementitious waterproofing for top knots
- Moai statues to be natural concrete finish with latex faux finish to enhance a weathered look. Finish will weather over time thereby enhancing the natural patina
- Includes application of UV super seal to top knots and valcon liquaseal to statues
- Includes final grading and jobsite clean up



Concept Image

Exhibit 2
Worksite



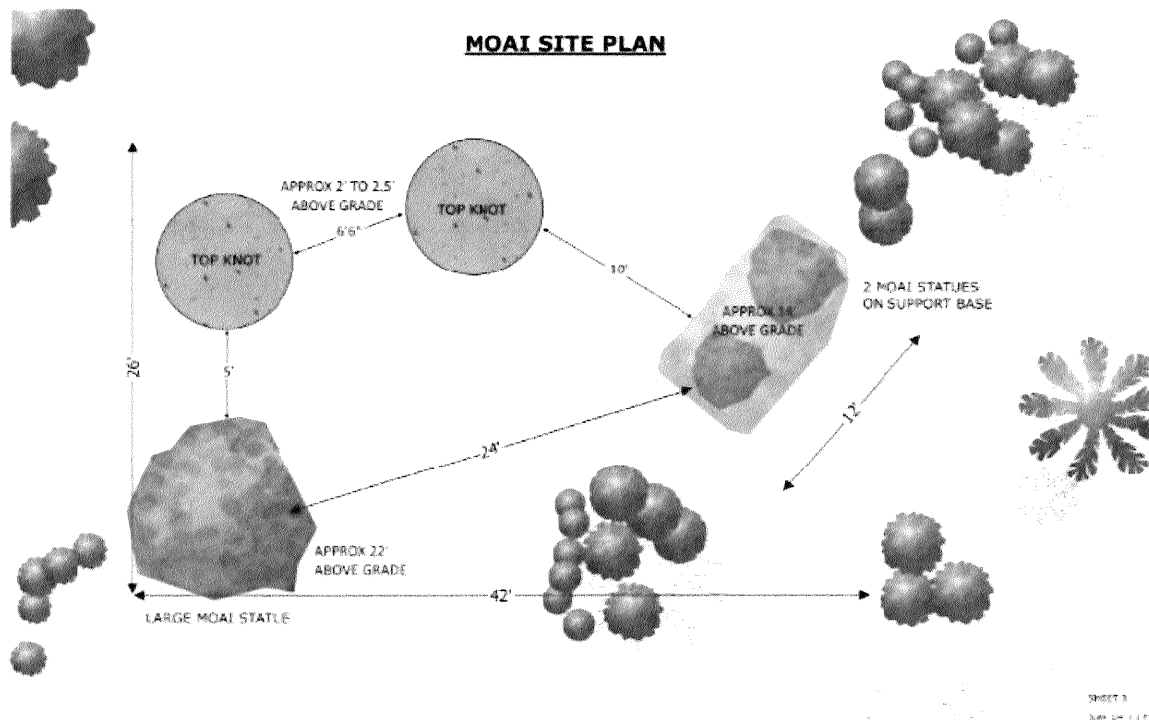


Exhibit 3
Design Requirements

- Statue materials require minimal maintenance and will withstand intense local environment (sun, high winds, salty moist air, and rain).
- Statue complements the architecture, style, scale, medium and integrity of Mounts Botanical Garden of Palm Beach County.

Exhibit 4
Design Review, Project Schedule & Milestones

Task	Duration
Design Development, concrete stain sample review/approval	2 weeks
Construction Documents	1 week
Permit Review/Approval	4 weeks
Install protective safety fencing	1 week
Site layout	
Install helical piles	
Excavate footers	
Preliminary formworks	
Piling/steel/formwork inspection as required	
Install footer double mat steel	1 week
Pour phase 1 concrete into footers	
Steel inspection if applicable	
Strip forms if applicable	1 week
Install structural steel in columns, Steel inspection if applicable	
Pour concrete for Moai Pedestal	1 week
Pour concrete for central support columns	
Strip forms if applicable	
Install fiberglass molds prior to pouring concrete	1 week
Pour concrete into molds and allow times to set up prior to removal	
Job site clean up	
Remove molds	1 week
Shoot concrete for Top Knots, Apply textured finishes	1 week
Apply penetrating sealers to all surfaces	
Final job site clean-up, Remove safety fencing	
Final inspection by COUNTY Art in Public Places/Building department where applicable	

Certain phases of this job will be weather dependent therefore please allow an additional 3 days for every day of rain. Inspections to be called in at each appropriate phase of the job.

Exhibit 5
Materials

- Integral pigmented flexcrete cementitious waterproofing for top knots
- Application of UV super seal to top knots
- Application of valcon liquaseal to statues
- FRP fiberglass molds
- Structural steel
- 3500 PSI minimum concrete
- Helical piles

Exhibit 6
Schedule of Contract Values

Description	Contract Total	% Complete	Value in Place	Prev. Billed	Amount Due	Contract Balance
DESIGN DEVELOPMENT	\$10,500					
CONSTRUCTION DOCUMENTS	\$9,500					
PERMITTING	\$2,500					
MATERIALS	\$50,980					
FABRICATION/ INSTALLATION	\$78,717					
INSTALL HELICAL PILES	\$16,800					
ARTIST FEE	\$15,000					
INSURANCE	\$2,500					
TOTAL	\$186,497					

Exhibit 7
Final Release

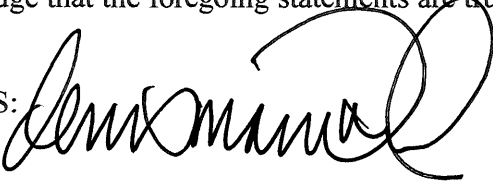
CONDITIONAL FINAL WAIVER AND RELEASE OF CLAIM

KNOW ALL MEN BY THESE PRESENTS, that the undersigned, to induce the final payment in the sum of \$_____ and other valuable considerations and benefits to the undersigned accruing, does upon receipt of payment waive, release and quit claim all claims or demands of every kind whatsoever against the project, commonly known as the Garden Statues at the Mounts Botanical facility, on account of work and labor performed, and/or materials furnished in, to, or about the construction of any Garden Statues located thereon.

It being understood that this is a Final Waiver and Release of Claim, and the undersigned warrants that no assignment of said claim, nor the right to perfect a claim against any work by virtue of the accrual of said payment, has or will be made, and that the undersigned has the right to execute this Final Waiver and Release, and that all laborers employed by the undersigned in connection with the construction of improvements upon the aforesaid premises, to the extent of the payment herein referred to, have been fully-paid and all materials, supplies and personality are free and clear of conditional bill of sale and/or retain title contracts.

IN WITNESS WHEREOF, I have hereunto set my hand and seal and I hereby acknowledge that the foregoing statements are true and correct this ____ day of _____, 20__.

WITNESS:



VENDOR:



The foregoing was acknowledged before me this _____ day of _____, 20__, by _____ as _____ of _____, 20__, personally known to me or who produced the following identification _____, and who did/did not take an oath.

NOTARY PUBLIC IN AND FOR THE COUNTY OF
PALM BEACH, STATE OF FLORIDA

Exhibit 8
Donation Letter



Friends of Mounts Botanical Garden, Inc.
Letter to Donate
July 11, 2020

Dear Palm Beach County Board of County Commissioners,

This letter is to certify that The Friends of the Mounts Botanical Garden, Inc., a Florida Not For Profit Corporation ("Friends"), will donate \$189,982 to Palm Beach County, a political subdivision of the State of Florida ("County"), conditioned upon the use of this donation for Moai statues fabricated and installed by Aqua Escapes, Inc. ("Aqua Escapes"). Friends shall deliver a check made payable to Palm Beach County Board of County Commissioners in the amount of \$189,982 to the County's Cooperative Extension Department within 10 days of the County's acceptance and execution of this donation letter. Friends acknowledges that the County will not execute any agreement with Aqua Escapes for the fabrication and installation of the statues until the donation is received by the County.

Friends agrees to fund all costs associated with this project. The Friend's donation of \$189,982 to the County includes: 1.) a \$186,497 fee for Aqua Escapes' services which covers all materials, expenses, supplies, equipment and the design, fabrication and installation of the Moai statues as well as required insurance coverage; and 2) County staff charges of \$3,485 for the County Public Art Administrator's role in contract management, oversight of statue design, development and siting, and risk management compliance.

The Moai statues will reinforce the Mounts Botanical Garden mission to inspire and educate, and enhance the sensory and spiritual experience of the Garden. The design development and construction period will take approximately fourteen weeks. Statue siting shall be at the discretion of Mounts Botanical Garden Staff and the County's Facilities Development & Operations/Strategic Planning/Art in Public Places Administrator.

The statues will become the property of the County and any ongoing maintenance will become the financial and performance responsibility of the County. The County will use its best efforts to maintain the statues according to the instructions of Aqua Escapes, but Friends will have no cause of action against the County if the statues are damaged, destroyed or removed at the County's sole discretion.

Friends selected Aqua Escapes and all subcontractors and consultants without consultation with or advice from the County. Friends acknowledges that the County will be entering into a services

Page 1 of 2

responsible for any costs in excess of the \$189,982, including County's costs of litigation and attorney's fees, associated with the fabrication and installation of the statues.

Sincerely,

Friends of Mounts Botanical Garden, Inc.

By: Carol S Smith Title: President
Signature
Name: Carol S Smith Date: 7/11/2020
Printed

Must be signed by an officer of the Corporation

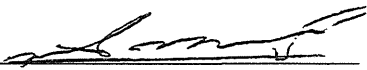
ACCEPTED:
Palm Beach County

By: [Signature]
Dave Kerner, Mayor

Date: 09/03/20

Exhibit 9
Warranty of Title

I, Michael McKenzie, guarantee and warrant that the Garden Statues created for the Mounts Botanical Garden of Palm Beach County, is free and clear of any liens, claims or other encumbrances of any type.



VENDOR Signature

Michael McKenzie
VENDOR Printed Name

Date

Exhibit 10
Documentation Worksheet

This information is required from VENDOR. Completion of this worksheet is a condition precedent to Final Payment thereof.

Please fill in *all* information in the spaces indicated *or* "n/a" (for "not applicable").
Do not leave any space blank. All information must be legible (printed or typed).

VENDOR INFORMATION

Name: *Michael McKenzie*

Date of Birth: *12/18/*

Birthplace / Place of Death: *Ohio*

Citizenship: *USA*

Ethnicity/Culture:

GARDEN STATUE INFORMATION

Title:

Discipline:

☐ Painting/Drawing ☐ Sculpture ☐ Ceramic

☐ Fiber Art ☐ Photography ☐ Film/Video

Other _____

Medium:

Materials: Provide a *complete list of all materials which compose the Garden Statues*. Include generic and manufacturer's product names, as well as product numbers. Include contact information of product manufacturer's if available. Note the words "see *attached list*" and attach list to worksheet if necessary.

Below, provide a list of all *commercially manufactured materials* which are part of the Garden Statues:

<u>Generic Name</u>	<u>Product Brand Name/Number</u>
1) _____	_____
2) _____	_____
3) _____	_____
4) _____	_____
5) _____	_____
6) _____	_____

List below the manufacturer contact information for all *commercially manufactured materials* listed above:

<u>Company Name</u>	<u>Business Address</u>	<u>Tel./Email</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

FABRICATION & TECHNICAL SPECIFICATION INFORMATION

Fabricator(s)/Collaborator(s): List company name and contact information (*address, tel., contact name*) of any fabricator(s) and/or collaborator(s) for the Garden Statues. If more than one fabricator, please include a brief description of specific work performed by each.

Method of Fabrication: Describe method of fabrication of the Garden Statues.

Fabrication Documents: Such as working models; material samples; shop and/or as-built drawings; plans; and specification information. Specification information must be provided for all paint materials (primers and finishes) used in the creation of the Garden Statues. Include a description and location for any fabrication materials of the Garden Statues which are to be retained by sources other than Palm Beach County Art in Public Places.

Maintenance Instructions: Describe in detail the suggested maintenance procedure. Include special materials required, instructions for their use, and recommended frequency of procedure. Additionally, describe any acceptable material substitutes for primers and/or paint finishes.

Cleaning

Materials

Instructions

Frequency

Replacement Parts (List any components which require regular replacement)

Materials

Sources

Graffiti Protection

Lighting: Describe any special lighting requirements for the Garden Statues whether or not provided/integrated as part of the Garden Statues.

PUBLICITY INFORMATION

Exhibitions: Exhibition history of the Garden Statues. Indicate whether or not the proposal or drawings have been exhibited. Include copies of exhibition materials (i.e. invitations, news articles) if available.

Publications: Fill in publication history; reproduction or mention of the Garden Statues. Include copies of publications if available.

PREPARER'S NAME

Fill in name of individual completing form and contact *information if other than* **VENDOR**.

PREPARER'S SIGNATURE

Please sign and date the form in the space provided. If preparer is other than the **VENDOR**, then describe affiliation to **VENDOR** or relationship with the Garden Statues (i.e. , **VENDOR**'s representative, **VENDOR**'s spouse, trustee of **VENDOR**'s estate etc.)

Completion Date _____ / _____ / _____
(month) (day) (year)

- ☐ Denotes date of fabrication
- ☐ Denotes date of installation

Dimensions (attach isometric sketch with dimensions if necessary)

_____ H x _____ W x _____ D

Inscriptions and Identifying Marks

☐ VENDOR’s signature - Location _____

☐ Date - Location _____

Other – Location _____

Siting

Street Address: *531 Military Trail, West Palm Beach, FL 33415*

Building Name: *Mounts Botanical Garden of Palm Beach County, Tropical Forest*

Building Floor Level: N/A

Location is Exterior and/ or Interior Application (“E” or “I”): “E”