

REQUEST FOR PROPOSALS (RFP)
Two Commissioned Sculpture Opportunities at Roundabouts:
Southwest Paar Drive and Southwest Darwin Boulevard
and
Southwest Paar Drive and Southwest Savona Boulevard
Port St. Lucie, Florida

Issue Date: November 13, 2025

Due Date: December 14, 2025 by 11:59pm EST

Project Description

The City of Port St. Lucie is seeking *up to* two artists or artist teams to conceptualize, fabricate, and install two newly-commissioned sculptures, one for each of the two newly-constructed roundabouts at Southwest Paar Drive and Southwest Darwin ("Paar/Darwin Site") Boulevard and the roundabout at Southwest Paar Drive and Southwest Savona Boulevard ("Paar/Savona Site"). Construction is projected for completion in late 2026. In alignment with Port St. Lucie's public art plan, the sculptures for both roundabouts should reflect the character of Port St. Lucie and enhance the City's visual landscape. Specific goals for sculpture at the new roundabouts include:

- Express Port St. Lucie's identity.
- Offer a visually stimulating, transformative, and inspiring experience to enliven the built environment.
- Artwork may not have electrical or digital components, excluding standard artwork illumination.
- Concepts should convey either abstract compositions, or natural imagery of plants and wildlife, excluding fish and marine life.
- Artwork should be light, and airy in form - avoiding bulky or heavy visual massing.
- While the City of Port St. Lucie will plan and implement landscaping at each roundabout site, the art should complement and integrate with planned landscaping at each site (landscaping provided by the City of Port St. Lucie).
- Artwork concepts minimize driver distractions.
- Avoid reflective or mirrored surfaces and minimize potential driver distraction.

Each sculpture has been allocated a lump sum of \$150,000 for the selected artist's or artist teams scope of services. The budget for this project is all-inclusive and must cover all costs associated with the project, including but not limited to: artist

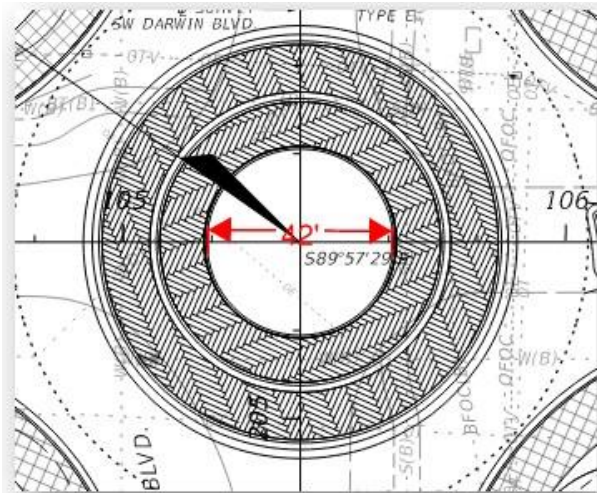
expenses/honorarium, administration, sub-consultants, travel/lodging, artwork fabrication (including materials, details and specifications), site prep (including but not limited to foundation construction, structural engineering, plinth building, etc.), artwork storage, transportation and installation, related permits, licenses, taxes and insurance. Any expenses that exceed the contracted amount will be the artist's or artist team's responsibility.

Project Site

Site drawings are included below. Artwork will be placed within the 42 foot diameter central circle. Artwork foundation/site work may not commence until the roundabout is completed in late 2026. Upon completion of the roundabout, the central circle will be covered with sod.

The completed site will include 12-foot pathways that will improve safe access for pedestrians and cyclists along the roadway. It will also feature improved drainage with curb and gutter system around roundabout improvements, as well as pedestrian crosswalks, and roadway and pedestrian lighting

The artist(s) is responsible for the engineering, design, hiring of contractors, permits, costs, and any other related tasks associated with any plinth, foundation, or related structure necessary for the security of the artworks at the roundabouts.



- Tuesday, December 16 from 2:10-2:50 pm EST
- Tuesday, December 16 from 3:00-3:40 pm EST
- Wednesday, December 17 from 10:10-10:50 am EST

We have allocated a total of 40 minutes for your proposal; anticipating up to 20 minutes for you to present and 20 minutes for conversation with the Panelists. Your concept will be reviewed by the staff project team prior to your presentation so that questions can be compiled in advance of your presentation, but no concepts will be shared with panelists in advance of the presentation. You will maintain control of the presentation during the Panel review.

Selection Criteria

The artist or artist team will be selected by demonstrating:

- **Artistic Excellence:** The aesthetic significance and quality of the artwork, including the artworks transformative and distinctive qualities.
- **Context:** Artwork's appropriateness to surrounding architecture, topography, local history, and community attitudes and concerns of both the residents of the City of Port St. Lucie and the surrounding community.
- **Durability, Safety and Permanence:** The artwork is highly durable, as well as structurally sustainable. The artwork must be examined for unsafe conditions, materials, or factors, as well as the potential for excessive maintenance.
- **Technical Feasibility:** The artist must provide convincing evidence of his or her ability to complete the artwork as proposed.
- **Past Performance:** The Selection Committee will consider the artist's performance under previous contracts including success in meeting established timelines and budgets. The references that candidates have submitted as part of the RFP process will be contacted prior to their presentations.
- **Cost Feasibility:** The Selection Committee will consider the cost feasibility and determine if the project is realistic within the specified project budget.

Once selected, the artist must design and create artwork that:

- is of high artistic quality
- is appropriate to the project site
- is of durable design and uses durable materials that require minimal maintenance
- provides maximum resistance to vandalism
- reflects one or more of the project goals identified by the Committee

Responding to this RFP

Please send a concept proposal addressing the following:

- Narrative description of the concept and its relationship to its site/community.
- Concept drawings that show the following:
 - Location and dimensions of the artwork and site plan with footprint of artwork.
 - Visual depiction of the artwork including several elevation drawings to understand the artwork from several sightlines.
- List of proposed materials
- List of maintenance issues and concerns
- Preliminary installation plan and required equipment
- Timeline from concept to final installation with key milestones with target installation date of Spring 2027.
- Budget with major line items identified:
 - Each sculpture has been allocated a lump sum of \$150,000 for the selected artist or artist team's scope of services. The budget for this project is all-inclusive of all costs associated with the project, including but not limited to: artist expenses/honorarium, administration, sub-consultants, travel and lodging, artwork fabrication (including materials, details and specifications), site preparation (including but not limited to foundation construction, structural engineering, plinth building, etc.), artwork storage, transportation and installation, related permits, licenses, taxes and insurance.

Any expenses that exceed the contracted amount will be the artist's responsibility.

Please outline the following:

- Artist design fee
- Engineering costs
- Travel costs
- Insurance costs
- Contingency
- All applicable taxes
- Artwork fabrication costs, including all anticipated costs for subcontractors
- Itemized artwork transportation costs (shipping, crating, delivery, etc.)
- Anticipated Installation Details, including but not limited to:
 - Itemized anticipated installation costs, including but not limited to equipment rental, installation personnel fees,

- maintenance of traffic (MOT) personnel fees, travel expenses related to installation, and construction-related costs
- Anticipated installation plan

Submission Format

Responses shall be submitted as a single PDF file via email to Josh Lapp, Designing Local (josh@designinglocal.com). Questions about this RFP shall be sent in writing to josh@designinglocal.com by November 18, 2025. Phone calls will not be accepted.

RFP Submission Due Date: December 14, 2025 by 11:59pm EST

Selection Process and Timeline

The timeline for the full process is below, and is subject to change:

November 13, 2025	Finalists Selected and Notified, RFP circulated
December 14, 2025	Finalist Proposals due
Week of Dec. 15, 2025	Finalists present concepts to Selection Committee
January 2026	Selection Committee forwards final artist(s)/design recommendation
February 2026	Artist(s) Selected and Notified
February 2026	Contracting
Late 2026	Projected date for roundabout construction completion
Spring 2027	Artwork installation complete

Artist Scope of Services

Please review, in the Appendix of this RFP, the draft contract for this project. The selected artist(s) or artist team(s) will be responsible for the following scope of services:

- Design two sculptural public artworks for two newly-constructed roundabouts at Southwest Paar Drive and Southwest Darwin ("Paar/Darwin Site") Boulevard and the roundabout at Southwest Paar Drive and Southwest Savona Boulevard ("Paar/Savona Site").
- Upon preliminary approval of the artwork design, work with a Florida-licensed structural engineer to furnish comprehensive engineering reports, drawings, renderings, etc. for approval by the City.
- Collaborate with local partners to obtain all necessary permits.
- Lead community engagement as necessary, as directed by the City of Port St. Lucie.
- Deliver the artwork to the site for installation and perform artwork installation.
- Create and implement an installation plan.

- Outline detailed routine and long-term maintenance and care instructions for the artwork. Long-term maintenance must be minimal, as assured by the proper selection and installation of materials.

The City will furnish site reports, upon selection of the artist(s). The artist(s) will be responsible for furnishing all necessary information, including but not limited to drawings, descriptions, renderings, list of materials, installation plans, ongoing maintenance plan, engineering documents, etc.

Insurance Requirements

Please refer to Exhibit D in the Draft Contract (included as an attachment) for complete details about the City of Port St. Lucie's insurance requirements.

Appendix

Port St. Lucie Public Art Master Plan - accessible here:
https://issuu.com/designing_local/docs/draft_document

Draft Contract for artwork at both sides

Artwork Commission Agreement

SAMPLE AGREEMENT – DO NOT EXECUTE

(Agreement subject to change)

THIS AGREEMENT, is entered into this ___ day of _____, 2025, by and between the City of Port St. Lucie, a Florida municipal corporation (hereinafter the "City") located at 121 SW Port St Lucie Blvd, Port St Lucie, FL 34984 and _____ (hereinafter "Artist") located at _____.

WHEREAS, the City requires the services of an artist to create a work of art (hereinafter the "Artwork", and as described and defined in Exhibit A, in a public space located at the roundabout at Southwest Paar Drive and Southwest Savona") (hereinafter "Site"); and

WHEREAS, the Artist is a professional artist whose work and qualifications make the Artist uniquely qualified to create the Artwork; and

WHEREAS, the City has selected the Artist based upon the Artist's work and qualifications; and

WHEREAS, the Artist and the City wish to perform under the terms and conditions of this Agreement to complete the project (the "Project").

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE COVENANTS HEREINAFTER SET FORTH, IT IS AGREED AS FOLLOWS:

Article 1. Scope of Services

- I. Artist's Obligations. The Artist shall:
 - A. Perform all services and furnish all supplies, material and/or work equipment as necessary for the design, fabrication, transportation and installation of the Artwork. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
 - B. With the assistance of the City, be responsible for obtaining any necessary permits to install the Artwork.
 - C. Determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the City, as set forth in this Agreement.
 - D. Prepare the design concept described in Section 1.3 of this Agreement.
 - E. Complete the fabrication, transportation and installation of the Artwork by the scheduled dates as provided in the Proposed Schedule/Time Frame included in Exhibit E.
 - F. Arrange for the transportation and installation of the Artwork in coordination with the City. If the Artist does not install the Artwork him/herself, the Artist shall supervise and approve the installation. Prior to the installation of the Artwork, the Artist shall inspect the Site to ensure that it is ready to accept the Artwork and compliant with the specifications provided by the Artist. The Artist shall notify the City of any perceived conflict, defect or non-compliance with specifications.

- G. Artist shall not begin installation until written notification from the City that all plans, including but not limited to a Maintenance of Traffic ("MOT") plan, right-of-way ("ROW") plans, and rigging plans, have been properly obtained by the City.
 - H. Artist is responsible for connecting, and included associated costs, for connecting any standard artwork lighting components to the electrical connections provided by the City. Such costs should be included in the budget, as referenced in Section IV and Exhibit C.
 - I. Procure and provide required insurance in amounts and limits specified in Article 5 and Exhibit D.
 - J. Inform the City of the progress of each phase of work completed under the Agreement in the form of photographic documentation and written description as indicated in the Budget/Payment Schedule, Exhibit B.
- II. City's Obligations. The City Shall:
- A. Assign an informed person ("Project Coordinator") to work with the Artist on the Project.
 - B. Be responsible for providing the Artist, at the City's sole expense, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by Artist in order to perform. The Project Coordinator will facilitate Artist's application for any permits required for the Project.
 - C. Prepare the Site in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement, including but not limited to obtaining right-of-way plans, rigging plans, and the MOT plans, .
 - D. Be responsible for all expenses, labor and equipment to prepare the Site for the timely transportation and installation of the Artwork, including costs to obtain right-of-way plans, rigging plans, and the MOT plans.
 - E. Complete the Site preparations by the scheduled installation date as provided in the Proposed Schedule/Time Frame included in Exhibit E or shall contact the Artist in writing informing him/her of any delays.
 - F. Be responsible for monthly storage fees until the Site is ready for installation, in the event that installation is delayed more than two (2) months beyond the Proposed Schedule Time Frame due to the City's failure to prepare the Site. In the event that the City fails to prepare the Site, absent any force majeure event or unforeseen delays in construction schedule, in accordance with specifications as provided, or Artist is refused access to the Site as reasonably required, the Artist shall be excused from any delay occasioned by such failure of access or preparation.
 - G. Be responsible for any landscaping, structural or finishing modifications to the Sites, and electrical supply and connection necessary to integrate the Artwork into the Site before and after its installation, in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement.
 - H. Provide and install a plaque on or near the Artwork containing a credit to the Artist and a copyright notice substantially in the following form: Copyright © _____, date of publication. If the plaque is to be placed on the Artwork or Artwork pedestal, it should be done in consultation with the Artist.

III. Design

A. Concept/Schematic

The Artist submitted design concepts/schematics (the "Design") which were selected and approved by the City, consisting of colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artworks and how they will be installed at the Site, mock-ups, color and materials samples, and proposed fabrication methods. The Design is attached to this Agreement as Exhibit A.

B. Approval

Within forty-five (45) days after the execution of this agreement, the City shall notify the Artist if City requires any revisions to the Design in order to comply with any applicable laws, ordinances, and/or regulations or for other reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by both parties, such revisions will become a part of the Design. At the moment of approval for the Artwork, the City must also approve the Artist's intended display elements at the Site, including but not limited to electric needs for proposed lighting; plinths or other related display structures pertaining to the physical integrity of the Artwork at the Site; and proposed signage. The City will provide the Artist with an overview of intended landscaping at the Site.

C. Proposed Change After Approval

After the final form of the Work is approved by the City, the Artist may not change or alter the Artwork without the City's prior written consent at the City's sole discretion. Artist shall bear the sole responsibility and cost of removing and/or repairing any added design elements that are not approved, in writing, by the City.

D. Final Design/Construction Documents

Upon approval of the Design by City, Artist is authorized to proceed with the final Design which shall include the following:

1. Any amended versions of drawings, renderings, maquettes, plans or finish samples included in the Preliminary Design; and
2. Engineered drawings of the Artworks' structural components, fabrication and installation methods, which must be signed and stamped by licensed design professionals/engineers; and
3. Detailed drawings, plans and/or written descriptions of all work to be done on or to the Sites by City before and after installation of the Artwork including, but not limited to initial surveying, leveling and landscaping, forming and pouring of concrete slabs, preparation of pedestal, walls, electrical & plumbing sources and finish landscaping/integration (the "Final Design").
4. Upon approval by the City, the Final Design as approved (the "Approved Design") shall be attached as Exhibit I to this Agreement. The Artist shall provide a set of as-built drawings for the Work following its installation.

IV. Budget and Payment Schedule

A. Budget

1. The budget for this project shall not exceed \$150,000.00.

2. The Artist shall prepare a budget ("Artist Budget,") which shall include all goods, services and materials with such costs itemized. The Artist Budget is attached hereto as Exhibit C.
3. If the Artist incurs costs in excess of the amount listed in the Artist Budget, the Artist shall pay such excess from the Artist's own funds unless the Artist obtains approval in writing for such additional costs from the City.

B. Payment Schedule

1. Artist's completion milestones and payment schedule is as set forth in Exhibit B.
2. A completed W9 and invoices are required for processing payment.
3. Payments will be made via ACH in accordance with City policy and procedures.

V. Fabrication and Installation

- A. The Artist shall fabricate and install the Artwork in substantial conformity with the Design. The Artist may not substantially deviate from the Design without written approval of the City.
- B. The Artist shall provide at least ten (10) days' notice to the City, in writing, when fabrication of the Artwork have been completed, and that the Artwork is ready for delivery and installation at the Site.
- C. Artist shall not begin installation until written notification from the City that all plans, including but not limited to a Maintenance of Traffic ("MOT") plan, right-of-way ("ROW") plans, and rigging plans, have been properly obtained by the City.
- D. The City shall promptly notify the Artist of any delays impacting installation of the Artwork.
- E. The Artist shall inspect the Site at least ten (10) days prior to, but no greater than thirty (30) days prior to, the transportation and installation of the Artwork and shall notify the City of any adverse Site conditions that will impact the installation of the Artwork and which are in need of correction within five (5) business days of the discovery of such adverse Site conditions. Failure to inspect the site by the Artist shall be deemed as an acceptance of the Site conditions.
- F. The Artist shall deliver and install the Artwork to the Site in accordance with the Proposed Schedule/Timeframe included in Exhibit E.
- G. The Artist shall be present to supervise the installation of the Artwork.
- H. Upon completion of the installation of the Artwork, the Artwork shall be deemed to be in the custody of the City for purposes of Article 3 and Article 5 of this Agreement, and the City assumes responsibility for the Artwork.
- I. Upon completion of the installation of the Artwork, the Artist shall provide the City with written instructions for the future maintenance and preservation of the Artwork.
- J. Notwithstanding any contrary language in the Project Timelines, Exhibit E, Artist may not install the Artwork until authorized to do so by the City in writing.

Article 2. Terms of Agreement

I. Duration

This Agreement shall be effective on the date that it has been signed by both parties, and, unless terminated earlier pursuant to such provisions in the Agreement, shall remain in effect until the City receives title to the Artwork ("Termination Date").

II. Force Majeure

The City shall grant to the Artist a reasonable extension of time in the event of a Force Majeure Event. As used herein, a "Force Majeure Event" shall include governmental moratorium or unavailability of essential supplies or utilities (e.g. power or water) through no fault of Artist, fire (including wildfires), explosion or similar casualty, sabotage, theft, vandalism, riot or civil commotion, hurricane, tropical storm, tornado or flooding. Any extension of any date or deadline set forth in this Agreement due to a Force Majeure Event shall be only for delay in performance that is an actual and direct result of such Force Majeure Event. In the event that Artist claims a delay for a Force Majeure Event, Artist must make a claim for an extension in writing to City within five (5) business days after the occurrence of a Force Majeure Event for which such claim is being made.

Article 3. Risk of Loss. The Artist shall bear the risk of loss or damage to the Artworks until completion of the installation of the Artworks. The Artist shall take such measures as are reasonably necessary to protect the Artworks from loss or damage.

Article 4. Artist's Representations and Warranties

I. Warranties of Title

The Artist represents and warrants that:

- A. The Artwork is solely the result of the artistic effort of the Artist;
- B. Except as otherwise disclosed in writing to the City, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- C. The Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- D. The Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- E. The Artwork is free and clear of any liens from any source whatsoever;
- F. All Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party;
- G. The Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;
- H. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances and with all necessary care, skill, and diligence;
- I. These representations and warranties shall survive the termination or other extinction of this Agreement;
- J. Artist shall provide the City with Warranty of Titles, Exhibit F, certifying that the Artwork is free of liens, claims or other encumbrances and that Artist has the legal ability to make this sale upon the completion of installation and final payment to the Artist.

II. Warranties of Quality and Condition

- A. The Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for two (2) years after the Termination Date ("Warranty Period").

- B. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation instructions submitted by the Artist upon completion of the Artwork.
- C. If, within the Warranty Period, the City observes any breach of warranty described in this agreement that is curable by the Artist, the Artist shall, at the request of the City, cure the breach promptly, satisfactorily and consistent with professional standards, at the sole cost and expense of the Artist. The City shall give notice to the Artist of such breach with reasonable promptness.
- D. If, after the Warranty Period, the City observes any breach of warranty described in this agreement that is curable by the Artist, the City shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, the City may seek the services of a qualified restorative conservator and maintenance expert.
- E. The foregoing Warranties of Quality and Condition are conditional and shall be voided by the City's failure to maintain the Artwork in accordance with Artist's specifications and the applicable conservation standards.

Article 5. Insurance and Indemnification

I. General

- A. The Artist acknowledges that until completion of the installation of the Artwork, any injury to property or persons caused by the Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artworks are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation, delivery or installation of the Artwork, regardless of where such loss occurs.
- B. Artist shall procure insurance coverages as set forth in Exhibit D for the entire duration of the installation.

II. Indemnity

The Artist shall indemnify, defend, and hold harmless the City, its representatives, employees, and elected officials, from and against all claims, causes, demands, legal fees, costs, losses, damages or other expenses occasioned by any act, conduct, negligence, error or omission by the Artist or its respective agents, employees or delegees in the performance of this Agreement or occasioned wholly or in part by any act, conduct, error or omission by the Artist or its respective agents, employees or delegees in the performance of this Agreement, occurring during the term of this Agreement. In agreeing to this paragraph, the City does not alter, extend or waive any defense of sovereign immunity to which it may be entitled under the Florida Constitution, section 768.28, Florida Statutes, or as otherwise provided by law. This Paragraph shall survive the termination of this Agreement. Notwithstanding any provision of this Agreement to the contrary, no Party shall recover from a party to this Agreement in an action, of whatever nature, in contract or tort, any consequential or incidental damages, lost profits, or any type of expectancy damages.

Article 6. Ownership and Intellectual Property Rights

I. Title

Title to the Artwork shall pass to the City upon completion of the Artwork, completion of installation of the Artworks, and final payment by City to Artist pursuant to Exhibit B. The Artist hereby acknowledges that upon the Artwork's transfer of ownership to the City, the Artwork will be accessioned into the Port St. Lucie Public Art Collection (hereinafter "Collection").

II. Copyright Ownership

- A. Artist Copyright: The Artist retains ownership of the copyright in the Artwork and in any plans, diagrams, installation instructions, drawings, models, and any other work product materials pertaining to the Artwork produced by the Artist. The Artist represents and warrants to the City that the Artwork and materials pertaining to the Artwork (including but not limited to instructions, plans, diagrams, models, and sketches) will be original to the Artist and all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright, and do not violate any third party's copyright or other intellectual property rights.
- B. City Copyright: The Artist agrees that the City and its agents may document the Artwork, and any renderings of the Artwork or work product, including, without limitation, its display, installation, and deinstallation, by all modern methods available (including but not limited to photography and video) for archival, promotional, publicity, educational, and any other non-commercial purposes as the City shall determine and that the City shall own the copyright in any and all City documentation. City will give credit to the Artist as specified herein when images of the Artwork are published.

III. Reproduction Rights

- A. Artist License: The Artist hereby grants the City an exclusive, perpetual, worldwide license, with right to sublicense, to reproduce and distribute images of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogs or other similar publication provided that these rights are exercised in a tasteful and professional manner.
- B. City License: The City hereby grants the Artist a non-exclusive, perpetual, worldwide license, with right to sublicense, to reproduce and distribute images of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogs or other similar publication provided that these rights are exercised in a tasteful and professional manner.
- C. All reproductions by the City shall contain a credit to the Artist and a copyright notice in substantially the following form: © ARTIST, 2025.
- D. The Artist shall use his best efforts in any public showing or resume use of reproductions of the Artwork to give acknowledgment to the City in substantially the following form: "An original artwork owned and commissioned by the City of Port St. Lucie, Florida."
- E. The City shall be entitled to make reproductions of the Artwork for commercial purposes including, but not limited to, t-shirts, postcards and posters, if any.

Article 7. Artist's Rights

I. General

- A. The Artist waives their rights pursuant to 17 U.S.C. §106A(a)(3) to prevent any distortion, mutilation, modification, or destruction of that work, for whatever reason and for whatever use of the Artwork such distortion, mutilation, modification, or destruction of work is undertaken.
- B. This waiver does not extend to the rights of attribution conferred by 17 U.S.C. §106A(a)(1) or §106A(a)(2).
- C. If any substantial alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork.
- D. The Artist understands, and consents, to the City using any secondary material, including but not limited to, lighting, décor, signage, etc. without first obtaining permission from the Artist.

II. Deaccession of Artwork(s)

Artist hereby acknowledges that the City may deaccession the Artwork, including but not limited to, taking one of the following actions:

- A. selling the Artwork;
- B. donating the Artwork; or
- C. discarding or destroying the Artwork;

III. Sale of Artwork

In accordance with the Policy, the artist, or estate of the artist, will be given the first option to purchase or exchange the Artwork. In the event the City receives a bona fide written offer from any third party to purchase the Artwork, which the City desires to accept, Artist has the right and may elect to purchase the Artwork at the price offered by such third party (the "Offered Price"). The City shall give notice to Artist, including delivery to Artist of a true and exact copy of the written bona fide offer, and allow Artist thirty (30) calendar days subsequent to OWNER's receipt of such notice within which Artist may elect to purchase the Artwork from the City, and in the event Artist so elects to purchase the Artwork by giving notice of such election to the City within the thirty (30) day period the City shall sell the Artwork to Artist at the offered Price.

Article 8. Artist as an Independent Contractor

- I. The Artist agrees to perform all work under this Agreement as an independent contractor and not as an employee of the City. The Artist acknowledges and agrees that the Artist shall not hold himself out as an authorized agent of the City with the power to bind in any manner. The Artist shall provide the City with the Artist's Tax Identification number and any proof of such number as requested by the City.

Article 9. Assignment of Artwork

- I. The work and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the City. The City shall have the right to assign or transfer any and all of the City's rights and obligations under this Agreement, subject to the Artist's consent, which consent will not be unreasonably withheld.

Article 10. Termination and Default

- I. If either party to this agreement shall fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice of default to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have 30 days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement may be terminated.
- II. If the Artist defaults, fails to cure, and the City terminates the Agreement pursuant to such failure to cure, then the Artist shall return to the City all funds provided by the City. All finished and unfinished drawings, sketches, photographs and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist.
- III. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for Force Majeure Events beyond such Party's reasonable control. If a Party claims termination for a Force Majeure Event, such party must provide notice within ten (10) business days after the occurrence of a Force Majeure Event for which such termination is being made. Additionally, notice of termination of this Agreement, for a Force Majeure Event, shall be given to the non-terminating party in writing not less than ten (10) days prior to the effective date of termination.
- IV. The City may terminate this Agreement without cause upon sixty (60) days written notice to the Artist. The City shall pay the Artist for services performed and commitments made prior to the date of the termination, consistent with the schedule of payments set forth in Exhibit B of this Agreement. The Artist shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated to date under Exhibit B. The Artist shall retain possession and title to the plans, drawing, designs, maquettes, and models already prepared and submitted or prepared for submission to the City by the Artist under this Agreement prior to the date of termination.
- V. Upon notice of termination, the Artist and his subcontractors shall cease all services affected.

Article 11. Death or Incapacity

- I. If the Artist becomes unable to complete this Agreement due to death or incapacity, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for purposes of Article 10.
- II. In the event of incapacity, the Artist shall assign his obligations and services under this Agreement to another artist provided that the City approves of the new artist and so agrees in writing. If the City does not agree, the City may elect to terminate this Agreement. The Artist shall retain all rights under Article 6 and Article 7 in the event of termination pursuant to this provision.
- III. In the event of death, this Agreement shall terminate effective the date of death. The Artist's heirs shall retain rights under Article 6 and Article 7.

Article 12. Waiver. The Parties agree that a waiver of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition

contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

Article 13. Jury Trial Waiver. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit in and for St. Lucie County, Florida, for claims under state law, and in the Southern District of Florida for claims justiciable in federal court. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT. This clause shall survive the expiration or Termination of this Agreement.

Article 14. Amendments. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.

Article 15. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel to be in conflict with the laws, rules and/or regulations of the United States or the State of Florida, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

Article 16. Choice of Law; Venue. This Agreement shall be governed by the laws of the State of Florida both as to interpretation and performance. The venue of any action taken to enforce this Agreement, arising out of the Agreement, or related to the Agreement, shall be in St. Lucie County, Florida.

Article 17. Entire Agreement . This Agreement embodies the whole understanding of the parties hereto with respect to the subject matter set forth herein. There is no promise, term, condition or obligation between the parties with respect to the subject matter set forth in this Agreement, other than those contained herein, and this Agreement shall supersede all previous communications, representation, or agreements between the parties, either oral or written, with respect thereto.

Article 18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement.

Article 19. Public Records. Artist and any subcontractors shall comply with section 119.0701, Florida Statutes. Artist and any subcontractors are to allow public access to all documents, papers, letters, or other material made or received by the Artist in conjunction with this Agreement, unless the records are exempt from Article I, section 24(a), Florida Constitution, and section 119.07(1)(a), Florida Statutes. Pursuant to section 119.10(2)(a), Florida Statutes, any person who willfully and knowingly violates any of the provisions of chapter 119, Florida Statutes, commits a misdemeanor of the first degree, punishable as provided in sections 775.082 and 775.083, Florida Statutes.

RECORDS

The City of Port St. Lucie is a public agency subject to chapter 119, Florida Statutes. The Artist shall comply with Florida's Public Records Laws. ARTIST'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to section 119.0701, Florida Statutes, Artist agrees to comply with all public records laws, specifically to:

Keep and maintain public records required by the City in order to perform the service.

1. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies and GS2 for Criminal Justice Agencies and District Medical Examiners.
2. During the term of the Agreement, the Artist shall maintain all books, reports, and records in accordance with generally accepted accounting practices and standards for records directly related to this Agreement. The form of all records and reports shall be subject to the approval of the City.
3. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Artist's records under this Agreement include, but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, emails and all other documentation generated during this Agreement.
4. The Artist agrees to make available to the City, during normal business hours all books of account, reports and records relating to this Agreement.
5. An Artist who fails to provide the public records to the City within a reasonable time may also be subject to penalties under section 119.10, Florida Statutes.

Upon request from the City's custodian of public records, provide the City 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.

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 Agreement term and following completion of the Agreement if the Artist does not transfer the records to the City.

Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Artist or keep and maintain public records required by the City to perform the service. If the Artist transfers all public records to the City upon completion of the Agreement, the Artist shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Artist keeps and maintains public records

**IF THE ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF
CHAPTER 119, FLORIDA STATUTES, TO THE ARTIST'S DUTY TO
PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT,
CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984
(772) 871 5157
pr@cityofpsl.com**

Date _____

Signature of Notary Public

My Commission expires

Printed Name of Notary Public

Exhibit A: Design

Exhibit B: Budget and Payment Schedule

Exhibit C: Budget from Artist

Exhibit D: Insurance

1. Commercial General Liability insurance policy, written on an occurrence form basis, including all the usual coverage known as:
 - a. premises/operations liability
 - b. products/completed operations
 - c. personal/advertising injury
 - d. contractual liability
 - e. broad-form property damage
 - f. independent contractor's liability
2. Said policy must provide the following minimum coverage:
 - a. \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
 - b. \$1,000,000 annual aggregate
 - c. Automobile liability. Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event, the Artist does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Artist to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation shall be provided to the City. Coverage shall apply on a primary basis.
 - d. Workers' Compensation Insurance and Employer's Liability. The Artist shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement shall be provided to the City. Coverage shall apply on a primary basis.
 - e. Transportation/Cartage insurance. Prior to shipment, the Artist must show the City that the artwork is insured independently or by the carrier during its shipment to the Site. While under the care, custody and control of the carrier up to the value of the Artwork.
 - f. Installation Subcontractor Liability. It shall be the responsibility of the Artist to ensure that all subcontractors for installation of the Artwork at the Site comply with the same insurance requirements referenced above without the language "when required by written contract".

Exhibit E: Project Timeline/Time Frame

Exhibit F: Warranty of Title

I, _____ (name), _____ (title) guarantee and warrant that the WORK listed in the Artwork Commission Agreement is free and clear of any liens, claims or other encumbrances of any type.

ARTIST

By: _____

Its: _____

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _ day of _____ 2025, by _____ on behalf of _____, is [] personally known to me to be the person who executed the foregoing instrument, or who has [] produced the following identification:

_____.

Signature of Notary Public

My Commission expires

Printed Name of Notary Public

Artwork Commission Agreement

SAMPLE AGREEMENT – DO NOT EXECUTE

(Agreement subject to change)

THIS AGREEMENT, is entered into this ___ day of _____, 2025, by and between the City of Port St. Lucie, a Florida municipal corporation (hereinafter the "City") located at 121 SW Port St Lucie Blvd, Port St Lucie, FL 34984 and _____ (hereinafter "Artist") located at _____.

WHEREAS, the City requires the services of an artist to create a work of art (hereinafter the "Artwork", and as described and defined in Exhibit A, in a public space located at the roundabout at Southwest Paar Drive and Southwest Darwin") (hereinafter "Site"); and

WHEREAS, the Artist is a professional artist whose work and qualifications make the Artist uniquely qualified to create the Artwork; and

WHEREAS, the City has selected the Artist based upon the Artist's work and qualifications; and

WHEREAS, the Artist and the City wish to perform under the terms and conditions of this Agreement to complete the project (the "Project").

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE COVENANTS HEREINAFTER SET FORTH, IT IS AGREED AS FOLLOWS:

Article 1. Scope of Services

- I. Artist's Obligations. The Artist shall:
 - A. Perform all services and furnish all supplies, material and/or work equipment as necessary for the design, fabrication, transportation and installation of the Artwork. Services shall be performed in a professional manner and in strict compliance with all terms and conditions in this Agreement.
 - B. With the assistance of the City, be responsible for obtaining any necessary permits to install the Artwork.
 - C. Determine the artistic expression, design, dimensions and materials of the Artwork, subject to review and acceptance by the City, as set forth in this Agreement.
 - D. Prepare the design concept described in Section 1.3 of this Agreement.
 - E. Complete the fabrication, transportation and installation of the Artwork by the scheduled dates as provided in the Proposed Schedule/Time Frame included in Exhibit E.
 - F. Arrange for the transportation and installation of the Artwork in coordination with the City. If the Artist does not install the Artwork him/herself, the Artist shall supervise and approve the installation. Prior to the installation of the Artwork, the Artist shall inspect the Site to ensure that it is ready to accept the Artwork and compliant with the specifications provided by the Artist. The Artist shall notify the City of any perceived conflict, defect or non-compliance with specifications.

- G. Artist shall not begin installation until written notification from the City that all plans, including but not limited to a Maintenance of Traffic ("MOT") plan, right-of-way ("ROW") plans, and rigging plans, have been properly obtained by the City.
 - H. Artist is responsible for connecting, and included associated costs, for connecting any standard artwork lighting components to the electrical connections provided by the City. Such costs should be included in the budget, as referenced in Section IV and Exhibit C.
 - I. Procure and provide required insurance in amounts and limits specified in Article 5 and Exhibit D.
 - J. Inform the City of the progress of each phase of work completed under the Agreement in the form of photographic documentation and written description as indicated in the Budget/Payment Schedule, Exhibit B.
- II. City's Obligations. The City Shall:
- A. Assign an informed person ("Project Coordinator") to work with the Artist on the Project.
 - B. Be responsible for providing the Artist, at the City's sole expense, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by Artist in order to perform. The Project Coordinator will facilitate Artist's application for any permits required for the Project.
 - C. Prepare the Site in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement, including but not limited to obtaining right-of-way plans, rigging plans, and the MOT plans, .
 - D. Be responsible for all expenses, labor and equipment to prepare the Site for the timely transportation and installation of the Artwork, including costs to obtain right-of-way plans, rigging plans, and the MOT plans.
 - E. Complete the Site preparations by the scheduled installation date as provided in the Proposed Schedule/Time Frame included in Exhibit E or shall contact the Artist in writing informing him/her of any delays.
 - F. Be responsible for monthly storage fees until the Site is ready for installation, in the event that installation is delayed more than two (2) months beyond the Proposed Schedule Time Frame due to the City's failure to prepare the Site. In the event that the City fails to prepare the Site, absent any force majeure event or unforeseen delays in construction schedule, in accordance with specifications as provided, or Artist is refused access to the Site as reasonably required, the Artist shall be excused from any delay occasioned by such failure of access or preparation.
 - G. Be responsible for any landscaping, structural or finishing modifications to the Sites, and electrical supply and connection necessary to integrate the Artwork into the Site before and after its installation, in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement.
 - H. Provide and install a plaque on or near the Artwork containing a credit to the Artist and a copyright notice substantially in the following form: Copyright © _____, date of publication. If the plaque is to be placed on the Artwork or Artwork pedestal, it should be done in consultation with the Artist.

III. Design

A. Concept/Schematic

The Artist submitted design concepts/schematics (the "Design") which were selected and approved by the City, consisting of colored drawings or computer-generated color images (in plan and elevation) and/or 3-dimensional models that accurately reflect the Artworks and how they will be installed at the Site, mock-ups, color and materials samples, and proposed fabrication methods. The Design is attached to this Agreement as Exhibit A.

B. Approval

Within forty-five (45) days after the execution of this agreement, the City shall notify the Artist if City requires any revisions to the Design in order to comply with any applicable laws, ordinances, and/or regulations or for other reasons including, but not limited to, ensuring the physical integrity of the Artwork or its installation at the Site. If agreed upon by both parties, such revisions will become a part of the Design. At the moment of approval for the Artwork, the City must also approve the Artist's intended display elements at the Site, including but not limited to electric needs for proposed lighting; plinths or other related display structures pertaining to the physical integrity of the Artwork at the Site; and proposed signage. The City will provide the Artist with an overview of intended landscaping at the Site.

C. Proposed Change After Approval

After the final form of the Work is approved by the City, the Artist may not change or alter the Artwork without the City's prior written consent at the City's sole discretion. Artist shall bear the sole responsibility and cost of removing and/or repairing any added design elements that are not approved, in writing, by the City.

D. Final Design/Construction Documents

Upon approval of the Design by City, Artist is authorized to proceed with the final Design which shall include the following:

1. Any amended versions of drawings, renderings, maquettes, plans or finish samples included in the Preliminary Design; and
2. Engineered drawings of the Artworks' structural components, fabrication and installation methods, which must be signed and stamped by licensed design professionals/engineers; and
3. Detailed drawings, plans and/or written descriptions of all work to be done on or to the Sites by City before and after installation of the Artwork including, but not limited to initial surveying, leveling and landscaping, forming and pouring of concrete slabs, preparation of pedestal, walls, electrical & plumbing sources and finish landscaping/integration (the "Final Design").
4. Upon approval by the City, the Final Design as approved (the "Approved Design") shall be attached as Exhibit I to this Agreement. The Artist shall provide a set of as-built drawings for the Work following its installation.

IV. Budget and Payment Schedule

A. Budget

1. The budget for this project shall not exceed \$150,000.00.

2. The Artist shall prepare a budget ("Artist Budget,") which shall include all goods, services and materials with such costs itemized. The Artist Budget is attached hereto as Exhibit C.
3. If the Artist incurs costs in excess of the amount listed in the Artist Budget, the Artist shall pay such excess from the Artist's own funds unless the Artist obtains approval in writing for such additional costs from the City.

B. Payment Schedule

1. Artist's completion milestones and payment schedule is as set forth in Exhibit B.
2. A completed W9 and invoices are required for processing payment.
3. Payments will be made via ACH in accordance with City policy and procedures.

V. Fabrication and Installation

- A. The Artist shall fabricate and install the Artwork in substantial conformity with the Design. The Artist may not substantially deviate from the Design without written approval of the City.
- B. The Artist shall provide at least ten (10) days' notice to the City, in writing, when fabrication of the Artwork have been completed, and that the Artwork is ready for delivery and installation at the Site.
- C. Artist shall not begin installation until written notification from the City that all plans, including but not limited to a Maintenance of Traffic ("MOT") plan, right-of-way ("ROW") plans, and rigging plans, have been properly obtained by the City.
- D. The City shall promptly notify the Artist of any delays impacting installation of the Artwork.
- E. The Artist shall inspect the Site at least ten (10) days prior to, but no greater than thirty (30) days prior to, the transportation and installation of the Artwork and shall notify the City of any adverse Site conditions that will impact the installation of the Artwork and which are in need of correction within five (5) business days of the discovery of such adverse Site conditions. Failure to inspect the site by the Artist shall be deemed as an acceptance of the Site conditions.
- F. The Artist shall deliver and install the Artwork to the Site in accordance with the Proposed Schedule/Timeframe included in Exhibit E.
- G. The Artist shall be present to supervise the installation of the Artwork.
- H. Upon completion of the installation of the Artwork, the Artwork shall be deemed to be in the custody of the City for purposes of Article 3 and Article 5 of this Agreement, and the City assumes responsibility for the Artwork.
- I. Upon completion of the installation of the Artwork, the Artist shall provide the City with written instructions for the future maintenance and preservation of the Artwork.
- J. Notwithstanding any contrary language in the Project Timelines, Exhibit E, Artist may not install the Artwork until authorized to do so by the City in writing.

Article 2. Terms of Agreement

I. Duration

This Agreement shall be effective on the date that it has been signed by both parties, and, unless terminated earlier pursuant to such provisions in the Agreement, shall remain in effect until the City receives title to the Artwork ("Termination Date").

II. Force Majeure

The City shall grant to the Artist a reasonable extension of time in the event of a Force Majeure Event. As used herein, a "Force Majeure Event" shall include governmental moratorium or unavailability of essential supplies or utilities (e.g. power or water) through no fault of Artist, fire (including wildfires), explosion or similar casualty, sabotage, theft, vandalism, riot or civil commotion, hurricane, tropical storm, tornado or flooding. Any extension of any date or deadline set forth in this Agreement due to a Force Majeure Event shall be only for delay in performance that is an actual and direct result of such Force Majeure Event. In the event that Artist claims a delay for a Force Majeure Event, Artist must make a claim for an extension in writing to City within five (5) business days after the occurrence of a Force Majeure Event for which such claim is being made.

Article 3. Risk of Loss. The Artist shall bear the risk of loss or damage to the Artworks until completion of the installation of the Artworks. The Artist shall take such measures as are reasonably necessary to protect the Artworks from loss or damage.

Article 4. Artist's Representations and Warranties

I. Warranties of Title

The Artist represents and warrants that:

- A. The Artwork is solely the result of the artistic effort of the Artist;
- B. Except as otherwise disclosed in writing to the City, the Artwork is unique and original and does not infringe upon any copyright or the rights of any person;
- C. The Artwork (or duplicate thereof) has not been accepted for sale elsewhere;
- D. The Artist has not sold, assigned, transferred, licensed, granted, encumbered or utilized the Artwork or any element thereof or any copyright related thereto which may affect or impair the rights granted pursuant to this Agreement;
- E. The Artwork is free and clear of any liens from any source whatsoever;
- F. All Artwork created by the Artist under this Agreement, whether created by the Artist alone or in collaboration with others shall be wholly original with the Artist and shall not infringe upon or violate the rights of any third party;
- G. The Artist has the full power to enter into and perform this Agreement and to make the grant of rights contained in this Agreement;
- H. All services performed hereunder shall be performed in accordance with all applicable laws, regulations, ordinances and with all necessary care, skill, and diligence;
- I. These representations and warranties shall survive the termination or other extinction of this Agreement;
- J. Artist shall provide the City with Warranty of Titles, Exhibit F, certifying that the Artwork is free of liens, claims or other encumbrances and that Artist has the legal ability to make this sale upon the completion of installation and final payment to the Artist.

II. Warranties of Quality and Condition

- A. The Artist represents and warrants that all work will be performed in accordance with professional "workmanlike" standards and free from defective or inferior materials and workmanship (including any defects consisting of "inherent vice," or qualities that cause or accelerate deterioration of the Artwork) for two (2) years after the Termination Date ("Warranty Period").

- B. The Artist represents and warrants that reasonable maintenance of the Artwork will not require procedures substantially in excess of those described in the maintenance and preservation instructions submitted by the Artist upon completion of the Artwork.
- C. If, within the Warranty Period, the City observes any breach of warranty described in this agreement that is curable by the Artist, the Artist shall, at the request of the City, cure the breach promptly, satisfactorily and consistent with professional standards, at the sole cost and expense of the Artist. The City shall give notice to the Artist of such breach with reasonable promptness.
- D. If, after the Warranty Period, the City observes any breach of warranty described in this agreement that is curable by the Artist, the City shall contact the Artist to make or supervise repairs or restorations at a reasonable fee during the Artist's lifetime. The Artist shall have the right of first refusal to make or supervise repairs or restorations. Should the Artist be unavailable or unwilling to accept reasonable compensation under the industry standard, the City may seek the services of a qualified restorative conservator and maintenance expert.
- E. The foregoing Warranties of Quality and Condition are conditional and shall be voided by the City's failure to maintain the Artwork in accordance with Artist's specifications and the applicable conservation standards.

Article 5. Insurance and Indemnification

I. General

- A. The Artist acknowledges that until completion of the installation of the Artwork, any injury to property or persons caused by the Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artworks are the sole responsibility of the Artist, including, but not limited to, any loss occurring during the creation, storage, transportation, delivery or installation of the Artwork, regardless of where such loss occurs.
- B. Artist shall procure insurance coverages as set forth in Exhibit D for the entire duration of the installation.

II. Indemnity

The Artist shall indemnify, defend, and hold harmless the City, its representatives, employees, and elected officials, from and against all claims, causes, demands, legal fees, costs, losses, damages or other expenses occasioned by any act, conduct, negligence, error or omission by the Artist or its respective agents, employees or delegees in the performance of this Agreement or occasioned wholly or in part by any act, conduct, error or omission by the Artist or its respective agents, employees or delegees in the performance of this Agreement, occurring during the term of this Agreement. In agreeing to this paragraph, the City does not alter, extend or waive any defense of sovereign immunity to which it may be entitled under the Florida Constitution, section 768.28, Florida Statutes, or as otherwise provided by law. This Paragraph shall survive the termination of this Agreement. Notwithstanding any provision of this Agreement to the contrary, no Party shall recover from a party to this Agreement in an action, of whatever nature, in contract or tort, any consequential or incidental damages, lost profits, or any type of expectancy damages.

Article 6. Ownership and Intellectual Property Rights

I. Title

Title to the Artwork shall pass to the City upon completion of the Artwork, completion of installation of the Artworks, and final payment by City to Artist pursuant to Exhibit B. The Artist hereby acknowledges that upon the Artwork's transfer of ownership to the City, the Artwork will be accessioned into the Port St. Lucie Public Art Collection (hereinafter "Collection").

II. Copyright Ownership

- A. Artist Copyright: The Artist retains ownership of the copyright in the Artwork and in any plans, diagrams, installation instructions, drawings, models, and any other work product materials pertaining to the Artwork produced by the Artist. The Artist represents and warrants to the City that the Artwork and materials pertaining to the Artwork (including but not limited to instructions, plans, diagrams, models, and sketches) will be original to the Artist and all rights under the Copyright Act of 1976, 17 U.S.C. § 101 et seq., as the sole author of the Artwork for the duration of the copyright, and do not violate any third party's copyright or other intellectual property rights.
- B. City Copyright: The Artist agrees that the City and its agents may document the Artwork, and any renderings of the Artwork or work product, including, without limitation, its display, installation, and deinstallation, by all modern methods available (including but not limited to photography and video) for archival, promotional, publicity, educational, and any other non-commercial purposes as the City shall determine and that the City shall own the copyright in any and all City documentation. City will give credit to the Artist as specified herein when images of the Artwork are published.

III. Reproduction Rights

- A. Artist License: The Artist hereby grants the City an exclusive, perpetual, worldwide license, with right to sublicense, to reproduce and distribute images of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogs or other similar publication provided that these rights are exercised in a tasteful and professional manner.
- B. City License: The City hereby grants the Artist a non-exclusive, perpetual, worldwide license, with right to sublicense, to reproduce and distribute images of the Artwork for non-commercial purposes, including, but not limited to, reproductions used in brochures, media publicity, and exhibition catalogs or other similar publication provided that these rights are exercised in a tasteful and professional manner.
- C. All reproductions by the City shall contain a credit to the Artist and a copyright notice in substantially the following form: © ARTIST, 2025.
- D. The Artist shall use his best efforts in any public showing or resume use of reproductions of the Artwork to give acknowledgment to the City in substantially the following form: "An original artwork owned and commissioned by the City of Port St. Lucie, Florida."
- E. The City shall be entitled to make reproductions of the Artwork for commercial purposes including, but not limited to, t-shirts, postcards and posters, if any.

Article 7. Artist's Rights

I. General

- A. The Artist waives their rights pursuant to 17 U.S.C. §106A(a)(3) to prevent any distortion, mutilation, modification, or destruction of that work, for whatever reason and for whatever use of the Artwork such distortion, mutilation, modification, or destruction of work is undertaken.
- B. This waiver does not extend to the rights of attribution conferred by 17 U.S.C. §106A(a)(1) or §106A(a)(2).
- C. If any substantial alteration or damage to the Artwork occurs, the Artist shall have the right to disclaim authorship of the Artwork.
- D. The Artist understands, and consents, to the City using any secondary material, including but not limited to, lighting, décor, signage, etc. without first obtaining permission from the Artist.

II. Deaccession of Artwork(s)

Artist hereby acknowledges that the City may deaccession the Artwork, including but not limited to, taking one of the following actions:

- A. selling the Artwork;
- B. donating the Artwork; or
- C. discarding or destroying the Artwork;

III. Sale of Artwork

In accordance with the Policy, the artist, or estate of the artist, will be given the first option to purchase or exchange the Artwork. In the event the City receives a bona fide written offer from any third party to purchase the Artwork, which the City desires to accept, Artist has the right and may elect to purchase the Artwork at the price offered by such third party (the "Offered Price"). The City shall give notice to Artist, including delivery to Artist of a true and exact copy of the written bona fide offer, and allow Artist thirty (30) calendar days subsequent to OWNER's receipt of such notice within which Artist may elect to purchase the Artwork from the City, and in the event Artist so elects to purchase the Artwork by giving notice of such election to the City within the thirty (30) day period the City shall sell the Artwork to Artist at the offered Price.

Article 8. Artist as an Independent Contractor

- I. The Artist agrees to perform all work under this Agreement as an independent contractor and not as an employee of the City. The Artist acknowledges and agrees that the Artist shall not hold himself out as an authorized agent of the City with the power to bind in any manner. The Artist shall provide the City with the Artist's Tax Identification number and any proof of such number as requested by the City.

Article 9. Assignment of Artwork

- I. The work and services required of the Artist are personal and shall not be assigned, sublet or transferred. Any attempt by the Artist to assign this Agreement or any rights, duties or obligations arising hereunder shall be void and of no effect unless prior written consent is given by the City. The City shall have the right to assign or transfer any and all of the City's rights and obligations under this Agreement, subject to the Artist's consent, which consent will not be unreasonably withheld.

Article 10. Termination and Default

- I. If either party to this agreement shall fail to fulfill in a timely and proper manner, or otherwise violate any of the covenants, agreements or stipulations material to this Agreement, the other party shall thereupon have the right to terminate this Agreement by giving written notice of default to the defaulting party of its intent to terminate specifying the grounds for termination. The defaulting party shall have 30 days after the effective date of the notice to cure the default. If it is not cured by that time, this Agreement may be terminated.
- II. If the Artist defaults, fails to cure, and the City terminates the Agreement pursuant to such failure to cure, then the Artist shall return to the City all funds provided by the City. All finished and unfinished drawings, sketches, photographs and other work products prepared and submitted or prepared for submission by the Artist under this Agreement shall be retained by the Artist.
- III. Either Party may terminate this Agreement without recourse by the other where performance is rendered impossible or impracticable for Force Majeure Events beyond such Party's reasonable control. If a Party claims termination for a Force Majeure Event, such party must provide notice within ten (10) business days after the occurrence of a Force Majeure Event for which such termination is being made. Additionally, notice of termination of this Agreement, for a Force Majeure Event, shall be given to the non-terminating party in writing not less than ten (10) days prior to the effective date of termination.
- IV. The City may terminate this Agreement without cause upon sixty (60) days written notice to the Artist. The City shall pay the Artist for services performed and commitments made prior to the date of the termination, consistent with the schedule of payments set forth in Exhibit B of this Agreement. The Artist shall have the right to an equitable adjustment in the fee for services performed and expenses incurred beyond those for which the Artist has been compensated to date under Exhibit B. The Artist shall retain possession and title to the plans, drawing, designs, maquettes, and models already prepared and submitted or prepared for submission to the City by the Artist under this Agreement prior to the date of termination.
- V. Upon notice of termination, the Artist and his subcontractors shall cease all services affected.

Article 11. Death or Incapacity

- I. If the Artist becomes unable to complete this Agreement due to death or incapacity, such death or incapacity will not be deemed a breach of this Agreement or a default on the part of the Artist for purposes of Article 10.
- II. In the event of incapacity, the Artist shall assign his obligations and services under this Agreement to another artist provided that the City approves of the new artist and so agrees in writing. If the City does not agree, the City may elect to terminate this Agreement. The Artist shall retain all rights under Article 6 and Article 7 in the event of termination pursuant to this provision.
- III. In the event of death, this Agreement shall terminate effective the date of death. The Artist's heirs shall retain rights under Article 6 and Article 7.

Article 12. Waiver. The Parties agree that a waiver of any breach or violation of any term or condition of this Agreement shall not be deemed to be a waiver of any other term or condition

contained herein or a waiver of any subsequent breach or violation of the same or any other term or condition.

Article 13. Jury Trial Waiver. In the event it is necessary for either party to initiate legal action regarding this Agreement, venue shall be in the Nineteenth Judicial Circuit in and for St. Lucie County, Florida, for claims under state law, and in the Southern District of Florida for claims justiciable in federal court. TO ENCOURAGE PROMPT AND EQUITABLE RESOLUTION OF ANY LITIGATION, EACH PARTY HEREBY WAIVES ITS RIGHTS TO A TRIAL BY JURY IN ANY LITIGATION RELATED TO THIS AGREEMENT. This clause shall survive the expiration or Termination of this Agreement.

Article 14. Amendments. No alteration, change or modification of the terms of this Agreement shall be valid unless made in writing and signed by both Parties hereto.

Article 15. Severability. If any term, covenant, condition or provision of this Agreement, or the application thereof to any person or circumstance, shall be held by a court of competent jurisdiction or arbitration panel to be in conflict with the laws, rules and/or regulations of the United States or the State of Florida, invalid, void or unenforceable, the remainder of the terms, covenants, conditions or provisions of this Agreement, or the application thereof to any person or circumstance, shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby to the extent the remainder of the terms, covenants, conditions or provisions of this Agreement are capable of execution.

Article 16. Choice of Law; Venue. This Agreement shall be governed by the laws of the State of Florida both as to interpretation and performance. The venue of any action taken to enforce this Agreement, arising out of the Agreement, or related to the Agreement, shall be in St. Lucie County, Florida.

Article 17. Entire Agreement . This Agreement embodies the whole understanding of the parties hereto with respect to the subject matter set forth herein. There is no promise, term, condition or obligation between the parties with respect to the subject matter set forth in this Agreement, other than those contained herein, and this Agreement shall supersede all previous communications, representation, or agreements between the parties, either oral or written, with respect thereto.

Article 18. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall constitute an original, but all of which taken together shall constitute one and the same agreement.

Article 19. Public Records. Artist and any subcontractors shall comply with section 119.0701, Florida Statutes. Artist and any subcontractors are to allow public access to all documents, papers, letters, or other material made or received by the Artist in conjunction with this Agreement, unless the records are exempt from Article I, section 24(a), Florida Constitution, and section 119.07(1)(a), Florida Statutes. Pursuant to section 119.10(2)(a), Florida Statutes, any person who willfully and knowingly violates any of the provisions of chapter 119, Florida Statutes, commits a misdemeanor of the first degree, punishable as provided in sections 775.082 and 775.083, Florida Statutes.

RECORDS

The City of Port St. Lucie is a public agency subject to chapter 119, Florida Statutes. The Artist shall comply with Florida's Public Records Laws. ARTIST'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to section 119.0701, Florida Statutes, Artist agrees to comply with all public records laws, specifically to:

Keep and maintain public records required by the City in order to perform the service.

1. The timeframes and classifications for records retention requirements must be in accordance with the General Records Schedule GS1-SL for State and Local Government Agencies and GS2 for Criminal Justice Agencies and District Medical Examiners.
2. During the term of the Agreement, the Artist shall maintain all books, reports, and records in accordance with generally accepted accounting practices and standards for records directly related to this Agreement. The form of all records and reports shall be subject to the approval of the City.
3. Records include all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business with the City. Artist's records under this Agreement include, but are not limited to, supplier/subcontractor invoices and contracts, project documents, meeting notes, emails and all other documentation generated during this Agreement.
4. The Artist agrees to make available to the City, during normal business hours all books of account, reports and records relating to this Agreement.
5. An Artist who fails to provide the public records to the City within a reasonable time may also be subject to penalties under section 119.10, Florida Statutes.

Upon request from the City's custodian of public records, provide the City 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.

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 Agreement term and following completion of the Agreement if the Artist does not transfer the records to the City.

Upon completion of the Agreement, transfer, at no cost to the City, all public records in possession of the Artist or keep and maintain public records required by the City to perform the service. If the Artist transfers all public records to the City upon completion of the Agreement, the Artist shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Artist keeps and maintains public records

upon completion of the Agreement, the Artist shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to the City, upon request from the City's custodian of public records, in a format that is compatible with the information technology systems of the City.

**IF THE ARTIST HAS QUESTIONS REGARDING THE APPLICATION OF
CHAPTER 119, FLORIDA STATUTES, TO THE ARTIST'S DUTY TO
PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT,
CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

**CITY CLERK
121 SW Port St. Lucie Blvd.
Port St. Lucie, FL 34984
(772) 871 5157
pr@cityofpsl.com**

For City:

Name

Title

Date

For Artist:

Name

Title

Date

NOTARIZATION AS TO ARTIST'S EXECUTION

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _ day of _____ 2025, by _____ on behalf of _____, is [] personally known to me to be the person who executed the foregoing instrument, or who has [] produced the following identification:

_____.

Signature of Notary Public

My Commission expires

Printed Name of Notary Public

Exhibit A: Design

Exhibit B: Budget and Payment Schedule

Exhibit C: Budget from Artist

Exhibit D: Insurance

1. Commercial General Liability insurance policy, written on an occurrence form basis, including all the usual coverage known as:
 - a. premises/operations liability
 - b. products/completed operations
 - c. personal/advertising injury
 - d. contractual liability
 - e. broad-form property damage
 - f. independent contractor's liability
2. Said policy must provide the following minimum coverage:
 - a. \$1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage.
 - b. \$1,000,000 annual aggregate
 - c. Automobile liability. Business Automobile Liability at a limit of liability not less than \$1,000,000.00 each accident covering any auto, owned, non-owned and hired automobiles. In the event, the Artist does not own any automobiles; the Business Auto Liability requirement shall be amended allowing Artist to agree to maintain only Hired & Non-Owned Auto Liability. This amended requirement may be satisfied by way of endorsement to the Commercial General Liability, or separate Business Auto Coverage form. Certificate holder must be listed as additional insured. A waiver of subrogation shall be provided to the City. Coverage shall apply on a primary basis.
 - d. Workers' Compensation Insurance and Employer's Liability. The Artist shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes. Employers' Liability must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement shall be provided to the City. Coverage shall apply on a primary basis.
 - e. Transportation/Cartage insurance. Prior to shipment, the Artist must show the City that the artwork is insured independently or by the carrier during its shipment to the Site. While under the care, custody and control of the carrier up to the value of the Artwork.
 - f. Installation Subcontractor Liability. It shall be the responsibility of the Artist to ensure that all subcontractors for installation of the Artwork at the Site comply with the same insurance requirements referenced above without the language "when required by written contract".

Exhibit E: Project Timeline/Time Frame

Exhibit F: Warranty of Title

I, _____ (name), _____ (title) guarantee and warrant that the WORK listed in the Artwork Commission Agreement is free and clear of any liens, claims or other encumbrances of any type.

ARTIST

By: _____

Its: _____

STATE OF _____)
) ss
COUNTY OF _____)

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization this _ day of _____ 2025, by _____ on behalf of _____, is [] personally known to me to be the person who executed the foregoing instrument, or who has [] produced the following identification:

_____.

Signature of Notary Public

My Commission expires

Printed Name of Notary Public