

# **Artwork Commission Agreement**

**THIS AGREEMENT**, is entered into this \_\_\_ day of \_\_\_\_\_, 2024, 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 Peter Busby (hereinafter "Artist") located at 108 Pritchard Road Cornwall Bridge, CT 06754.

**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 SE Howe Avenue, SE Floresta Drive, and SE Bywood Avenue (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 Obligations
  - A. The Artist shall 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. The Artist shall 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.
  - C. The Artist shall prepare the design concept described in Section 1.3 of this Agreement.
  - D. The Artist shall 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.
  - E. The Artist shall 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.

- F. The Artist shall provide required insurance in amounts and limits specified in Article 5 and Exhibit D
- G. The Artist shall inform the client of the progress of each phase of work completed under the Agreement in the form of photographic documentation and written description as indicated in Exhibit B.

## II. City Obligations

- A. The City shall perform all obligations in strict compliance with all terms and conditions in this Agreement.
- B. The City shall assign an informed person ("Project Coordinator") to work with the Artist on the Project.
- C. The City shall be responsible for providing the Artist, at no expense to the Artist, copies of existing designs, drawings, reports, list of required permits, and other existing relevant data, if any, which is needed by Artist to perform obligations herein. The Project Coordinator will facilitate Artist's application for any permits required for the Project.
- D. The City shall be responsible for compliance with all applicable laws and regulations, including but not limited to zoning or environmental regulations, and prior to Artist's development of design, shall provide to the Artist, in writing, an explanation of any specific limitations imposed by such laws and/or regulations that may impact the Artwork or it's installation.
- E. The City shall prepare the Site in accordance with the specifications detailed in the approved design concept in Section 1.3 of this Agreement. The City shall be responsible for all expenses, labor, and equipment to prepare the Site for the timely transportation and installation of the Artwork. The City shall complete the Site preparations by the scheduled installation date as provided in the Proposed Schedule/Timeframe included in Exhibit E or shall contact the Artist, in writing, informing him/her of any delays.
- F. In the event that the City fails to prepare the Site 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. In the event that installation is delayed more than two (2) months beyond the Proposed Schedule Timeframe due to the City's failure to prepare the site, the City shall be responsible for monthly storage fees until the Site is ready for installation.
- G. The City shall be responsible for any landscaping, structural, or finishing modifications to the Site, 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. The City shall 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 © **PETER BUSBY, 2025**. 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 a design concept/schematic (the "Design") which was 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 Artwork and how it 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 Work, 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 Work 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 Work without the City's prior written consent at the City's sole discretion.

#### 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 Artwork's 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 Site 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").

### IV. Budget and Payment Schedule

#### A. Budget

1. The budget for this project shall not exceed \$200,000 USD.
2. The Artist shall prepare a budget, which shall include all goods, services, and materials with such costs itemized. The budget is attached hereto as Exhibit C.
3. If the Artist incurs costs in excess of the amount listed in the 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 W9 and an invoice is required for processing payment.
3. Payments will be made via ACH.

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 has been completed, and that the Artwork is ready for delivery and installation at the Site.
- C. The City shall promptly notify the Artist of any delays impacting installation of the Artwork.
- D. 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 twenty-four (24) hours 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.
- E. The Artist shall deliver and install the Artwork to the Site in accordance with the Proposed Schedule/Timeframe included in Exhibit E.
- F. The Artist shall be present to supervise the installation of the Artwork.
- G. 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.
- H. 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.
- I. Notwithstanding anything to the contrary, 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**

- I. The Artist shall bear the risk of loss or damage to the Artwork until title is transferred to the City. The Artist shall take such measures as are reasonably necessary to protect the Artwork 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; and
- J. artist shall provide the City with a Warranty of Title 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.

Said document shall be in substantially similar form to the sample form attached hereto as Exhibit F.

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.
- 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 two (2) years, 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 no expense to the City. The City shall give notice to the Artist of such breach with reasonable promptness.
- D. If, after two (2) years, 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**

I. General

- A. The Artist acknowledges that until completion of the installation of the Artwork and transfer of title to the City, any injury to property or persons caused by the Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artwork 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. Terms for the procurement and duration of insurance are provided in Exhibit D.
- C. Required insurance policies are described in Exhibit D.

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 delegates 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, 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 Artwork, and final payment by City to Artist pursuant to Exhibit B. The Artist hereby acknowledges that upon the Work's transfer of ownership to the City, the Work 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 Work and in any plans, diagrams, installation instructions, drawings, models, and any other work product materials pertaining to the Work produced by the Artist. The Artist represents and warrants to the City that the Work and materials pertaining to the Work (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 Work 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 Work, and any renderings of the Work 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 Work 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 Work 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 Work 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: © **PETER BUSBY, 2025.**
- D. The Artist shall use his best efforts in any public showing or resume use of reproductions of the Work 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 Work 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 work 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**

In accordance with Article 6 above, Artist hereby acknowledges that upon the Work's transfer of ownership to the City, the Work will be accessioned into the Port St. Lucie Public Art Collection (hereinafter "Collection"). As part of the Collection, the Work will be governed by the guidelines, processes, and procedures outlined in the City's public art policy (hereinafter "Policy"). As an artwork in Collection, the City may deaccession the Work, 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 Work**

In accordance with the Policy, the artist, or estate of the artist, will be given the first option to purchase or exchange the artwork(s). In the event the City receives a bona fide written offer from any third party to purchase the Work, which the City desires to accept, Artist has the right and may elect to purchase the Work 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 Work from the City, and in the event Artist so elects to purchase the Work by giving notice of such election to the City within the thirty (30) day period the City shall sell the Work 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 thirty (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 for cause other than death or incapacitation, 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 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 immediately.

#### **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**

- I. 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 Waiver**

- I. 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**

- I. 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 Conflict with the Law**

- I. 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**

- I. 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**

- I. 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 Sovereign Immunity**

- I. Nothing contained in this Agreement shall be deemed or otherwise interpreted as waiving the City's sovereign immunity protections existing under the laws of the State of Florida, or as increasing the limits of liability as set forth in Section 768.28, Florida Statutes.

**Article 19 Audits**

- I. The Artist shall establish and maintain a reasonable accounting system that enables the City to readily identify the Artist's assets, expenses, costs of goods, and use of funds throughout the term of the Agreement for a period of at least seven (7) years following the date of final payment or completion of any required audit, whichever is later. Records shall include, but are not limited to, accounting records, written policies and procedures; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); all paid vouchers including those for out-of-pocket expenses; other reimbursement supported by invoices; ledgers; cancelled checks; deposit slips; bank statements; journals; original estimates; estimating work sheets; Agreement amendments and change order files; backcharge logs and supporting documentation; insurance documents; payroll documents; timesheets; memoranda; and correspondence. The Artist shall permit the City's authorized auditor or any authorized representative of the State, and where federal funds are involved, the Comptroller General of the United States, or any other authorized representative of the United States government, to access and examine, audit, excerpt and to make copies of all books, documents, papers, electronic or optically stored and created records, or other records relating or pertaining to this Agreement kept by or under the control of the Artist, including, but not limited to, those kept by the Agreement, its employees, agents, assigns, successors, and subcontractors. Such records shall be made available to the

City during normal business hours at the Artist's office or place of business. The Artist shall not impose a charge for audit or examination of the Artist's books and records. If an audit discloses incorrect billings or improprieties, the City reserves the right to charge the Artist for the cost of the audit and appropriate reimbursement. Any adjustments and/or payments that must be made as a result of any such audit or inspection of the Artist's invoices and/or records shall be made within a reasonable amount of time (not to exceed ninety (90) days) from presentation of the City's findings to the Artist. Evidence of criminal conduct will be turned over to the proper authorities.

The Artist shall also ensure the City has these rights with Artist's employees, agents, assigns, successors, and subcontractors, and the obligations of these rights shall be explicitly included in any subcontracts or agreements formed between the Artist and any subcontractors to the extent that those subcontracts or agreements relate to fulfillment of the Artist's obligations to the City.

#### **Article 20 Counterparts**

- I. 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 21 Public Records**

- I. Artists and any subcontractor shall comply with section 119.0701, Florida Statutes. Artist and any subcontractor are to allow public access to all documents, papers, letters, or other material made or received by Artist in conjunction with the 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 Law, and as may be amended from time to time. ARTIST'S RESPONSIBILITY FOR COMPLIANCE WITH CHAPTER 119, FLORIDA STATUTES. Pursuant to Section 119.0701, F.S.

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](#).
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/subconsultant 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, and as may be amended from time to time.

Upon request from the City's custodian of public records, provide the public agency 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 this chapter 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, AND AS MAY BE AMENDED FROM TIME TO TIME, 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**



**Exhibit A: Preliminary Design**

***PROVIDED IN ATTACHMENT***

**[Page Left Intentionally Blank]**

## **Exhibit B: Budget and Payment Schedule**

The City shall pay the Artist a fixed fee of \$200,000, which shall constitute full and complete compensation for all the services performed and material furnished by the Artist under this Agreement. Payment shall be made in accordance with the following milestones:

- A. First Payment: \$50,000 (25% of total cost) to be paid to the Artist by the City upon signing this agreement.
- B. Second Payment: \$80,000 (40% of total cost) to be paid to the Artist by the City upon written City approval of the final design concept, in accordance with Article I, section III, item B.
- C. Third Payment: \$50,000 (25% of total cost) to be paid to the Artist by the City upon two-thirds of the completion of total fabrication, prior to artwork crating and shipping
- D. Fourth Payment: \$20,000 (10% of total cost), to be paid to the Artist by the City upon City acceptance of the installation and turnover of the title to the City.

Upon completion of each milestone, the Artist shall submit a written invoice to the City requesting payment. The Artist shall include documentation of work completed in the form of photographs and written descriptions to indicate completion of milestones. The City shall submit payment within thirty (30) days of receipt of invoice.

In accordance with Article IV, the Artist has provided the following Budget:

***PROVIDED IN ATTACHMENT***

## **Exhibit C: Artwork Information**

### **1. Scope of Services**

- Final Design + Renderings.
- Fabrication of Work
- Packing and Shipping of Work to Site in Port St. Lucie, Florida.
- Installation of Work
- Stamped Engineering Report
- Maintenance Manual and Spares Kit
- Artist Statement and Name of Work

**3. Site (Installation Location):** roundabout at SE Howe Avenue, SE Floresta Drive, and SE Bywood Avenue

### **4. Installation Details**

- Installation Instructions and Requirements (traffic control, equipment, etc.) to be provided by [60 days from installation date]
- Installation Period: [Artist to advise, PSL to confirm]

### **5. Artwork Information**

- Name: Floresta Four
- Materials: 304 Stainless steel rod and plate, powder coated
- Date: Fabricated 2024-2025. Finished 2025
- Copyright: Peter Busby
- Credit Line to be used wherever images are published: Peter Busby

## Exhibit D: Insurance

The Artist shall on a primary basis and at its sole expense agree to maintain in full force and effect at all times during the life of this Agreement, insurance coverage and limits, including endorsements, as described herein. The requirements contained herein, as well as City's review or acceptance of insurance maintained by Artist are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Artist under the Agreement.

The parties agree and recognize that it is not the intent of the City of Port St. Lucie that any insurance policy/coverage that it may obtain pursuant to any provision of this Agreement will provide insurance coverage to any entity, corporation, business, person, or organization, other than the City of Port St. Lucie and the City shall not be obligated to provide any insurance coverage other than for the City of Port St. Lucie or extend its immunity pursuant to Section 768.28, Florida Statutes, and as may be amended from time to time, under its self-insured program. Any provision contained herein to the contrary shall be considered void and unenforceable by any party. This provision does not apply to any obligation imposed on any other party to obtain insurance coverage for this project and/or any obligation to name the City of Port St. Lucie as an additional insured under any other insurance policy or otherwise protect the interests of the City of Port St. Lucie as specified in this Agreement.

Workers' Compensation Insurance & Employer's Liability: The Artist shall agree to maintain Workers' Compensation Insurance & Employers' Liability in accordance with Section 440, Florida Statutes, and as may be amended from time to time, unless Artist qualifies as a sole proprietor pursuant to sec. 440.02, Fla Stat., is not involved in the "Construction Industry", pursuant to definition in sec. 440.02(10), Fla. Stat., and completed the Affidavit of Sole Proprietor. Employers' Liability and must include limits of at least \$100,000.00 each accident, \$100,000.00 each disease/employee, and \$500,000.00 each disease/maximum. A Waiver of Subrogation endorsement must be provided. Coverage shall apply on a primary basis.

Commercial General Liability Insurance: The Artist shall agree to maintain Commercial General Liability insurance, issued under an Occurrence form basis, including Contractual liability, to cover the hold harmless agreement set forth herein, with limits of not less than:

Each occurrence	\$1,000,000
Personal/advertising injury	\$1,000,000
Products/completed operations aggregate	\$2,000,000
General aggregate	\$2,000,000
Fire damage	\$100,000 any 1 fire
Medical expense	\$10,000 any 1 person

Additional Insured: An Additional Insured endorsement **must** be attached to the certificate of insurance (should be CG2026) under the General Liability policy. Coverage is to be written on an occurrence form basis and shall apply as primary and non-contributory. Defense costs are to be in addition to the limit of liability. A waiver of subrogation is to be provided in favor of the City. Coverage shall extend to independent consultants and fellow employees. Contractual Liability is to be included. Coverage is to include a cross liability or severability of interests provision as provided under the standard ISO form separation of insurers clause.

Except as to Workers' Compensation and Employers' Liability, and Professional Liability Insurance, Certificates of Insurance and policies shall clearly state that coverage required by the

Agreement has been endorsed to include the City of Port St. Lucie, a municipality of the State of Florida, its officers, agents, and employees as Additional Insured for Commercial General Liability and Business Auto policies. The name for the Additional Insured endorsement issued by the insurer shall read: **"City of Port St. Lucie, a municipality of the State of Florida, its officers, employees and agents shall be listed as additional insured and shall include Artwork Commission Agreement between Peter Busby and the City of Port St. Lucie"** Copies of the Additional Insured endorsements shall be attached to the Certificate of Insurance. The policies shall be specifically endorsed to provide thirty (30) days written notice to the City prior to any adverse changes, cancellation, or non-renewal of coverage thereunder. In the event that the statutory liability of the City is amended during the term of this Agreement to exceed the above limits, the Artist shall be required, upon thirty (30) days written notice by the City, to provide coverage at least equal to the amended statutory limit of liability of the City.

Deductibles: All deductible amounts shall be paid for and be the responsibility of the Artist for any and all claims under this Agreement. Where an SIR or deductible exceeds \$5,000, the City of Port St. Lucie reserves the right, but is not obligated, to review and request a copy of the bidder's most recent annual report or audited financial statement.

It shall be the responsibility of the Artist to ensure that all independent consultants and sub-consultants comply with the same insurance requirements referenced herein. It will be the responsibility of the Artist to obtain Certificates of Insurance from all independent consultants and subconsultants listing the City as an Additional Insured without the language "when required by written contract." If Artist, independent consultant or subconsultant maintain higher limits than the minimums shown above, the City requires and shall be entitled to coverage for the higher limits maintained by Artist/independent consultant/subconsultant.

The Artist may satisfy the minimum limits required above for either Commercial General Liability, Business Auto Liability, and Employers' Liability coverage under Umbrella or Excess Liability. The Umbrella or Excess Liability shall have an Aggregate limit not less than the highest "Each Occurrence" limit for either Commercial General Liability, Business Auto Liability, or Employers' Liability. When required by the insurer, or when Umbrella or Excess Liability is written on Non-Follow Form, the City shall be endorsed as an "Additional Insured."

The City by and through its Risk Management Department reserves the right, but is not obligated, to review, modify, reject, or accept any required policies of insurance, including limits, coverages, or endorsements, herein from time to time throughout the term of this Agreement. All insurance carriers must have an AM Best rating of at least A:VII or better. When a self-insured retention or deductible exceeds \$5,000, the City reserves the right, but is not obligated, to review and request a copy of bidder's most recent annual report or audited financial statement.

A failure on the part of the Artist to execute the Agreement and/or punctually deliver the required insurance certificates and other documentation may be cause for annulment of the award.

**Exhibit E: Project Timeline/Time Frame**

***PROVIDED IN ATTACHMENT***

**[Page Left Intentionally Blank]**





## **Floresta Oval-about Public Art Project Port St. Lucie, FL**

I propose to create four larger-than-life dolphin sculptures, to be placed in groupings of two at either end of the new Floresta Oval-about. For thousands of years, dolphins have swum and frolicked in the waters off the Florida coast. They have endeared themselves to the human imagination with their playful antics and seemingly endless good humor, and they were even chosen as the Floresta Elementary School's mascot. They are revered for their joyful spirit, graceful curves, and powerful movements.

### **Description**

I plan to emulate, on a grand scale, the strong bonds of friendship and joyful sense of community the dolphin is known for. The two groupings of dolphins are intended to:

- have a dramatic visual impact on the surrounding area
- be simple, yet elegant in nature
- create and foster a focal point at both ends of the oval-about
- inspire the imagination and appeal to a broad spectrum of viewers
- relate to man's natural affiliation with nature
- provide an awe-inspiring experience and become a landmark for Floresta Drive

The four sculptures will profile the dolphin in varying postures, capturing different moments in their out-of-water leaps. While there will be two dolphins at each end of the oval-about, they are intended to be viewed as two parts of the same scene. They will all be swimming in the same direction as the traffic flow, as if swimming along with the traffic.

At the north facing end of the oval-about, near SE Howe, the leading dolphin will have already crested its jump and will be diving steeply back towards the water. The second dolphin, trailing the first, will be seen almost suspended in mid air as its rounded body just reaches its highest point and prepares to curve back toward the water. At the south facing end of the oval-about, near SE Bywood, the first dolphin will have crested its jump and will be seen just starting its dive back towards the water. The second dolphin will be seen just starting its jump, lunging out of the water and straight up into the sky. Both pairs will be staggered apart slightly from side to side to appear as dolphins often do, playfully jumping about as if chasing each other.

The woven and welded dolphin sculptures will be roughly 12 feet long each, though they will vary slightly due to their various postures. The two dolphins at the north facing end of the oval-about will span approximately 24 feet in total length, while the dolphins at the south facing end will span approximately 21 feet total. The tallest dolphin in each grouping will be approximately 12 feet tall at its highest point while the lower dolphin will be approximately 8 feet tall at its highest point. The rods constructing the dolphins will be woven and overlapped, creating a

surface that presents a sense of volume and mass, while the intricate web of spaces between the woven rods allow the sculptures to feel light and open. It is the fluidity of lines created by the hand-bent rods that give the metal pieces a strikingly soft and organic feel.

## **Lighting**

Each dolphin will be illuminated at night with up-lighting from two light fixtures set on a timer. The lights will be nestled among the plantings and aimed upwards so as not to affect the driver's line of sight. The strength of the light and its warmth will be determined in consultations with a lighting designer.

## **Materials**

The dolphins will be constructed of 304 stainless steel rods of varying diameters, including 7/16, 3/8, 5/16 and 1/4 inch. The individual rods are shaped, bent, woven and welded together, one piece at a time. There are eventually hundreds of pieces welded together to create a frame-like structure that has enormous strength. Each dolphin will weigh approximately 350 pounds when completed, excluding the bases.

Each of the sculptures will be securely mounted to a stainless steel tube that has been rolled to create a graceful curving arch. The tubing will be 4 inches in diameter with ¼ inch thick walls (schedule 40). The tubing will be securely welded to a stainless steel base mounting plate using gussets. The base plates will be bolted to a poured concrete foundation. The dolphins are permanently attached to the steel bases—they are each one unit when shipped. The foundation can be either a large diameter reinforced sonotube type or a shallow, broad based type foundation. The exact foundation style will be determined in coordination with a licensed Florida structural engineer and representatives of the city.

## **Finish**

The stainless steel sculptures and their bases will be primed and then painted white with a Sherwin Williams exterior top coat. I chose this white finish because it will allow the pieces to stand out against the darker trees in the back ground and really stand out at night when lit.

## **Maintenance**

The sculpture's finish should remain maintenance free for many years to come. The finish is very robust to the elements, and can be easily touched up by hand with a brush should the surface be scratched or damaged. The stainless steel material the pieces are fabricated with precludes any serious rusting under the paint and the woven and welded framework of the sculptures is practically indestructible under normal conditions.

Peter Busby  
Floresta Oval-about  
Port St. Lucie, Florida

### **Timeline**

January 2024.....Present proposal  
May – June 2024.....Sign Contract, City Approves Contract  
July - August 2024.....Structural Engineering and coordination with City representatives  
Sept 2024 – February 2025....Fabricate sculptures and bases  
March 2025.....Apply finish to sculptures  
March 2025.....Foundations installed  
April 1, 2025.....Ship sculptures  
April 1, 2025.....Install sculptures and lighting

### **Budget**

Materials A-Z.	22,500
Studio costs.	7,000
Insurance.	1,500
Travel.	3,000
Shipping.	6,000
Foundations.	12,000
Installation.	5,000
Electrical Installation	3,000
Lighting Components	2,500
Engineer Fee.	2,500
Artist Fee	25,000
Fabrication.	110,000
Total	\$ 200,000

**Location of Artwork, two dolphins at either end of Oval-About**



**North Facing Oval-About, near SE Howe  
24 feet long overall, tallest dolphin 12 feet tall, lower dolphin 8 feet tall.**



**South facing Oval-About, near SE Bywood**  
**21 feet long overall, tallest dolphin 12 feet tall, lower dolphin 8 feet tall.**



**Night View of South Facing Oval-About, near SE Bywood**



Night view with Floresta Elementary School in background

