

Kingston City Council
1230 Nepean Hwy
Cheltenham 3192

PO Box 1000 Mentone

Victoria 3194

Ausdoc DX 19401 Mentone

Telephone: (03) 9581 4567

Facsimile: (03) 9581 4500



City of
KINGSTON

Date XX

Design, Commission and Installation Agreement – Patterson River Sculpture Trail – The Launching Way CON 25/18

Kingston City Council
and

Artist name

ABN XXXX

Contents

1.	Definitions.....	1
2.	Commission of the Artwork	3
3.	Design	3
4.	Technical specification report.....	3
5.	Performance of the Work	4
6.	Access to the Work and Installation Site	5
7.	Subcontracting.....	5
8.	Council's directions and the Artist's obligations	5
9.	Delivery and Installation of the Artwork.....	6
10.	Transfer of risk	6
11.	Transfer of title and intellectual property rights.....	6
12.	The Artist's warranties	7
13.	Acceptance of the Artwork by Council.....	8
14.	Payment for the Work.....	8
15.	Insurance	8
16.	Indemnity	9
17.	Limitations of Liability	9
18.	Maintenance	9
19.	Variations to the Work.....	10
20.	Termination.....	11
21.	GST.....	11
21.1	GST Act	11
21.2	Exclusive of GST	11
21.3	Recipient must pay	11
21.4	Tax Invoice	12
22.	General.....	12



City of
KINGSTON

22.1	Amendment	12
22.2	Entire Understanding	12
23.	Further assurance.....	12
24.	Legal costs and expenses	12
25.	Waiver and exercise of rights	12
26.	Assignment.....	12
27.	Time of the essence.....	13
28.	No relationship	13
29.	Survival of indemnities.....	13
30.	Enforcement of indemnities	13
31.	No merger	13
32.	Rule of construction	13
33.	Notices	14
33.1	Service of Notice	14
33.2	Particulars for Service	14
33.3	Time of Service.....	14
34.	Interpretation	15
34.1	Governing Law and Jurisdiction	15
34.2	Dispute resolution.....	15
34.3	Persons.....	15
34.4	Joint and Several	15
34.5	Legislation.....	15
34.6	This Agreement, Clauses and Headings.....	15
34.7	Severance.....	16
34.8	Counterparts	16
34.9	Currency	16
34.10	Business Day.....	16
34.11	Number and Gender.....	16
Schedule 1	– Commission Brief.....	19
Schedule 2	- Payment Schedule	20
Schedule 3	- Occupational Health and Safety	21
Schedule 4	- The Work	22



Design and Commission Agreement

DATE XX

BETWEEN

KINGSTON CITY COUNCIL

having its Municipal Office at 1230 Nepean Highway, Cheltenham, Victoria 3192

(Council)

AND

XX(Artist)

Background

- A. Council wishes to commission the Artist to design, fabricate and install an Artwork in accordance with the terms and conditions of this Agreement.
- B. The Artist has agreed to design, fabricate and install the Artwork in accordance with the terms and conditions of the Commission Brief and this Agreement.
- C. The parties have agreed to enter into this Agreement to give effect to their common intentions.

THE PARTIES AGREE

1. Definitions

In this Agreement unless expressed or implied to the contrary:

Agent means an officer, employee or subcontractor of the Artist performing the Work.

Agreement means this agreement and the schedules.

Approved Design means the Design which Council has approved under clause 3.

Approved Technical Specification Report means the Technical Specification Report which Council has approved under clause 4.

Artwork means the artwork specified in Schedules 4.

Business Day means Monday to Friday excluding public holidays in Victoria.

Claims includes actions, proceedings, suits, causes of action, arbitrations, verdicts and judgments either at law or in equity or arising under a statute, debts, dues, demands, claims of any nature, costs and expenses.

Commission Proposal means the commission proposal in Schedule 4.

Damage means loss or damage however caused whether based in tort, contract or otherwise and includes without limitation any direct, indirect, special or consequential loss or damage or loss of profits, loss of production, loss or corruption of data, loss of reputation, direct or indirect labour costs and overhead expense and damage to property, personal injury and death.

Design means the design of the Artwork described in Schedule 4, subject to approval by Council pursuant to Stage 2 of Schedule 2.

Fabrication Completion Date means the date for completion of the Work as specified in Schedule 2.

Footings Installation Date means February 2027.

Installation Date means March 2027.

Installation Time means the time agreed subject to builders availability.

Install or Installation means the management and coordination of the installation of the Artwork by the Artist at the Installation Site.

Installation Site means the site in Schedule 4 or any other location as directed in writing by Council to the Artist in consultation with the Artist.

Occupational Health and Safety Obligations means the Artist's occupational health and safety obligations, including those described in Schedule 3.

Purpose means the display of the Artwork at the Installation Site for the Warranty Period.

Schedule means the schedules to this Agreement.

Stage means each stage of the Work specified in Schedule 2.

Tax Invoice has the same meaning given to that term in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Technical Specification Report means a technical specification report is prepared and approved by a qualified engineer as described in clause 4.1.

Warranty Period means 10 years.

Work includes the design, fabrication and installation of the Artwork by the Artist.

2. Commission of the Artwork

The Artist must:

- 2.1 design, fabricate the Artwork; and
- 2.2 install the Artwork at the Installation Site, in accordance with this Agreement.

3. Design

- 3.1 The Artist must submit a detailed Design to Council for Council's final approval before proceeding with fabrication of the Artwork.
- 3.2 The detailed Design mentioned in clause 3.1 includes, but is not limited to, preliminary designs, materials and approximate dimensions of the Artwork.

Council will notify the Artist in writing of its approval or disapproval of the designs and drawings submitted to Council under clause 3.1 within 10 business days
- 3.3 If Council does not approve the designs and drawings submitted to Council under clause 3.1, Council may request the Artist to change the designs and drawings once and re-submit them to Council.
- 3.4 The Artist must not proceed with Stage 2 and other later Stages if the Artist has not received Council's approval of the Design under this clause 3.

4. Technical specification report

- 4.1 The Artist must provide Council with the Technical Specification Report.
- 4.2 The Technical Specification Report must include, without limitation to:
 - 4.2.1 all structural and safety issues related to the Work; and
 - 4.2.2 the life and long-term durability of the Artwork.
- 4.3 Council must notify the Artist in writing of its approval or disapproval of the Technical Specification Report within 10 business days from the date of receipt of the Technical Specification Report from the Artist.
- 4.4 The Artist must provide Council with other Technical Specification Reports upon Council's request.
- 4.5 The Artist must not proceed with Stage 2 and other later Stages before the Artist has received Council's approval of the Technical Specification Report under clause 4.3.

5. Performance of the Work

- 5.1 The Artist will attend to all Works required for completion of the Artwork in a timely manner.
- The Artist will advise Council of progress during the fabrication and installation period.
- The Artist must complete the Work, on or before the Installation Completion Date (weather permitting).
- 5.2 If the Artist becomes aware of any potential delays in completing the Work or any of the Artist's obligations under this Agreement, the Artist must immediately notify Council of those delays, reasons for those delays and agree an amended Completion Date.
- 5.3 The Artist must pay itself and Council any additional costs relating to or arising from the delays caused or contributed to by the Artist.
- 5.4 The Artist will as far as practicable provide Council 14 days clear notice of when the Artwork is expected to be completed and will be available for Installation on the Site.
- 5.5 The Artist will arrange for delivery of the Artwork to the Site in consultation and agreement with Council.
- 5.6 Delivery of the Artwork to the Site and commencement of its Installation must not begin until Council has received an installation plan including a work breakdown and timeline from the Artist and approved all proposed arrangements for such delivery and installation.

6. Access to the Work and Installation Site

- 6.1 During the period of fabrication by the Artist of the Artwork and if requested by Council, the Artist must allow Council to have reasonable access to the Artwork during Business Hours to inspect the progress of the Work.
- 6.2 If the Artist has notified Council of potential delays in completing the Work or installing and delivering the Artwork under clause 5.4, and such delays are occasioned by inclement weather or other adverse conditions, Council may take possession of the Artwork and keep it secure until the weather or other conditions

improve and the Artist can resume performance of his or her obligations under this Agreement.

7. Subcontracting

- 7.1 The Artist must ensure each Agent is aware of and complies with all of the relevant Artist's obligations under this Agreement.

8. Council's directions and the Artist's obligations

The Artist must ensure that the Artist and all of the Agents:

- 8.1 comply with all legislative requirements and local laws in relation to the Work;
- 8.2 comply with any reasonable direction made by any Council employee during the performance of the Work;
- 8.3 protect people, property and the environment;
- 8.4 avoid unnessecary interference with the passage of people and property;
- 8.5 prevent nuisance, unreasonable noise and disturbance;
- 8.6 provide the Artist's relevant Occupational Health and Safety obligations as specified in Schedule 3;
- 8.7 during the performance of the Work, the Artist has complied and complies with all the Artist's relevant Occupational Health and Safety obligations in accordance with Schedule 3.
- 8.8 provide and maintain a working environment for their employees, subcontractors and members of the public that is safe and without risk to health;
- 8.9 immediately notify Council of any accident, injury, property or environmental damage which occurs during the performance of the Works; and
- 8.10 comply with any guidelines, assessments, and/or directions of Council as to conduct of the Installation of the Artwork on the Site and ensure that all agents so comply.

9. Delivery and Installation of the Artwork

- 9.1 The Artist must deliver and install the Artwork:
- 9.1.1 during the Installation Time;

9.1.2 on the Installation Date or month; and

9.1.3 at the designated Installation Site.

As per the Commission Brief, the commission fee will cover all costs associated with the artwork's implementation including all Artist fees (including all labour, fabrication and materials and associated installation costs, all insurances and public liability insurances, transportation, hiring of necessary equipment, anti-graffiti coating and/or UV coating suitable for selected material. Sub consultant fees i.e. structural engineer, 10% contingency, handover and maintenance schedule) etc. Therefore, the Artist is responsible for all the costs of or relating to the construction of the footing and the installation of the Artwork.

Council to be notified of any additional contingency costs 10 days prior to the commencement of works for approval.

10. Transfer of risk

- 10.1 All risk associated with the design, fabrication and installation of the Artwork at the Site until the completion of the installation is solely that of the Artist.
- 10.2 The risks, including loss or damage to the Artwork, will pass from the Artist to Council at 5pm on the Installation Date or, if the Artwork is installed after this time, on completion of the installation of the Artwork by the Artist.

11. Transfer of title and intellectual property rights

- 11.1 The title of the Artwork will pass from the Artist to Council upon payment to the Artist of Stage 1 under Schedule 2.
- 11.2 The copyright in the Artwork will remain with the Artist.
- 11.3 The Artist grants Council an exclusive, perpetual and royalty-free licence for non-commercial purposes and for which no fee is charged by Council to:
 - 11.3.1 exhibit the Artwork; and
 - 11.3.2 reproduce the Artwork whether by photographic or other medium in such a manner as Council may determine, publish or cause to be published images of the Artwork on Council and other websites and in promotional material.
- 11.4 Council will publish an attribution of authorship in respect of the Artwork and recognise the Artist's continuing moral rights in accordance with clause 11.3.
- 11.5 Council may at some future time decide to de-accession or remove the Artwork from the Site. Council is at liberty to do so at its own discretion but only after

consultating the Artist or the Artist's successors as required by section 195AT of the Copyright Act.

- 11.6 Council will display at the Site a sign or plaque, at Council's expense, stating the title of the Artwork and the Artist's name and relevant cataloguing or interpretative details.

The Artist agrees that the Artwork is unique to the Patterson River and will not be replicated in any future project.

12. The Artist's warranties

The Artist warrant to Council that:

- 12.1 the Design of the Artwork is the original work of the Artist and the Artist has not copied or altered any existing design or concept belonging to another party;
- 12.2 the Artist has necessary skills to perform the Work;
- 12.3 the Artist uses high quality materials to perform the Work;
- 12.4 the Artwork is suitable for the Purpose;

the Artwork is free from defects and will remain as delivered on the Installation Date, subject to normal wear and tear, for a minimum of 5 years from the Installation Date;

The Artist will provide the warranties on all materials upon submission of the maintenance schedule

- 12.5 the Artist is capable of passing title in the Artwork free of encumbrances and all other adverse interests on and from the time it is delivered to Council.

13. Acceptance of the Artwork by Council

- 13.1 If Council determines that the Artwork does not comply with this Agreement, the Approved Design and the Approved Technical Specification Report, Council, at its absolute discretion, may accept or reject the Artwork.
- 13.2 If Council rejects the Artwork under clause 13.1, Council may retain part or all of any fee specified in Schedule 2 relating to a Stage which has not been completed.

14. Payment for the Work

- 14.1 The Artist must issue an itemised Tax Invoice to Council for all amounts payable by Council to the Artist under clause 14.2.
- 14.2 Council must pay the Artist at the fees specified in Schedule 2 for the Work performed by the Artist in accordance with Schedule 2 within 30 days of receipt of an invoice prepared in accordance with clause 14.1.
- The parties accept and agree that the monies specified in Schedule 2 fully cover the Artist's professional fees, insurances, designs, materials and fabrication costs, engineering assessments, equipment hire, out-of pocket expenses, travel, delivery and the full installation costs.
- 14.3 If Council fails to pay the Artist under clause 14.2, the Artist may suspend the Work until the Artist has received the fees for the relevant Stages.

15. Insurance

- 15.1 The Artist must take out and maintain appropriate Public Liability insurance to protect the Artist, the Agent and other associated people contracted by the Artist for performing the Works, against all Claims for the whole period of performing the Work until completion of Installation.
- 15.2 The Artist must take out appropriate and maintain insurance of the Work against fire, theft or accidental damage until completion of the Installation.
- 15.3 The Artist must ensure that the maximum cover for each occurrence under clauses 15.1 and 15.2 is no less than \$20,000,000 for the Public Liability insurance.
- 15.4 The Artist must immediately provide Council with certificates of currency for the insurance under clause 15.1 and 15.2 upon signing this Agreement.

16. Indemnity

- 16.1 The Artist indemnifies Council against any claims from third parties that the design of the Artwork is not original work of the Artist.
- 16.2 The Artist indemnifies and holds harmless Council from and against all Claims for Damages and costs that may be sustained directly or indirectly as a result of any damage, loss, death or injury in connection with the works, caused by any breach of this Agreement by the Artist or the negligent act or omission or wilful misconduct of the Artist or any Agent.

- 16.3 This indemnity extends to and includes all costs, damages and expenses incurred in defending and/or settling Claims, including legal costs on a full indemnity (solicitor/own-client) basis.

17. Limitations of Liability

- 17.1 Nothing in this Agreement is to be read as excluding, restricting or modifying the application of any legislation which by law cannot be excluded, restricted or modified.
- 17.2 Council is not liable for any Claim arising under this Agreement in contract, tort, statute or otherwise, as a result of a Force Majeure.
- 17.3 Notwithstanding any other provision of this Agreement and to the fullest extent permitted by law, Council will not be liable to for consequential, indirect or special losses or Damages of any kind suffered by the Artist as a result of any act or omission whatsoever of the Artist, its officers, employees, agents.

18. Maintenance

The Artist must provide cleaning, maintenance instructions for the Artwork.

Council will be solely responsible for the proper cleaning, maintenance and protection of the Artwork.

- 18.1 The Artist is responsible for maintenance work and costs that arise directly as a result of faults in the materials, fabrication and installation of the Artwork for a period of 12 months after the date of completion of Installation.
- 18.2 Upon Council's request under clause 18.3, the Artist must repair any damage to the Artwork at the Artist's expense, subject to clause 18.5.
- 18.3 The Artist is not required to repair damages to the Artwork to the extent that:
- 18.3.1 the Artist has provided Council with the instructions and advice under clause 18.1;
 - 18.3.2 Council has failed to comply with the instructions and advice provided by the Artist to Council under clause 18.1; and
 - 18.3.3 as a result of Council's failure under clause 18.5.2, damage has occurred to the Artwork.
 - 18.3.4 the damage to the Artwork is caused by normal wear and tear, acts of vandalism or other deliberate acts of third parties.

- 18.4 In the case that significant maintenance or repairs to the Artwork is required at any time outside the agreed warranty period, Council will make every reasonable effort to contact the Artist to facilitate the maintenance or repairs before seeking assistance from elsewhere.

19. Right to purchase the Artwork

- 19.1 Where during the Warranty Period, Council wishes to remove the Artwork from the Installation Site for the purposes of either relocating it (permanently or temporarily), selling it, making a gift of it, storing it or otherwise disposing of it, Council must first make reasonable endeavours to give the Artist 28 days notice in writing of:
- 19.1.1 Council's intention to do so;
 - 19.1.2 The Artist's right to offer to purchase the Artwork from Council; and
 - 19.1.3 If the Artist wishes to exercise the right under clause 19.1.2, the Artist must notify Council in writing of the Artist's offer to purchase the Artwork within 15 business days from the date of the notice under clause 19.1 (Artist's Offer).
- 19.2 Council may, at its absolute discretion, accept or reject the Artist's Offer.

20. Variations to the Work

- 20.1 No variation to the approved Design of the Artwork under clause 3 is permitted without Council's consent which shall not be unreasonably withheld.
- 20.2 This Agreement may only be varied or extended by agreement in writing and signed by both parties.

21. Termination

- 21.1 In the event that the Artist does not complete any Stage of the Work on or before the Completion Date in Schedule 2 Council may give the Artist written notice.
- 21.2 The Artist must, within 5 Business Days of receipt of the notice under clause 21.1, remedy the breach or notify Council of the program to remedy the breach to the reasonable satisfaction of Council.
- 21.3 If the Artist does not remedy the breach under clause 21.2 or if it is not possible for the Artist to remedy the breach, Council may terminate the Agreement by giving the Artist written notice of the termination.
- 21.4 If Council terminates the Agreement under clause 21.3:



- 21.4.1 all monies, which Council has paid to the Artist up to the date of termination, will be in full and final satisfaction of all Claims by the Artist under this Agreement; and
- 21.4.2 the Artist will relinquish title to and copyright of the Artwork.
- 21.4.3 if termination occurs after completion of the Design but prior to sign-off of the Artwork, the Artist hereby licences Council to complete the Artwork to its satisfaction but the Artist has the right to be attributed or seek not to be attributed as the Author of the final Artwork produced with or without attribution to any third party.

22. GST

22.1 GST Act

In this clause words that are defined in *A New Tax System (Goods and Services Tax) Act* 1999 have the same meaning as their definition in that Act.

22.2 Exclusive of GST

Except as otherwise provided by this clause, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

22.3 Recipient must pay

If GST is payable in respect of any supply made by a supplier under this Agreement, the recipient will pay to the supplier an amount equal to the GST payable on the supply at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

22.4 Tax Invoice

The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under clause 22.3.

23. General

23.1 Amendment

This Agreement may only be varied or replaced by a document duly executed by the parties.

23.2 Entire Understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations



and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

24. Further assurance

Each party must promptly execute and deliver all documents and take all other action necessary or desirable to effect, perfect or complete the transactions contemplated by this Agreement.

25. Legal costs and expenses

Each party must pay its own legal costs and expenses in relation to the negotiation, preparation and execution of this Agreement and other documents referred to in it, unless expressly stated otherwise.

26. Waiver and exercise of rights

- 26.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.
- 26.2 No party will be liable for any loss or expenses incurred by another party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

27. Assignment

A party must not:

- 27.1 sell, transfer, delegate, assign, licence; or
- 27.2 mortgage, charge or otherwise encumber any right under this Agreement to any person (**Proposed Assignee**), or permit a Proposed Assignee to assume any obligation under this Agreement without the prior written consent of the other parties to this Agreement.

28. Time of the essence

Time is of the essence as regards all dates, periods of time and times specified in this Agreement.

29. No relationship

No party to this Agreement has the power to obligate or bind any other party. Nothing in this Agreement will be construed or deemed to constitute a partnership, joint venture or employee, employer or representative relationship between any of the parties. Nothing in this Agreement will be deemed to authorise or empower any of the parties to act as agent for or with any other party.

30. Survival of indemnities

Each indemnity in this Agreement is a continuing obligation, separate and independent from the other obligations of the parties and survives termination of this Agreement.

31. Enforcement of indemnities

It is not necessary for a party to incur expense or make payment before enforcing a right of indemnity conferred by this Agreement.

32. No merger

The warranties, undertakings, agreements and continuing obligations in this Agreement do not merge on completion.

33. Rule of construction

In the interpretation of this Agreement, no rule of construction applies to the disadvantage of the party preparing the Agreement on the basis that it put forward this Agreement or any part of it.

34. Notices

34.1 Service of Notice

A notice or other communication required or permitted, under this Agreement, to be served on a person must be in writing and may be served:

34.1.1 personally on the person;

34.1.2 by leaving it at the person's current address for service;

34.1.3 by posting it by prepaid post addressed to that person at the person's current address for service; or

34.1.4 by email to the person's current email address.

34.2 Particulars for Service

34.2.1 The particulars for service of Council are

address: 1230 Nepean Highway, Cheltenham, Victoria, 3192

email: visualarts@kingston.vic.gov.au

The particulars for service of Artist are:

address: xxxxx

email: xxxxx

34.2.2 Any party may change the address or email for service by giving notice to the other parties.

34.2.3 If the person to be served is a company, the notice or other communication may be served on it at the company's registered office.

34.3 Time of Service

A notice or other communication is deemed served if:

34.3.1 served personally or left at the person's address, upon service;

34.3.2 posted within Australia to an Australian address, two Business Days after posting and in any other case, seven Business Days after posting;

34.3.3 served by email, subject to clause 34.3.5;

34.3.4 at the time indicated on the sent report produced by the sender's email server indicating that the email was sent in its entirety to the addressee's email address;

34.3.5 received after 6.00pm in the place of receipt or on a day which is not a Business Day, at 9.00am on the next Business Day.

35. Interpretation

35.1 Governing Law and Jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of Victoria.



City of
KINGSTON

35.2 Dispute resolution

The parties agree to submit any dispute which arises out of this Agreement to mediation in accordance with the rules of the Arts Law Centre Mediation Service, a program of the Arts Law Centre of Australia, prior to having recourse to arbitration or litigation.

35.3 Persons

In this Agreement, a reference to:

- 35.3.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;
- 35.3.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and
- 35.3.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency, is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

35.4 Joint and Several

If a party consists of more than one person, this Agreement binds them jointly and each of them severally.

35.5 Legislation

In this Agreement, a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them.

35.6 This Agreement, Clauses and Headings

In this Agreement:

- 35.6.1 a reference to this or other document includes the Agreement as varied or replaced regardless of any change in the identity of the parties;
- 35.6.2 a reference to a clause, schedule, appendix or annexure is a reference to a clause, schedule, appendix or annexure in or to this Agreement all of which are deemed part of this Agreement;
- 35.6.3 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;
- 35.6.4 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;
- 35.6.5 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning; and



35.6.6 where the expression including or includes is used it means 'including but not limited to' or 'including without limitation'.

35.7 Severance

35.7.1 If a provision in this Agreement is held to be illegal, invalid, void, voidable or unenforceable, that provision must be read down to the extent necessary to ensure that it is not illegal, invalid, void, voidable or unenforceable.

35.7.2 If it is not possible to read down a provision as required in this clause, that provision is severable without affecting the validity or enforceability of the remaining part of that provision or the other provisions in this Agreement.

35.8 Counterparts

This Agreement may be executed in any number of counterparts all of which taken together constitute one instrument.

35.9 Currency

In this Agreement, a reference to '\$' or 'dollars' is a reference to Australian dollars.

35.10 Business Day

If a payment or other act is required by this Agreement to be made or done on a day which is not a Business Day, the payment or act must be made or done on the next following Business Day.

35.11 Number and Gender

In this Agreement, a reference to:

35.11.1 the singular includes the plural and vice versa; and

35.11.2 a gender includes the other genders.



City of
KINGSTON

EXECUTED by the parties as an agreement

SIGNED for and on behalf of **KINGSTON**
CITY COUNCIL by its Authorised
Representative in the presence of:

)
)
)

.....
Witness

.....
Print name

.....
Representative

.....
Print name

SIGNED SEALED AND DELIVERED by
XXXX in the presence of:

)
)

.....
Witness

.....
Print name



Schedule 1 – Commission Brief

Refer attached.

Schedule 2 - Payment Schedule



PROJECT TIMELINES and PAYMENT SCHEDULE

Stage	Task	Stage Completion Date	Indicator/s	Fees
1	Commissioning of Artist	April 2026	Signing the Agreement by Council and the Artist	20% 44,000 exc. GST
2	Artist commences fabrication	October 2026	Final design concept, work schedule for installation approved by Council	30% 66,000 exc. GST
3	Artist fabrication completed and installation period commence	January/February 2027	Artwork completed and installed	30% 66,000 exc. GST
4	Acceptance of the Artwork by Council and completion of reporting requirements to Council including maintenance schedule	March/April 2027	Written acceptance by Council Provision of written maintenance schedule by Artist to Council	20% 44,000 exc. GST
TOTAL				\$220,000 exc. GST

For the avoidance of doubt, the Artist must not proceed to work on a subsequent Stage, and Council is not liable for the Fees of any subsequent Stage, where the Artist has not received Council approval required for an earlier Stage.

The Artist's invoices must be marked to the attention of Public Art Officer, Kingston City Council, PO Box 1000, Mentone, Victoria, 3194.

Schedule 3 - Occupational Health and Safety

The relevant Occupational Health and Safety obligations includes, but not limited to:

- Occupational Health and Safety Plan;
- WorkCover;
- Public Liability Insurance (\$20 million); and
- Compliance with Australian Standards: and
- Rapid Global
- Traffic/Pedestrian Management Plan
- Asset Protection Permit

Contractors and any sub-contractors will be required to register with Council's nominated OH&S registration process and provide evidence of their OH&S to attain certification to work for Council.

If the site is accessible to the general public, a Traffic Management Plan must be obtained by the Artist through a registered company and submitted to Council.

The Artist is responsible for overseeing any sub-contractors and will ensure they comply with the relevant OHS Laws and Regulations.



Schedule 4 - The Work

Refer attached Artist Proposal.