



PUBLIC ART

Design and Commission Agreement

Coffs Harbour City Council and [insert Artist name]

FOR

Project: [insert project name]

DATE: [insert]

PUBLIC ART DESIGN AND COMMISSION AGREEMENT

THIS IS AN AGREEMENT BETWEEN:

Coffs Harbour City Council (ABN 79 126 214 487)

of 2 Castle Street, Coffs Harbour NSW 2450, (02) 6648 4000

AND

★[NAME, ABN]★

of ★[ADDRESS, TELEPHONE,]★ (Artist)

BACKGROUND

- A. Council has prepared a brief for the creation of a public artwork, a copy of which is attached to this agreement as Annexure 1 (**Brief**).
- B. Based on the Brief, the Artist has prepared a preliminary design for the public artwork, a copy of which is attached to this agreement as Annexure 2 (**Preliminary Design**).
- C. Council wishes to commission the Artist to produce a more detailed design based on the Brief and Preliminary Design, and to create and install the public artwork.
- D. The Artist has agreed to produce a more detailed design based on the Brief and Preliminary Design, and to create and install the public artwork on the terms of this agreement.

THE PARTIES AGREE AS FOLLOWS:

1. Definitions

- 1.1. In this agreement, unless the context requires otherwise:

Acceptance Date means the date on which Council accepts a notice of completion from the Artist and takes over legal ownership of the artwork.

Agreement means this artwork commission between the Artist and Council.

Artist means the party named on the front page of this agreement.

Artwork means the public art described in the design documentation (Artwork Brief and Preliminary Design)

Artwork Brief means the Brief in relation to the Artwork set out in Annexure 1.

Commission means the commissioning of the Artist to undertake the Public Artwork in accordance with this Agreement.

Commission Fee means the total fee amount of \$.00 payable by Council to the Artist for the commission of the Artwork and payable in the manner set out in the Commission Fee in the Project Schedule.

Date of agreement means the date when this agreement has been signed by all of the parties.

Design Documentation means the design documents including the Brief and the Preliminary Design, in Annexure 1 and 2.

Maintenance Manual means the manuals, guides or instructions regarding the operation and/or maintenance of the Artwork referred to in the Clause 17 of this Agreement;

Site means the location or building where the Artwork will be installed as per the Site Map provided in Annexure 3.

THE WORK

2. Scope of Work

- 2.1. The Artist must furnish all of the materials and perform all the work for the Project as shown on the drawings and described in the specifications in the Design Documentation and Project Schedule.
- 2.2. The Artist must ensure that the Artwork is created by the Artist in a proper manner and be of a standard of high skill, quality and craftsmanship, in compliance with accepted standards of workmanship, and in conformity with this agreement.

3. Materials

- 3.1. The Artist must use high quality materials which are free from defects and suitable for the purpose of the Artwork.

4. Council Representative

- 4.1. Council will designate its project representative who will make all necessary and proper decisions with reference to the Project within the scope of his or her authority. The Artist must direct all requests for clarification or instruction to the Council representative.
- 4.2. Council has assigned _____ to serve as the Council's representative on this Project.
- 4.3. Council's representative will be available on reasonable notice to the Artist to discuss the Artwork as required
- 4.4. The Artist will be available for discussions with Council's representative, the Site Owner or other such persons nominated by Council upon being given reasonable notice.

5. Project Timeframes

- 1.1. Council and the Artist agree to use their best efforts to complete all stages of the process of creation, amendment and installation of the design and the artwork that are the subject matter of this agreement (the **Public Artwork Project**) in accordance with the timeline set out in the Schedule or such other dates as the parties agree in writing (**Timeline**).

6. Delay

- 6.1. If there is a delay due to circumstances beyond the control of the parties, including but not limited to non-availability of necessary materials, shipping delays, labour strikes or natural disasters, each party agrees to take all reasonable steps to minimize its losses as a consequence of that delay.

STAGE 1: DESIGN DEVELOPMENT

7. The Design

- 7.1. Council confirms and agrees that:

- a. the Preliminary Design conforms to, and is consistent with, the Brief;
- b. the Brief contains all relevant information relating to:
 - i the intended life and use of the public artwork contemplated by the Brief (**Artwork**);
 - ii the proposed site for the Artwork (**Site**) and the environment where the Artwork will be located including any occupational health and safety and disability access considerations.

- 7.2. The Artist agrees to:

- a. develop an original design for the artwork based on the Brief and the Preliminary Design (**Design**);
- b. create a detailed record of the Design in the form of a drawing, model or plan which includes clear information about:
 - i the scale and dimensions of the Artwork;
 - ii how it is intended to be situated in relation to the Site;
 - iii the suitability of the materials to be used and their durability given the proposed life, use and location of the Artwork as stated in the Brief;

and addresses any other issues identified in the Brief including the intended use of the Artwork, any particular features of the Site, any occupational health and safety and disability access considerations, and any structural engineering requirements;

c. deliver the Design to the Council on or before the date specified in the Timeline.

7.3. Following receipt of the Design and within the time specified in the Timeline, Council must either:

a. request changes to the Design in accordance with clause 8 of this agreement;

b. accept the Design in accordance with clause 9 of this agreement; or

c. reject the Design in accordance with clause 10 of this agreement.

8. Changes to the Design

8.1. Council may request a reasonable number of changes to the Design provided that the Council:

a. requests all such changes in a single written notice to the Artist specifying the changes (**Amendment Notice**) delivered to the Artist on or before the date specified in the Timeline;

b. does not request any change to the Design that is substantially different from the Brief, the Preliminary Design or the Design as first submitted other than changes to the Design required in order to comply with structural engineering requirements specified in the Brief; and

c. pays the Artist a fee for the production of any further Design produced by the Artist to address the changes in the Amendment Notice (**Amended Design**) as set out in clause 20.

8.2. Within fifteen (15) business days of receiving the Amendment Notice, the Artist must either:

a. prepare an Amended Design and submit it to the Council; or

b. notify the Council that the Artist is not prepared to modify the Design and outline the reasons why.

8.3. Within fifteen (15) business days of the Artist submitting an Amended Design, the Council must either:

a. accept the Amended Design in accordance with clause 9; or

b. request further changes to the Amended Design by issuing a further Amendment Notice to the Artist (**Further Amendment Notice**) provided that:

- i the notice does not request changes that are substantially different from the Brief, the Preliminary Design, or the Design as first submitted;
- ii such changes arise solely from the Amended Design and could not reasonably have been requested in the initial Amendment Notice;
- iii such changes do not relate to the artistic merits but exclusively concern engineering or occupational health and safety issues or are otherwise required by law; and
- iv the Council pays the Artist a further fee for the production of any further Amended Design as set out in clause 21.

8.4. Within fifteen (15) business days of receiving a Further Amendment Notice, the Artist must:

- a. prepare a further amended design and submit it to Council (**Further Amended Design**); or
- b. notify the Council that the Artist is not prepared to modify the Amended Design and outline the reasons why.

8.5. Within fifteen (15) business days of the Artist submitting a Further Amended Design, Council must:

- a. accept the Further Amended Design in accordance with clause 9; or
- b. reject the Further Amended Design in accordance with clause 10.

8.6. Within fifteen (15) business days of the Artist notifying Council under clause 8.2 b or clause 8.4 b that the Artist is not prepared to make changes to the Design or the Amended Design, Council must:

- a. accept the Design or Amended Design by notifying the Artist in accordance with clause 9; or
- b. reject the Design and/or the Amended Design in accordance with clause 10.

9. Acceptance of the Design

9.1. Council may accept the Design, the Amended Design or the Further Amended Design by notifying the Artist in writing.

9.2. Council is deemed to accept the Design, the Amended Design, or the Further Amended Design if the Council does not, within the periods specified in this agreement, either:

- a. expressly accept the Design, the Amended Design or the Further Amended Design in accordance with this clause;
- b. request changes to the Design, the Amended Design or the Further Amended Design in accordance with clause 8; or
- c. reject the Design, the Amended Design and/or the Further Amended Design in accordance with clause 10.

- 9.3. By accepting the Design (or any amended design), Council agrees that the Design or Amended Design or Further Amended Design is suitable given the intended life of the Artwork and the environment where the Artwork will be located.

10. Rejection of the Design

- 10.1. Council may reject the Design, the Amended Design or the Further Amended Design by notifying the Artist in writing.
- 10.2. Where Council rejects the Design, the Amended Design, or the Further Amended Design the Council must pay the Artist the fee for design development specified in the Schedule (**Design Development Fee**) unless the Design the Amended Design or the Further Amended Design:
- a. was delivered to Council more than fifteen (15) business days after the due date; or
 - b. did not conform to, or was substantially different from, the Preliminary Design and the Brief except to the extent such differences were as a result of changes requested in an Amendment Notice or Further Amendment Notice.

STAGE 2: CREATION OF THE WORK

11. The Artwork

- 11.1. On or before the date set out in the Timeline, the Artist agrees to:
- a. create the Artwork as described in, and in accordance with, the Design, the Amended Design or the Further Amended Design accepted by the Council;
 - b. provide the reports listed in the Schedule (**Reports**);
 - c. notify Council when the Artwork is completed and ready for installation; and
 - d. provide Council with reasonable access to view the Artwork during fabrication and after completion.
- 11.2. If the Artwork is created on the Site or on the premises of Council or Council's employees, agents or contractors, the Council will arrange for the Artist and the Artist's employees and agents to have full and free access to those premises at all reasonable times for the purpose of producing the Artwork.
- 11.3. Within ten (10) business days of receiving notification of the Artwork's completion under clause 11.1 c, Council must view the Artwork and either:
- a. request changes to the Artwork in accordance with clause 12;
 - b. accept the Artwork in accordance with clause 13; or
 - c. reject the Artwork in accordance with clause 14.

12. Changes to the Artwork

- 12.1. Council may request a maximum of ***[NUMBER]*** changes to the Artwork provided that Council:
- a. requests all such changes in a single written notice specifying the changes (**Artwork Amendment Notice**) delivered to the Artist within the time specified in the Timeline;
 - b. acknowledges that the Artist has applied aesthetic skill and judgment in the creation of the Artwork and does not seek any changes based solely on artistic merits unless the Artwork is substantially different from the accepted Design, Amended Design or the Further Amended Design; and
 - c. pays the Artist a fee to undertake the requested changes as set out in clause 21.
- 12.2. Within fifteen (15) business days of receiving the Artwork Amendment Notice, the Artist must either:
- a. amend the Artwork to incorporate the changes requested by Council, notify Council that the changes have been completed and provide Council with reasonable access to view the amended Artwork; or
 - b. notify Council that the Artist is not prepared to modify the Artwork.
- 12.3. Within ten (10) business days of receiving such notification, Council must either:
- a. accept the Artwork in accordance with clause 13; or
 - b. reject the Artwork in accordance with clause 14.

13. Acceptance of the Artwork

- 13.1. Council may accept the Artwork by notifying the Artist in writing within the time specified in clause 12.3.
- 13.2. Council is deemed to accept the Artwork if the Council does not:
- a. expressly accept the Artwork in writing in accordance with clause 12.3 or 13.1;
 - b. request changes to the Artwork in accordance with clause 12; or
 - c. reject the Artwork in accordance with clause 14.

14. Rejection of the Artwork

- 14.1. Council may reject the Artwork by notifying the Artist in writing provided that:
- a. the Artwork is not produced substantially in accordance with the Design, Amended Design or Further Amended Design accepted by the Council;
 - b. Council has requested changes to the Artwork under clause 12 in order to bring the Artwork into conformity with the accepted Design, Amended Design or Further Amended Design;

- c. Council has agreed to vary the Timeline to give the Artist a reasonable time to make those changes; and
- d. the Artist has failed to make the necessary changes within the time specified.

STAGE 3: INSTALLATION OF THE WORK

15. The Site

- 15.1. A plan of the Site is attached to this agreement as Annexure 3.
- 15.2. Council will ensure that the Site is adequately prepared for the creation and installation of the Artwork at the Site within the times specified in the Timeline.

16. Delivery and installation

- 16.1. Subject to clause 16.2, the Artist will supervise the installation of the Artwork on the Site and be responsible for all costs associated with the installation of the Artwork at the Site.
- 16.2. If the Artwork is not created on the Site:
 - a. within ten (10) business days of Council accepting the Artwork, the Artist will arrange for the transport of the Artwork (including proper packaging) to the Site; and
 - b. the Artist will pay for all costs involved in the transport of the Artwork to at the Site.

17. Maintenance manual

- 17.1. Within ten (10) business days of the acceptance of the Artwork by Council and its installation on the Site, the Artist will provide Council with a written manual containing comprehensive instructions for the proper cleaning, operation and maintenance of the Artwork (**Manual**).
- 17.2. The Manual will include:
 - a. a description of the materials used and any installed services or equipment and their mode of operation;
 - b. equipment operating procedures and supplier's names, addresses and telephone numbers;
 - c. an inspection, testing and maintenance program detailing the routine required to maintain the Artwork throughout its intended lifespan;
 - d. "as installed" drawings for the Artwork and all related equipment and services; and
 - e. a list of major sub-contractors with appropriate contact details.

13.3. Council will ensure that the Artwork is properly maintained and protected from damage in accordance with the Artist's instructions in the Manual.

18. Defects liability

18.1. A defects liability period will extend for a period of twelve (12) months from the date of acceptance of the Artwork by Council and its installation on the Site.

18.2. The Artist will rectify, without charge to Council, any latent defects in the Artwork that become apparent during this period.

18.3. This clause will not apply to damage or deterioration which results from fair wear and tear, the inherent characteristics of the materials used to create the Artwork or the Site's environment.

18.4. The rights granted under this clause are in addition to any rights that a party may have at law.

ARTIST PAYMENTS

19. Commission Fees

19.1. Council agrees to pay the Artist the total fee specified in the Schedule (**Commission Fee**):

- a. in instalments in accordance with the Schedule; and
- b. within twenty (20) business days of receiving the Artist's invoice.

20. Amendment Fees

20.1. Where the Artist produces an Amended Design or Further Amended Design pursuant to clause 8.2 or clause 8.4, Council must pay the Artist the fee specified in the Schedule (**Design Amendment Fee**) within twenty (20) business days of receiving the Artist's invoice.

20.2. Where the Artist amends the Artwork in response to an Artwork Amendment Notice, Council must pay the Artist the fee specified in the Schedule (**Artwork Amendment Fee**) within twenty (20) business days of receiving the Artist's invoice.

21. Substantial Variation

21.1. Where an Amendment Notice or Further Amendment Notice requests changes which:

- a. require the use of alternative materials or methods of construction, or the use of particular contractors or sub-contractors nominated by Council; and
- b. are not necessary in order to comply with the Brief,

and complying with such changes will result in an increase of more than ***[X]%*** in the costs incurred by the Artist to create the Artwork, the Artist may request a variation to the Commission Fee by written notice to Council accompanying the Amended Design (**Notice of Variation**).

21.2. The Notice of Variation must specify the basis for the increased costs and provide reasons to support the Artist's original proposal as consistent with the Brief.

21.3. Within fifteen (15) business days of receipt of the Notice of Variation, Council must either:

- a. Agree to vary the Commission Fee as stated in the Notice of Variation or as otherwise agreed with the Artist;
- b. Withdraw the Amendment Notice or Further Amendment Notice and accept the previous Design, Amended Design or Further Amended Design; or
- c. Reject the Design, Amended Design or Further Amended Design in accordance with clause 10.

22. Death or incapacity of the Artist

22.1. In the event of the death or incapacity of the Artist, Council will pay the Artist or the Artist's estate all instalments of the Commission Fee due at the date of death or incapacity.

22.2. In the event of the death or incapacity of the Artist prior to the acceptance of the Artwork by Council, Council will pay the Artist or the Artist's estate a further amount calculated as the greater of:

- a. the amount of any reasonable expenses incurred by the Artist in relation to the Artwork as at the date of the Artist's death or incapacity which are not covered by instalments of the Commission Fee already paid to the Artist or payable under clause 21.1; and
- b. the amount of the Commission Fee less any instalments already paid to the Artist and any amounts payable under clause 22.1 less the reasonable costs of the Council in respect of the completion of the Artwork by other artists or crafts persons.

22.3. Subject to the payments in clauses 22.1 and 22.2, Council:

- a. will become the owner of the Artwork in the condition in which the Artwork stands at the date of the Artist's death or incapacity; and
- b. may engage, in consultation with the Artist or the Artist's estate, another artist or crafts person to complete the Artwork in accordance with the Design.

23. Goods and Services Tax

23.1. The parties agree that all amounts payable under this agreement are exclusive of Goods and Services Tax (**GST**).

- 23.2. If a party is liable to pay GST in respect of any good or service supplied under this agreement, that party will invoice the other party for the GST amount payable for the good or service and will ensure that the invoice is a GST compliant invoice.
- 23.3. The party who receives the GST compliant invoice must pay the amount of GST invoiced at the same time as the amount payable under this agreement.

INTELLECTUAL PROPERTY

24. Title and copyright

- 24.1. The Artist warrants that the Design and the Artwork:
- a. are the Artist's original works;
 - b. do not to the best of the Artist's knowledge infringe the copyright or moral rights of any third party; and
 - c. are unique works of the Artist developed exclusively for the commission under this agreement.
- 24.2. Title in the Artwork will only pass to the Council after:
- a. Council has accepted the Artwork;
 - b. the Artwork has been installed; and
 - c. all payments due to the Artist under this agreement have been made.
- 24.3. The parties agree that the Artist is the owner of copyright in the Preliminary Design, the Design, any amended design and the Artwork and all other materials created by the Artist under, or in relation to, this agreement.
- 24.4. If the Council engages another artist or craftsman to complete the Artwork under clause 22.3 and the creative contribution of that other artist or craftsman to the final Artwork is such that they are entitled under the *Copyright Act 1968* to joint ownership in the copyright in the Artwork with the Artist or the Artist's estate, then the Artist or the Artist's estate may demand the removal of any notice displayed with the Artwork, which identifies the Artist with the Artwork.
- 24.5. Subject to clause 24.6, the Artist grants the Council a non-exclusive royalty free worldwide licence of the copyright in the Artwork for as long as the Artwork remains installed on the Site for the exclusive purpose of making and using images of the Artwork for non-commercial purposes including but not limited to:
- a. the maintenance, promotion and marketing of the Artwork and the Council's public artwork policies and projects; and
 - b. promoting and marketing the business of the Council generally including in the Council's financial and annual reports, multimedia presentations, website, and advertising materials; and

c. archival purposes,

and the Council agrees not to reproduce or use images of the Artwork except for the above purposes.

24.6 Council must make all reasonable efforts to ensure that the Artist is attributed in any publication or communication of images of the Artwork by the Council.

25. Attribution

25.1. Subject to clauses 24.4, 26.3 and 27.4, Council may permanently display a notice in a reasonably prominent position near the installed Artwork, which identifies the Artist and the Artwork as follows:

[INSERT DETAILS FOR ATTRIBUTION]

***[IN ADDITION TO CLAUSE 25.1, USE CLAUSE 25.2 IF THE ARTWORK INVOLVES THE USE OF ANY INDIGENOUS CULTURAL INTELLECTUAL PROPERTY. OTHERWISE DELETE CLAUSE 25.2] ***

25.2. Subject to clauses 25.1, 26.3 and 27.4, Council may permanently display a notice in a reasonably prominent position near the installed Artwork, which identifies the custodial interest of the ***[NAME]*** Community in the Artwork as follows:

*This artwork embodies traditional ritual knowledge of the ***[NAME]*** Community. It was created with the consent of the custodians of the Community. Dealing with any part of this artwork for any purpose that has not been authorised by the custodians is a serious breach of the customary laws of the ***[NAME]*** Community. For enquiries regarding permitted use of this artwork, contact ***[NAME]***.*

26. Repairs and restoration

26.1. Council will give the Artist, by written notice to the Artist, first option to carry out any repairs or restoration to the Artwork. This option will lapse if the Artist does not signify an intention to carry out such repairs or restoration Artwork within ten (10) business days after receiving the Council's notice.

26.2. Council will pay the Artist a fee for repairs and restoration Artwork undertaken by the Artist at ***\$[AMOUNT]* *per hour/standard commercial rates***.

26.3. The Artist reserves the right to demand the removal of any notice displayed with the Artwork, which identifies the Artist with the Artwork if the Artist does not perform the Artwork's repairs or restoration.

27. Alteration and deaccessioning of the Artwork

27.1 Council may destroy, remove or otherwise deaccession the Artwork if:

- a. it is damaged or deteriorated beyond reasonable repair or conservation
- b. it is no longer consistent with the Council's cultural plan and/or requirements for the Site and

- b.** Council complies with the procedures set out in section 195AT of the *Copyright Act 1968* (Cth).
- 27.2.** Council will not alter or modify the Artwork in any way whatsoever without the Artist's prior written consent provided that where such alterations or modifications are required for the proper maintenance of the Artwork, or by law to comply with occupational health and safety standards, such consent will not unreasonably be withheld.
- 27.3.** Council may relocate the Artwork provided that Council complies with the procedures set out in section 195AT of the *Copyright Act 1968* (Cth).
- 27.4.** If the Council alters, modifies or relocates the Artwork, Council will, upon written request by the Artist, remove any notice displayed with the Artwork which identifies the Artist with the Artwork. The remedy under this clause is in addition to any other remedies available to the Artist.
- 27.5.** If Council intends to sell or otherwise dispose of the Artwork, the Artist or the Artist's estate will be given the first option to make a suitable offer for the Artwork.
- 27.6.** If Council sells the Artwork to a third party during the term of the Artist's copyright in respect of the Artwork, Council agrees to pay the Artist or the Artist's estate a resale royalty:
 - a.** in accordance with the *Resale Royalty Right for Visual Artists Act 2009* or the applicable artists resale royalty scheme in effect under Australian law at the time of such sale, only if the relevant Act or scheme applies to the sale.

LIABILITY AND INSURANCE

28. Risk of loss or damage

- 28.1.** If the Artwork is created on the Site, the Artist will bear the risk of loss of, or damage to, the Artwork until installation is complete and will take out and maintain insurance against loss or damage during that period.
- 28.2.** If the Artwork is not created on the Site:
 - a.** the Artist will bear the risk of loss of, or damage to, the Artwork until it is delivered to Council and will take out and maintain insurance against loss or damage during that period, including during transportation of the Artwork to the Site;
 - b.** the Artist will bear the risk of loss of, or damage to, the Artwork during installation at the Site and will take out and maintain insurance against loss or damage during that period.
- 28.3.** Council will bear the risk of loss of, or damage to, the Artwork after installation and will take out and maintain insurance against loss or damage for the period until title to the Artwork passes to Council under clause 24.2.

29. Workers Compensation

29.1. The Artist will be responsible for maintaining worker's compensation insurance in relation to any work or other act associated with the performance of this agreement carried out by the Artist, the Artist's employees or its agents.

30. Public Liability

30.1. The Artist will be responsible for maintaining public liability insurance cover in relation to any work or other act associated with the performance of this agreement carried out on the Artist's premises or on the premises of the Artist's employees.

30.2. Council will be responsible for maintaining public liability insurance cover in relation to any work or other act associated with the performance of this agreement carried out on the Council's premises (including the Site) or on the premises of the Council's employees or agents or otherwise in connection with the Artwork following delivery and/or installation.

31. Insurance policies

31.1. During the term of this agreement, the Artist must provide Council with certificates of currency for all required policies of insurance and copies of the receipts evidencing payment of the current premiums.

31.2. All premiums necessary to maintain current insurance coverage are to be paid by the Artist at least seven (7) days before the renewal of such premiums fall due.

31.3. Council may do all things necessary to effect and/or maintain such insurance coverage if the Artist fails to maintain insurance as required under this agreement. This clause is not intended to create any obligation on Council to do so, unless otherwise required by this agreement.

31.4. Any moneys expended by Council for that purpose are repayable by the Artist upon demand, or, may be deducted by Council from any moneys payable to the Artist.

31.5. The maintenance of insurance as required under this agreement shall not in any way limit the responsibilities and obligations of the Artist.

32. Indemnity and Insurance

32.1. The Artist must keep current an insurance policy covering:

a. Public and product liability insurance for at least \$20 million for each accident or event notifying Council's interest under the policy; and

b. Workers compensation insurance.

32.2 The Artist cannot make a claim against Council and releases Council from and indemnifies it against all claims for damages, loss, injury or death which arise from the during the production and installation of the Artwork on the Council's premises or premises of the Council's agents, except to the extent that it is

caused by the wilful act or omission or negligence of Council, its employees or agents.

32.3 The Artist indemnifies Council against all losses, liabilities, costs and expenses caused by latent defects in the manufacturing, construction or building of the Artwork which poses a serious risk to persons or property.

32.4 The Artist indemnifies Council against all losses, liabilities, costs and expenses arising out of or in relation to any breach of the Artist's warranty in clause 24.1.

TERMINATION

33. Termination

33.1. The Artist may terminate this agreement immediately by written notice to the Council if Council:

a. is more than twenty (20) business days late in making any payment under clauses 19, 20 or 21; or

33.2. If a delay under clause 6 has extended more than six (6) months, either party may terminate this agreement by fourteen (14) business days written notice to the other party.

33.3. This agreement is automatically terminated:

a. if Council becomes insolvent, is declared bankrupt, has a liquidator appointed or goes into administration, voluntary or otherwise;

b. following rejection of the Design under clause 10; or

c. following rejection of the Artwork under clause 14.

33.4. In the event of termination under clause 33.1 or 33.3, the Artist will be entitled to receive and retain payment of:

a. all instalments of the Commission Fee due in the period up to the date of termination; and

b. if the Artwork has not been completed, the amount of any reasonable expenses incurred by the Artist in relation to the Artwork as at the date of termination which are not covered by instalments of the Commission Fee already due to the Artist.

33.5. In the event of termination under clause, 33.1 or 33.3, any rights of copyright licensed to, or conferred on Council under clause 25 will cease immediately.

33.6. In the event of termination under clause 33.2, the Artist will reimburse to the Council all amounts paid to the Artist under this agreement other than the Design Development Fee and any Design Amendment Fees or Artwork Amendment Fees.

- 33.7. In the event that termination under clause 33.2 occurs after acceptance of the Design, Council may either:
- a. seek reimbursement from the Artist of the instalments of the Commission Fee already paid less the amount of the Design Development Fee, in which case the Artist has the sole right to complete, exhibit, sell and otherwise deal with the Preliminary Design, the Design and the Artwork; or
 - b. where the Artwork is substantially completed, pay the Artist the amounts specified in clauses 33.4 a and 33.4 b in which case, Council will own the Artwork in the condition in which the Artwork then stands and may engage other artists or crafts persons to complete the Artwork in accordance with the Design.
- 33.8. Subject to clause 33.7, if this agreement is terminated under clause 33.3 b or at any stage prior to acceptance of the Artwork, the Artist will:
- a. retain title to, and copyright in, the Preliminary Design, the Design and the Artwork, and
 - b. have sole right to complete, exhibit and sell the Preliminary Design, the Design and the Artwork.

34. Disputes

- 34.1. If a dispute or disagreement (**Dispute**) arises between the parties in connection with this agreement:
- a. one party must notify **each/the** other party in writing about the Dispute (**Notice of Dispute**); and
 - b. no party may start any litigation or arbitration in relation to the Dispute until the parties have complied with this clause.
- 34.2. The parties should meet within fourteen (14) calendar days after receipt of the Notice of Dispute and hold good faith discussions to attempt to resolve the Dispute.
- 34.3. If the Dispute is not resolved within twenty-eight (28) calendar days after receipt of the Notice of Dispute, the parties agree to submit the Dispute to mediation according to the Arts Law Centre Mediation guidelines current at that time (**Guidelines**). These Guidelines are part of this agreement.
- 34.4. If the parties are not able to agree to a mediator, the Arts Law Centre must appoint a mediator.
- 34.5. The parties must continue to perform their respective obligations under this agreement despite the existence of a Dispute.
- 34.6. Nothing in this clause 34 will impact on either party's rights to terminate under clause 33 of this agreement.

35. General provisions

- 35.1. The parties acknowledge that the Artist is an independent contractor and that nothing in this agreement creates any relationship of partnership or employment between the parties.
- 35.2. A notice required to be given under this agreement may be delivered by hand, or sent by pre-paid post or fax to the address of the party indicated at the top of this agreement. Notices are taken to have been served when received, or within two (2) calendar days of having been sent, whichever occurs first.
- 35.3. Subject to clause 26, neither party may assign, subcontract, novate or otherwise divest this agreement or any of the rights or obligations under this agreement without the other party's prior written consent. This consent must not be unreasonably withheld.
- 35.4. Subject to clause 35.6, this agreement is the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to this subject matter is replaced by this agreement and has no further effect.
- 35.5. Nothing in this agreement transfers or excludes any applicable cultural rights in favour of Australian Indigenous people that may be implemented under Australian law.
- 35.6. This agreement may only be modified by a written amendment signed by the parties.
- 35.7. Invalidity of any clause of this agreement will not affect the validity on any other clause except to the extent made necessary by the invalidity.
- 35.8. This agreement is governed by the law in force in NSW. The parties submit to the jurisdiction of the courts of this State and any court competent to hear appeals from those courts.
- 35.9. A person signing this agreement on behalf of a party to the agreement warrants, by that signing, that they have all the necessary authority from that party to sign this agreement of their behalf.
- 35.10. The following rules of interpretation apply to this agreement unless the context requires otherwise:
- a. headings are for convenience only and do not affect interpretation;
 - b. the singular includes the plural and conversely;
 - c. a reference to an agreement or document is to that agreement or document as amended in accordance with clause 35.6.

EXECUTED AS AN AGREEMENT

Signed by the Artist:

Signature:

Name (PRINT):

Date:

Signed by Coffs Harbour City Council:

Signature:

Name (PRINT):

Date:

ANNEXURE 1: THE BRIEF

[ATTACH A COPY OF THE BRIEF]

ANNEXURE 2: THE PRELIMINARY DESIGN

[ATTACH A COPY OF THE PRELIMINARY DESIGN]

ANNEXURE 3: SITE

[ATTACH A COPY OF THE SITE PLAN]

SCHEDULE

The Site:

Commission Fee: ***\$[X]*** (excluding any Design Amendment Fees, Artwork Amendment Fees and additional fees payable under clause 21)

Design Amendment Fee: ***\$[X]***

Artwork Amendment Fee: ***\$[X]***

The Reports: (for example, attach Engineer's Reports)

Timeline:

Project Timeline	Due date for Completion	Commission Fee
Execution of Agreement		*\$[x]* or *[X]%* of the total Commission Fee payable upon execution
Stage 1: Delivery of Design (clause 7.2)	The earlier of *[NUMBER]* business days from the date of execution of this agreement or *[DATE]* or such other time as is agreed in writing	
Changes to the Design (clause 8)	To be requested within fifteen (15) business days of the delivery of the Design	If applicable, Design Amendment Fee, payable upon issue of the Amendment Notice or Further Amendment Notice as the case may be.
Acceptance/Rejection of Design (clause 7.3)	Within fifteen (15) business days of the delivery of the Design or Amended Design, whichever is later	Design Delivery Fee of *\$[x]* or *[X]%* of the total Commission Fee, payable upon acceptance or rejection, as the case may be.
Stage 2: Fabrication of the Artwork (clause 11)	Stage 2 –*[DATE]*	*\$[x]* or *[X]%* of the total Commission Fee,

		payable within ten (10) business days of receiving notification of the Artwork's completion	
Changes to the Artwork (clause 12)	To be requested within fifteen (15) business days of the Artist's notification of the Artwork's completion under clause 11.1 c	If applicable, Artwork Amendment Fee .	
Acceptance of Artwork (clause 13)	Within ten (10) business days of the Artist's notification of the Artwork's completion under clause 11.1 c or clause 12.2 whichever is later	*\$[x]* or *[X]%* of the total Commission Fee, payable upon acceptance	
Stage 3: Installation and delivery of Artwork Manual (clause 16)	Stage 3 – *[DATE]*	*\$[X]* or *[X]%* of the total Commission Fee, payable within five (5) business days of delivery of the Manual	
TOTAL:		*\$[X]*	

The Artist's Agents/Subcontractors:

Name:

Scope of authority:

[insert further names if necessary]

Coffs Harbour City Council's Agents/Subcontractors:

Name:

Scope of authority:

[insert further names if necessary]