

Licence Agreement

The Council of the City of Sydney ABN 22 636 550 790 and
[*artist name*] ABN [*insert*]

For artwork for the Site Works Creative Hoardings Program

Reference: [*insert TRIM number*]

LICENCE AGREEMENT FOR ARTWORK FOR THE SITE WORKS CREATIVE HOARDINGS PROGRAM

THIS AGREEMENT is made on the date set out in **Item 1** of the Schedule.

BETWEEN

- (1) **THE COUNCIL OF THE CITY OF SYDNEY** of Town Hall House, 456 Kent Street, Sydney, NSW, 2000 (the **City**), and
- (2) **THE PARTY set out in Item 2(a) of the Schedule** (the **Artist**).

BACKGROUND

- A. The City as consent authority is responsible for the approval of the installation of most hoardings used by developers at construction sites in the City's local government area.
- B. The City's *Guidelines for Hoardings and Scaffolding* require developers install creative artworks and graphics on hoardings in certain circumstances, in line with the City's *Creative City Cultural Policy and Action Plan*.
- C. The City operates the Site Works Creative Hoardings Program which artworks available to developers to use, free of charge, on eligible hoardings.
- D. The City has issued an expression of interest for interested artists to submit art and design concepts for inclusion in the Site Works Creative Hoardings Program.
- E. The Artist submitted an expression of interest and the Artist's artwork has been selected for inclusion in the Site Works Creative Hoardings Program along with other artworks.
- F. Inclusion of the Artist's artwork in the Site Works Creative Hoardings Program does not guarantee its use by a developer on a hoarding. Installation is dependent on the availability of eligible hoardings and selection of the artwork by a developer.
- G. The Artist has agreed to licence the artwork to the City for the Site Works Creative Hoardings Program on the terms and conditions set out in this Agreement.

OPERATIVE PART

1 DEFINITIONS & INTERPRETATION

1.1 In this Agreement, unless a contrary intention appears:

Agreement means this document and any schedule or annexure to it.

Artwork means the artwork created by the Artist described in Item 5 of the Schedule.

Artwork Artefacts means materials, in any format or media, produced by, for or on behalf of the Artist in connection with the Artwork and that reproduce, reflect, comprise or adapt the Artwork (in whole or in part) including ephemera, collateral, components, pieces or legacy items of any exhibited instance of the Artwork, items inspired by the creative process of developing the Artwork, models or sculptures of the Artwork, and artistic prints or photographs of the Artwork.

Artwork Bank means the publicly accessible online location in which the Artwork is stored by the City, along with other artworks, and made available to developers and third parties to view and download for use on Hoardings.

Artwork Deliverables means the documentation, files and other material relating to the Artwork and the Artist to be provided by the Artist detailed in Item 7 of the Schedule.

Artist Fee means the fee payable by the City as set out in Item 8(a) of the Schedule.

Commencement Date means the date specified in Item 4(a) of the Schedule or, if this is not specified, the date on which this Agreement is signed by the City's authorised officer.

End Date means the date specified in Item 4(b) of the Schedule 1.

GST means the same as in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth).

Hoarding means a temporary protective structure which wraps and protects a construction site.

Indigenous Cultural and Intellectual Property (ICIP) Rights means the rights of Australian Aboriginal and Torres Strait Islander peoples to protect their traditional arts and culture and includes, but is not limited to, rights to protect traditional knowledge and sacred cultural material, ensure traditional laws and customary obligations are respected, full and proper attribution or naming of the community connected with the ICIP, and prevent insulting, offensive and misleading uses of ICIP.

Intellectual Property Rights means all industrial and intellectual property rights throughout the world, present or future including copyright in sketches, plans, maps, drawings, reports, computer programs, data bases, models and any designs, trademarks or other intellectual property rights but does not include ICIP Rights.

Moral Rights means all present and future rights of integrity of authorship, rights of attribution of authorship, rights not to have authorship falsely attributed and rights of a similar nature conferred by statute anywhere in the world.

Permitted Use means the uses of the Artwork and Artwork Deliverables for the purposes detailed in Item 6 of the Schedule.

Program means the City's Site Works Creative Hoardings Program, whereby the City makes available artworks in the Artwork Bank for use by developers, free of charge, as printed public artwork on eligible hoardings within the City's local government area.

1.2 The *Interpretation Act 1987* (NSW) will apply in the interpretation of this Agreement.

2 ARTWORK AND ARTWORK DELIVERABLES

2.1 The Artist agrees to licence the Artwork and Artwork Deliverables to the City for the Permitted Use on the terms of this Agreement.

2.2 The Artist must provide the Artwork Deliverables to the City within the timeframe specified by the City.

2.3 The Artist must ensure the Artwork Deliverables meet all technical specifications advised to the Artist by the City.

2.4 Where the City determines that the Artwork Deliverables, in whole or in part, do not meet the terms of this Agreement:

(a) the City is under no obligation to accept the Artwork Deliverables; and

(b) the Artist must revise the Artwork Deliverables, at its cost, to meet the terms of this Agreement.

3 ARTIST FEE & GST

3.1 Subject to:

(a) the Artist satisfactorily performing its obligations under this Agreement; and

(b) receipt of a valid tax invoice from the Artist;

the City will pay the Artist the Artist Fee in accordance with the payment schedule set out in Item 8(b) of the Schedule.

- 3.2 If one party (Supplying Party) makes a taxable supply and the consideration for that supply does not expressly include GST, the party that is liable to provide the consideration (Receiving Party) must also pay an amount (GST Amount) equal to the GST payable in respect of that supply.
- 3.3 Subject to first receiving a tax invoice or adjustment note as appropriate, the Receiving Party must pay the GST Amount when it is liable to provide the consideration.
- 3.4 If one party must indemnify or reimburse another party (Payee) for any loss or expense incurred by the Payee, the required payment does not include any amount which the Payee (or an entity that is in the same GST group as the Payee) is entitled to claim as an input tax credit, but will be increased under clause **Error! Reference source not found.** if the payment is consideration for a taxable supply.
- 3.5 If an adjustment event arises in respect of a taxable supply made by a Supplying Party, the GST Amount payable by the Receiving Party under clause **Error! Reference source not found.** will be recalculated to reflect the adjustment event and a payment will be made by the Receiving Party to the Supplying Party, or by the Supplying Party to the Receiving Party, as the case requires.

4 USE OF ARTWORK

- 4.1 The City will only use the Artwork for the Permitted Use and the licence set out in clause 6.3.
- 4.2 The City will not sell the Artwork nor act as an agent on the Artist's behalf.
- 4.3 If the City receives any enquiries about use of the Artwork beyond the scope of the Program, the City will notify the Artist and, subject to the Artist's consent, provide your contact details to the interested party.
- 4.4 The Artist will be attributed as the creator of the Artwork on the Hoarding on which the Artwork is installed with an artist credit consisting of: artist(s) name(s), title of artwork, year of artwork (if desired), and medium of Artwork (if desired), followed by a link to the Program webpage.
- 4.5 The Artist acknowledges that:
- (a) use of the Artwork on Hoardings is by developers and other third parties and the City has no control over the printing, installation, maintenance and disposal of the reproduced Artwork;
 - (b) the Artwork may be modified or adapted by the developer and other third parties to fit the Hoarding, and/or used in a modular fashion;
 - (c) where the Artwork is used on a Hoarding, it will be displayed on an active construction site and/or in the public domain and will be exposed to such wear and tear as expected in such environments; and
 - (d) where the Artwork is used on a Hoarding, parts of it may be obscured by signage or damage.

5 ARTWORK BANK

- 5.1 The City will publish the Artwork, and information about the Artist and the Artwork, in the Artwork Bank.
- 5.3 The City will endeavour to consult with the Artist about the content published in the Artwork Bank as it relates to the Artist and the Artwork, and the quality of the reproduction of the Artwork in the Artwork Bank.
- 5.4 The Artist acknowledges that:
- (a) the City is responsible for the design of, and content in, the Artwork Bank;

- (b) the City may edit any information or text provided by the Artist prior to its publication in the Artwork Bank;
 - (c) the City has the final determination over the appearance of, design of, and material contained within the Artwork Bank; and
 - (d) the Artwork Bank is publicly accessible and the City has no control over third parties accessing, downloading, copying or using material obtained from the Artwork Bank.
- 5.5 The City will remove the Artwork from the Artwork Bank following 20 uses of the Artwork by developers on Hoardings (as determined by the City), or in accordance with clause 8, whichever is the earlier.
- 5.6 Removal of the Artwork from the Artwork Bank will not impact or restrict the City's use of the Artwork for any other aspects of the Permitted Use.

6 INTELLECTUAL PROPERTY & MORAL RIGHTS

- 6.1 The Artist warrants that:
- (a) the Artist has the authority to enter into this Agreement;
 - (b) the Artwork is an original work;
 - (c) the Artist is the owner of all copyright in the Artwork and the Artwork Deliverables or has obtained all necessary approvals and consents to permit the use of the Artwork contemplated by this Agreement, including those required for the use of any ICIP.
- 6.2 The City acknowledges that:
- (a) the Intellectual Property Rights in the Artwork and the Artwork Deliverables remain the Artist's property at all times; and
 - (b) nothing in this Agreement, or in the use of the Artwork under or in relation to this Agreement, affects the ownership of the ICIP and ICIP Rights in the Artwork.
- 6.3 The Artist grants the City a perpetual, worldwide, irrevocable, royalty free and non-exclusive licence to use, reproduce and communicate to the public the Artwork (or any part of it) and the Artwork Deliverables for the Permitted Use together with the following additional rights associated with the Permitted Use:
- (a) to modify or adapt the Artwork and Artwork Deliverables for the Program and the Permitted Use;
 - (b) publicity and promotion of the Artwork and the Program;
 - (c) to reproduce the Artwork and Artwork Deliverables in City reports and publications, on the City's website, print media, social media or other promotional publications;
 - (d) to reproduce the Artwork and Artwork Deliverables for City displays, documentaries and exhibitions; and
 - (e) to retain a copy of the Artwork and Artwork Deliverables for non-commercial archival purposes.
- 6.4 The City may sublicense the rights in clause 6.3. This includes but is not limited to sublicensing to developers to use the Artwork on Hoardings.
- 6.5 The City will:
- (a) respect any ICIP and ICIP Rights in the Artwork and Artwork Deliverables;

- (b) not use the Artwork in a materially different context, or edit, enhance, distort or alter the Artwork in a way, that would objectively adversely affect the ICIP or owners of the ICIP Rights in the Artwork; and
 - (c) require that the signage provided by developers on Hoardings featuring the Artwork include full and proper attribution or naming of the community connected with the ICIP, with such information to be provided by the Artist.
- 6.6 The City will use its best endeavours to ensure the Artist is acknowledged in any publication of the Artwork by the City. However, in the event of the City's error, act or omission, the Artist agrees that the Artist will not hold the City liable where the Artist has not been properly identified, is incorrectly attributed, or the Artwork is altered or otherwise dealt with in a way that may otherwise constitute an infringement of the Artist's Moral Rights.

7 PUBLICITY

- 7.1 The Artist must not issue any media release or public communications, including social media posts, about the Artwork or the Artist's participation in the Program without the City's prior written consent.
- 7.2 The Artist must, at the City's direction, acting reasonably, attend and participate in media events relating to the Artwork or the Program during the Term.
- 7.3 The Artist acknowledges that the Artwork, when used on Hoardings, may be displayed in the public domain and the Artist acknowledges that any person may take photos or recordings of the Artwork over which the City has no control.
- 7.4 The Artist agrees that the City may use any recording or photo of the Artwork (in whole or part) in any media format to promote the Artwork or the Program. No additional fee is payable by the City for these rights.

8 WITHDRAWAL OF ARTWORK

- 8.1 The City may withdraw the Artwork from the Artwork Bank at any time at its discretion. Where the City exercises this discretion, the City will notify you of the reasons for removal of the Artwork.
- 8.2 The Artist may request removal of the Artwork from the Artwork Bank at any time in writing, which must set out the reasons for the requested removal.
- 8.3 Any decision to remove the Artwork from the Artwork Bank will be made by the City in its absolute discretion.

9 RIGHT TO ACQUIRE

- 9.1 The Artist acknowledges that the Artwork, and/or any Artwork Artefacts, may be considered for acquisition by the City for inclusion in the civic collection that comprises items of movable cultural heritage and contemporary artworks.
- 9.2 The Artist agrees to provide the City with the right of first refusal to acquire ownership of the Artwork and any Artwork Artefacts, and all associated Intellectual Property Rights, prior to any acquisition by any third party.
- 9.3 Where the City wishes to acquire the Artwork or any Artwork Artefacts, the parties will, acting reasonably, negotiate a price and terms for the acquisition that reflects:
- (a) the market value of the Artwork or Artwork Artefacts at the time of acquisition; and
 - (b) the City's contribution to the Artwork through its inclusion of the Artwork in the Program.
- 9.4 Where the parties cannot agree a price for the acquisition of the Artwork or Artwork Artefacts by the City, the parties agree that the price will be determined by an independent art valuer engaged by the City.

10 CONFIDENTIALITY

- 10.1 The Artist acknowledges and agrees that the terms of this Agreement are confidential.
- 10.2 The Artist must not disclose to any person any confidential information disclosed under this Agreement, other than that which has become known in the public domain or unless the Artist is compelled by law to do so.
- 10.3 Prior to any disclosure under clause 10.2, the consent of the City must be obtained.

11 DISPUTES

- 11.1 If a dispute arises between the parties about this Agreement then the party who raises the dispute must notify the other party of the dispute in writing.
- 11.2 The parties must meet and take all reasonable steps to resolve such dispute by negotiation within 14 days of notice received under clause 11.1.
- 11.3 If the dispute is not resolved under clause 11.2, then the dispute must be referred to mediation before the commencement of any legal proceedings about the dispute.
- 11.4 If there is a dispute, the parties must continue to perform their obligations under this Agreement.

12 PERSONAL ENGAGEMENT

- 12.1 This Agreement is personal and cannot be assigned, transferred or sub-contracted by the Artist to another person without the City's written consent.
- 12.2 Nothing in this Agreement creates any relationship of partnership or employment between the parties.

13 INSURANCE, RELEASE & INDEMNITY

- 13.1 The Artist agrees to hold and maintain for the duration of the Agreement:
 - (a) a policy of public liability insurance for an amount no less than \$10,000,000 any one claim and in the aggregate in respect of public and product liability; and
 - (b) insurance required under applicable workers compensation legislation or obligations imposed under common law.
- 13.2 The required insurance under clause 13.1 must be issued by a reputable insurance company and a copy of the certificates of currency provided to the City upon request.
- 13.3 To the extent permitted by law, the Artist releases and indemnifies the City from any losses, claims, damages, or other actions arising out of or in connection with:
 - (a) loss of the Artist's reputation;
 - (b) breach of Intellectual Property Rights and/or Moral Rights;
 - (c) use of the Artwork by any developer or other third party; and
 - (d) breach of this Agreement,except to the extent that the City's negligent act or omission contributed to the losses, claims, damages, or other actions.

14 TERM AND TERMINATION

- 14.1 This Agreement begin on the Commencement Date and end on the earlier of the End Date or termination under clause 14.2.

- 14.2 The City may terminate this Agreement by notice in writing:
- (a) at its sole convenience and absolute discretion for whatever reason;
 - (b) if the Artist is in breach of this Agreement.
- 14.3 If this Agreement is terminated pursuant to clause 14.2(a), the City will pay the Artist the unpaid portion of the Artist Fee up to the stage of work requested by the City prior to the date of termination. The Artist is not entitled to any other payment or compensation in connection with the termination.
- 14.4 If this Agreement is terminated pursuant to clause 14.2(b), the Artist must refund to the City that portion of the Artist Fee paid to the Artist by the City.
- 14.5 The Artist may terminate this Agreement by giving written notice to the City if the City fails to pay the Artist Fee within 90 days of the date when payment is due.
- 14.6 Termination of this Agreement will not affect any rights or remedies which either party may have under this Agreement or at law. The following clauses survive termination or expiry of this Agreement: 1 (Interpretation), 6 (Intellectual Property & Moral Rights), 9 (Right to Acquire), 10 (Confidentiality), 11 (Disputes), 13 (Insurance, Release & Indemnity), and 15 (General).

15 GENERAL

- 15.1 This Agreement contains the entire agreement between the parties and any previous negotiations, agreements, representations or warranties about the subject matter of this Agreement, and any purchase order terms issued in relation to the Agreement, are of no effect.
- 15.2 This Agreement may only be varied in writing signed by all parties.
- 15.3 A notice, consent, demand or other communication under this Agreement is only effective if it is in writing and emailed, posted or delivered to the address of the recipient shown in Items 2 and 3 of the Schedule.
- 15.4 This Agreement is governed by the laws of New South Wales. The parties submit to the non-exclusive jurisdiction of the courts of New South Wales in relation to all matters arising under or relating to this Agreement.
- 15.5 The invalidity, illegality or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provisions.
- 15.6 Nothing in this Agreement restricts or otherwise limits the exercise of the City's statutory powers as a public authority. If there is any conflict between the exercise of the City's statutory powers as a public authority and the performance of the City's obligations under this Agreement, the former prevails.
- 15.7 The parties acknowledge and agree to this Agreement being executed electronically, and in counterparts, in accordance with the *Electronic Transactions Act 2000* (NSW).

SCHEDULE

Item	Name	Description
Item 1	Date of Agreement	
Item 2	Artist	<p>Legal name: [INSERT LEGAL NAME, NOT TRADING NAME, OF THE ARTIST, AND THEIR DETAILS BELOW]</p> <p>ABN:</p> <p>Street address:</p> <p>Contact person:</p> <p>Phone:</p> <p>Email:</p>
Item 3	City	<p>Legal name: The Council of the City of Sydney</p> <p>ABN: 22 636 550 790</p> <p>Street address: Town Hall House, 456 Kent Street, Sydney NSW 2000</p> <p>Contact person: [INSERT CONTRACT MANAGER NAME & TITLE, AND CONTACT DETAILS BELOW]</p> <p>Phone:</p> <p>Email:</p>
Item 4	(a) Commencement Date (b) End Date	(a) Date of Agreement per Item 1. (b) [INSERT END/EXPIRY DATE]
Item 5	Artwork	[INSERT DETAILS OF ARTWORK]
Item 6	Permitted Use	<p>Inclusion of the Artwork in the Program.</p> <p>Inclusion of the Artwork in the Artwork Bank.</p> <p>Use of the Artwork by the City for promotion and publicity of the Artwork and Program.</p> <p>Use by developers and third parties on Hoardings to a maximum of 20 uses.</p> <p>Use of the Artwork in City reports and publications, on the City's website, print media, social media and other promotional publications.</p> <p>Use of the Artwork in City displays, documentaries and exhibitions.</p> <p>Use of the Artwork for non-commercial archival purposes.</p>

Item	Name	Description
Item 7	Artwork Deliverables	<p>Final design files of the Artwork in reproduction-quality Encapsulated PostScript (EPS), jpeg and pdf formats.</p> <p>Title and description of the Artwork.</p> <p>Recent photograph of the Artist.</p> <p>Biography of the Artist.</p> <p>Reproduction-quality images of the Artist's earlier works, if required by the City.</p>
Item 8	<p>(a) Artist Fee</p> <p>(b) Payment Schedule</p>	<p>\$12,400 plus GST (if applicable)</p> <p>\$3,720 plus GST (if applicable) paid within 7 days of the Commencement Date</p> <p>\$8,680 plus GST (if applicable) paid within 7 days of the acceptance of the Artwork Deliverables by the City</p>

Executed as an Agreement by:

Signed for and on behalf of THE)
COUNCIL OF THE CITY OF SYDNEY (ABN)
22 636 550 790) by its duly authorised)
officer in the presence of:)

Signature of witness

Electronic signature of:

Name of witness

Dated signed

Signature of authorised officer

Electronic signature of:

Name of authorised officer

Title of authorised officer

Affixed by me on:

Date signed

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

Select the appropriate execution clause for the legal entity. Delete those that are not applicable.

If other party is an individual:

SIGNED by [INSERT LEGAL NAME OF)
PERSON] (ABN [INSERT ABN]), in the)
presence of:)

Signature of witness

Electronic signature of:

Name of witness

Affixed by me on:

Date signed

Signature of Artist

Electronic signature of:

Name of Artist

Affixed by me on:

Date signed

This document was signed in counterpart and witnessed over audio visual link in accordance with section 14G of the *Electronic Transactions Act 2000* (NSW).

If other party is an incorporated company other than a sole director proprietary company:

SIGNED by [INSERT LEGAL NAME OF)
COMPANY] (ACN [INSERT ACN]), in)
accordance with section 127(1))
Corporations Act 2001 (Cth):)

Signature of director
Electronic signature of:

Name of director
Affixed by me on:

Date signed

Signature of director/secretary
Electronic signature of:

Name of director/secretary
Affixed by me on:

Date signed

If other party is an incorporated company with a sole director/secretary:

SIGNED by [**INSERT LEGAL NAME OF COMPANY**] (ACN [**INSERT ACN**]), in accordance with section 127(1) *Corporations Act 2001* (Cth):

Signature of sole director/secretary
Electronic signature of:

Name of director/secretary
Affixed by me on:

Date signed