

LICENCE AGREEMENT

The Council of the City of Sydney

and

[Insert name of other party]

**For Artwork for the 532-540 George Street Sydney
Scaffolding**

Sydney2030 Green/Global/Connected

The Council of the City of Sydney

Town Hall House
456 Kent Street
SYDNEY NSW 2000

Reference: 2021/085708
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LICENCE AGREEMENT

THIS AGREEMENT is made on the date referred to in Item 1 of Schedule 1.

PARTIES

- (1) **THE COUNCIL OF THE CITY OF SYDNEY** the details of which are set out at Item 2 of Schedule 1 (City), and
- (2) **THE PARTY** set out in Item 3 of Schedule 1 (Artist)

BACKGROUND

- A. The City is undertaking the Project.
- B. The Artist has offered to licence the City the Artwork for use on the Project.
- C. The parties have agreed to a licence for the Artwork for the Project on the terms of this Agreement.

OPERATIVE PART

1 DEFINITIONS & INTERPRETATION

- 1.1 In this Agreement, unless a contrary intention appears:

Agent means the Artist's agent being the person (if any) specified in **Item 2(b)** of the Schedule.

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

Artwork means the artwork described in **Item 3** of the Schedule.

Artwork Deliverables means the documentation, files and other material relating to the Artwork to be provided by the Artist detailed in **Item 4** of the Schedule.

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

City's Representative means the person stated in **Item 7** of the Schedule.

Licence Period means the period that the Artwork will be installed for the Project which is indicatively listed in **Item 6** of the Schedule.

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.

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 use of the Artwork for the purposes of the Project as detailed in **Item 5** of the Schedule.

Program means the indicative program for the Project as detailed in **Item 9** of the Schedule.

Project means the installation of scaffold wrap featuring the Artwork on the scaffolding that is to be installed to conceal the construction works occurring on the Woolworths Building located at 532-540 George Street Sydney NSW 2000 in 2021 and 2022.

Reference Information means the elevations and other construction features for the Project outlined in **Item 9** of the Schedule.

- 1.2 The Interpretation Act, 1987 (NSW) will apply in the interpretation of this Agreement.
- 1.3 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.

2 LICENCE OF ARTWORK FOR THE PERMITTED USE

- 2.1 The Artist agrees to licence the Artwork to the City for the purpose of the Project, subject to the terms of this Agreement.
- 2.2 To enable the City to use the Artwork in accordance with this Agreement, the Artist will provide the Artwork Deliverables set out in Item 4 of the Schedule, in accordance with the Program set out in Item 9 of the Schedule.

3 ARTIST FEE

- 3.1 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 The Artist must give the City a tax invoice for any payment to be made under this Agreement. The City is under no obligation to make any payment unless the Artist provides the City a tax invoice.
- 3.3 Any payment to be made under this Agreement for taxable supply must be increased by an amount equal to the GST paid or payable by the Artist so as to ensure that the Artist receives the net amount (after payment of the GST imposed) that the Artist is entitled to receive under this Agreement.

4 NOTICES AND COMMUNICATIONS

- 4.1 A notice under this Agreement must be in writing and posted, emailed or delivered to the address of the Artist shown in Item 2 of the Schedule, or the City's Representative in item 7 of the Schedule, respectively.
- 4.2 A notice is taken to be received:
 - (a) if hand delivered, on delivery;
 - (b) if it is sent by mail, 5 days (excluding Saturday, Sunday and any public holidays) after it is posted; or
 - (c) if sent by email, at the time sent, unless the sender is notified, by a system or person involved in the delivery of the email, that the email was not successfully sent.
- 4.3 If the Artist requires any communications with the City to be communicated through the Agent, the Artist must give the City a written request to that effect.
- 4.4 After the City receives a request from the Artist under clause 4.3, any communication by the City to the Agent will be taken to have been given to the Artist.

5 USE OF ARTWORK

- 5.1 The City will only use the Artwork for the Permitted Use.
- 5.2 The City will not sell the Artwork nor act as an agent on the Artist's behalf.

- 5.3 If the City receives any enquiries about the Artwork, the City will inform any interested parties or potential buyers of the Artwork how to contact the Artist or Agent.
- 5.4 The Artist will be attributed as the creator of the Artwork on or near the Project with an artist credit consisting of: artist(s) name(s), title of artwork, and year of artwork (if desired).
- 5.5 The Artist acknowledges that:
- (a) the Artwork will be printed onto beige scaffold wrap fabric;
 - (b) the Artwork will be printed and installed in sections;
 - (c) the Artwork may be modified or adapted to suit the Project;
 - (d) the Project, Program, Licence Period and Reference Information is indicative only and may change due to the requirements of the construction work;
 - (e) the Artwork will be displayed on an active construction site and as such the Artwork will be exposed to such wear and tear as expected at a construction site;
 - (f) the City has provided the Artist with the Reference Information outlined in Item 10 of the Schedule that provides details of the Project that may have an impact on how the Artwork is adapted, installed and displayed;
 - (g) some of the material on the Project featuring the Artwork may be obscured, damaged or destroyed and the Artist accepts that any decision to repair or replace such aspects is at the City's discretion;
 - (h) the City may remove, modify or destroy material on the Project featuring the Artwork at any time for reasons of public safety or where circumstances such as substantial damage or deterioration compromise the condition or integrity of the Artwork; and
 - (i) the City may appoint one or more third parties to perform the work associated with the use of the Artwork on the Project.
- 5.6 The Artist releases the City from any claim arising out of or in connection with changes made to the Project, Program, Licence Period or Reference Information.
- 5.7 The City does not accept any liability for loss of reputation, breach of Intellectual Property rights or any other loss or damage the Artist may incur arising out of or in connection with the use of the Artwork by any third party appointed by the City under clause 5.5(i).
- 5.8 The Artist agrees to release the City from all claims and demands the Artist may have arising out of or in connection with the wilful, intentional or negligent misuse of the Artwork.

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; and
 - (c) the Artist is the owner of all copyright in the Artwork or has obtained all necessary approvals to permit the use of the Artwork contemplated by this Agreement.
- 6.2 The City acknowledges that the Intellectual Property in the Artwork remains the Artist's property at all times.

- 6.3 The Artist grants the City a perpetual, worldwide, irrevocable, royalty free and non-exclusive licence to use and reproduce the Artwork (or any part of it) for the Permitted Use together with the following additional rights associated with the Permitted Use:
- (a) to modify or adapt the Artwork for the Project and the Permitted Use;
 - (b) publicity and promotion of the Artwork and the Project;
 - (c) to reproduce the Artwork in annual reports, on the City's website, print media, social media or other promotional publications;
 - (d) to reproduce images of and materials about the Artwork for displays, documentaries and exhibitions; and
 - (e) to retain a digital copy of the Artwork for non-commercial archival purposes.
- 6.4 The City may sublicense the rights in clause 6.3 for the purposes of the City enjoying its licence rights.
- 6.5 The City will take all care to ensure the Artist is acknowledged in any publication of the Artwork. 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 LIFE AND SUBSEQUENT DEALINGS WITH THE ARTWORK

- 7.1 The Artist acknowledges that the Artwork will be used for a temporary installation period and will be removed with the scaffolding on completion of the construction works.
- 7.2 The Artist may propose a use for the material from the Project featuring the Artwork. Any such use is subject to the City's agreement.
- 7.3 Subject to clause 7.2, the City or its appointed contractor will recycle or otherwise dispose of the material from the Project featuring the Artwork at the conclusion of the Project.

8 PUBLICITY

- 8.1 The Artist must not issue any media release about the Artwork including social media posts, or the Artist's participation in the Project without the City's prior written consent.
- 8.2 The Artist agrees to make themselves available for media appearances and to record an oral history about the Artwork as reasonably required by the City for the purpose of promotion of the Artwork. No additional fee is payable by the City for any media appearance or recording.
- 8.2 The Artist acknowledges that the Artwork will be displayed in a publicly accessible area as part of the Project and the Artist consents to any person taking photos or recordings of the Artwork.
- 8.3 The Artist agrees, subject to clause 6.4, that the City may use any recording or photo of the Artwork (in whole or part) in any media format to promote the Artwork and the Project during and beyond the Licence Period. No additional fee is payable by the City for these rights.

9 CONFIDENTIAL INFORMATION

- 9.1 The Artist acknowledges and agrees that the terms of this Agreement are confidential.
- 9.2 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.

9.3 Prior to any disclosure under clause 9.2, the City's consent must be obtained.

10 DISPUTES

10.1 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.

10.2 The parties must meet and take all reasonable steps to resolve such dispute by negotiation within 14 days of notice received under clause 10.1.

10.3 If the dispute is not resolved under clause 10.2, then the dispute must be referred to mediation before the commencement of any legal proceedings about the dispute.

10.4 If there is a dispute, the parties must continue to perform their obligations under this Agreement.

11 PERSONAL ENGAGEMENT

11.1 This Agreement is personal and cannot be assigned, transferred or sub-contracted by the Artist to another person without the City's written consent.

11.2 Nothing in this Agreement creates any relationship of partnership or employment between the parties.

12 INSURANCE & INDEMNITY

12.1 The Artist agrees to hold and maintain for the duration of this Agreement insurance required under applicable workers compensation legislation or obligations imposed under common law.

12.2 The Artist agrees to provide the City with copies of the insurance policies, including the certificates of currency, required under clause 12.1, if requested.

12.3 Except to the extent that the City's negligent act or omission contributed to the losses, claims, or damages, the Artist agrees to indemnify the City against any losses, claims, damages or other actions arising out of the breach of this Agreement.

13 GENERAL

13.1 This Agreement contains the entire agreement between the parties and any previous negotiations, agreements, representations or warranties about the subject matter of this Agreement are of no effect.

13.2 This Agreement may only be changed in writing signed by all parties.

13.3 This Agreement is governed by New South Wales law. The parties submit to the jurisdiction of the courts of New South Wales and to any courts which have the jurisdiction to hear appeals from any of those courts.

14 GST

14.1 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.

14.2 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.

14.3 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 17.1 if the payment is consideration for a taxable supply.

- 14.4 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 17.1 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.

**SCHEDULE
REFERENCE SCHEDULE**

Item	Name	Description
Item 1	Date of Agreement	[to be inserted following selection]
Item 2	(a) Artist Name Contact Details (b) Artist's Agent	[to be inserted following selection]
Item 3	Artwork	[to be inserted following selection]
Item 4	Artwork Deliverables	<p>High resolution file of the Artwork in a format specified by the City.</p> <p>Image transposed into the diagram provided – 'Elevation – Scaffold Wrap</p> <p>Photomontage illustrating image(s) on scaffold wrap. Use '_MG_0410 Woolworths Bldg façade' provided.</p> <p>Details of the Artist and Artwork for the purposes of attribution, publicity and promotion.</p> <p>Artwork statement (200-250 words) describing the artwork and indicating how the artwork fits within the theme and relevance to the location and application. This statement will be included with the Artist's Biographical notes at ground floor level of the Woolworths Building.</p>
Item 5	Permitted Use	<p>Use of the Artwork on printed scaffold wrap attached to the scaffolding concealing construction works at the Woolworths Building at 532-540 George Street Sydney NSW 2000.</p> <p>Associated incidental use for the promotion and publicity of the Artwork and construction works project, including in City publications and online.</p>
Item 6	Licence Period	April 2021 to completion of construction (inclusive) while scaffold is in place
Item 7	City's Representative Contact Details	<p>Graham Brideson, project manager</p> <p>Email: gbrideson@cityofsydney.nsw.gov.au</p>
Item 8	(a) Artist Fee (b) Payment Schedule	<p>\$15,000 excluding GST</p> <p>\$15,000 excluding GST following award of contract</p>

Item 9	Program	Date	Activity
		Monday 29 March 2021	RFP opens
		Tuesday 10am 20 April 2021	RFP closes
		26 April 2021	Project award and contract
		Three to four weeks	Project installation (by third party)
		Completion of construction	Remove and dispose of Artwork installed on the Project and dismantle scaffolding
Item 10	Reference Information	<p>Technical Elevations – Scaffolding – 540 George Street, Sydney.</p> <p>Elevation – Scaffold Wrap</p> <p>Explanatory Diagram – Scaffold Wrap.</p> <p>Photograph – Woolworths Building.</p> <p>The bottom 1.0 metre of the scaffold will be obscured by a plywood fascia that will be painted black and contain historic images. Site sheds will be located along the George Street face from the glass portal to Town Hall Station and these will be concealed by a 3-metre plywood screen similar to the general fascia.</p>	

EXECUTION PAGE

Executed as an Agreement by:

**Signed for and on behalf of THE)
COUNCIL OF THE CITY OF SYDNEY by its)
duly authorised officer in the presence of:)**

Witness:

Signature:

Name (printed):

Name of Authorised Officer:

Date executed by Authorised Officer

**SIGNED by [Artist company name], ACN)
[insert ACN], in accordance with Section)
127 of the Corporations Act 2001(Cth):)
)**

Director:

Director/Secretary:

Name (printed):

Name (printed):

or, where the Artist is a sole director company:

**SIGNED by [Artist company name], ACN)
[insert ACN], in accordance with Section)
127 of the Corporations Act 2001 (Cth):)
)**

Sole Director/Secretary:

Name (printed):

or, where the Artist is a sole trader:

SIGNED by [**Artist name**], ABN [**insert**
ABN], in the presence of:)
)
)
)

Witness:

Artist:

Name & Address (printed):

Name (printed):