



SAMPLE CONTRACT FOR INTEGRATED PUBLIC ART

CITY OF PARRAMATTA COUNCIL

AND

THE CONSULTANT OR ARTIST IDENTIFIED IN ITEM 2 OF THE SCHEDULE

THIS AGREEMENT is made on the date set out in Item 1 of Annexure A.

BETWEEN

CITY OF PARRAMATTA COUNCIL (ABN 49 907 174 773) of 126 Church Street, Parramatta, NSW, 2150 (**Council**),

AND

THE PARTY set out in Item 2 of Annexure A (**Consultant**)

BACKGROUND

- A. Council wishes to commission the design, creation, fabrication, delivery and installation of the Installation at the Site.
- B. The parties have agreed that the Installation will be designed, with additional advisory services only, on the terms of this Agreement.

OPERATIVE PART

1 INTERPRETATION

1.1 In this Agreement, unless the context otherwise requires:

“**Agreement**” means this document including all annexures and attachments.

“**Annexure**” means an annexure attached to this Agreement and forming part of this Agreement.

“**Artist**” means the person identified in Item 4 of Annexure A.

“**Catalogue**” has the meaning given in clause 25.1.

“**Claim**” means any claim, allegation, debt, cause of action, demand, remedy, suit, injury, damage, loss, cost, charge, expense, liability, action, proceeding and right of action of any nature howsoever arising and whether present, future, fixed or unascertained, actual or contingent whether at law, in equity, under statute or otherwise.

“**Completion Date**” means the date on which Council issues a notice of completion to the Consultant under clause 5.

“**Confidential Information**” means the terms of this Agreement and information of a party (and its employees, officers, agents and contractors) (disclosing party) that is: (i) made available to or otherwise obtained by the other party (or its employees, officers, agents or contractors) (receiving party); or (ii) by its nature confidential or the receiving party knows, or ought reasonably to know, is confidential. Confidential Information does not include information that: (a) is in or enters the public domain through no fault of the receiving party; (b) is or was made available to the receiving party by a person (other than the disclosing party) who is not or was not then under

an obligation of confidence to the disclosing party in relation to that information; or (c) is or was developed by the receiving party independently of the disclosing party.

“Consultant” means the person identified in Item 2 of Annexure A commissioned by Council to undertake the Installation on the terms and conditions set out in this Agreement.

“Consultant’s Fee” means the fee payable to the Consultant for the Project as specified in Item 9 of Annexure A.

“Council’s Representative” means the person specified in Item 3 of Annexure A or as otherwise advised by Council in writing from time to time.

“COVID-19 Pandemic” has the meaning given in clause 31.1.

“Defect” includes:

- (a) any defect or deficiency in design, materials or workmanship;
- (b) any defect, shrinkage or fault in Installation;
- (c) any omission in the Installation;
- (d) any aspect of the Installation, or any part thereof, which is not in accordance with the requirements of the Agreement or Specification (including a breach of any express warranty or non-compliance with any performance level or performance requirement stated in the Agreement or Specification);
- (e) any physical damage to Installation, or any part thereof, resulting from any such defect, deficiency, shrinkage, fault, omission or non-compliance; and
- (f) any other condition or event stated in the Agreement to constitute a defect.

“Defects Liability Period” means the period of 12 months from the Completion Date.

“Engineering Certification” means a review of the artwork’s detailed design package by a suitably qualified structural engineer, followed by a signed document that confirms that all structural requirements of this design have been met, and which is accompanied by all supporting documentation, calculations, and other information upon which the certification is based.

“Estimate” means the Consultant’s estimate of the costs to perform a Variation the subject of a notice from Council pursuant to clause 4 being either, as directed in that notice:

- (a) a fixed lump sum;
- (b) the amount calculated by reference to the rates set out in the Schedule of Rates and the estimated quantities in the notice; or
- (c) where the rates specified in the Schedule of Rates are not appropriate for the work the subject of the Variation, the amount calculated by reference to

appropriated rates and the estimated quantities in the notice.

“Force Majeure Event” means any of the following events or circumstances or combination of those events and circumstances which is beyond the control of the party affected:

- (a) fire, explosion, mudslide, natural disaster, lightning, flood, earthquake, tsunami or other act of God;
- (b) riots, civil commotion, pandemic (but excluding the COVID-19 pandemic), sabotage, terrorism, act of a public enemy, war (declared or undeclared), revolution, blockade or embargo;
- (c) shipwreck, train or plane crashes; or
- (d) radioactive contamination or toxic or dangerous chemical contamination,

which prevents the affected party from completing any of its obligations under the Agreement or allowing completion of the Project and, in the case of the Consultant, subject to the Consultant meeting all the following requirements:

- (e) an experienced consultant would not have foreseen or reasonably have made provision for the event, circumstance, default or delay; or
- (f) the event, circumstance, default or delay was not caused or contributed to by any act or omission or breach of the Agreement by the Consultant; and
- (g) the event could not reasonably be prevented, overcome or remedied by the exercise of a standard of care and diligence consistent with that of a prudent and competent consultant.

“Installation” means the artwork, creative design and works described in Item 6 of Annexure A and as further developed during this Agreement.

“Intellectual Property Rights” means all present and future rights conferred in law in relation to any copyright, trademarks, designs, patents, circuit layouts, plant varieties, business and domain names, inventions and Confidential Information, and other results of intellectual activity in the industrial, commercial, scientific, literary or artistic fields, throughout the world, whether or not registrable, registered or patentable that exist or that may come to exist anywhere in the world.

“Item” means an item identified in Annexure A,

“Integrated Public Artwork” means a public artwork that is incorporated into another structure – such as a building, bridge, streetscape or landscape design. It is designed and fabricated as part of the other structures' construction. It is not a standalone public artwork.

“Manual” has the meaning given in clause 26.1.

“Moral Rights” means any of the rights described in Article 6b of the Berne Convention for the Protection of Literary and Artistic Works 1886, being “droit moral”

or other analogous rights arising under any statute (including the *Copyright Act 1968* (Cth)) or any other law (including any law outside Australia), that exist, or that may come to exist, anywhere in the world.

“Program” means the program for completion of the Project in accordance with the stages in identified in Item 14 of Annexure A to be provided to the Consultant in accordance with clause 5 and as amended from time to time.

“Project” means the commissioning of the Consultant to undertake the Installation in accordance with this Agreement (including the Specification) and for the avoidance of doubt includes the maintenance obligations stated in this Agreement.

“Project Stages” mean the stages of the Project described in Item 16 of Annexure A and/or the Program.

“Principal Construction Contractor” means the person engaged solely by the Principal to undertake the fabrication and installation of the Integrated Public Artwork.

“Safety in Design” means a risk management process that integrates control measures for identified risks associated with the design, early in the process to eliminate or mitigate risks to health and safety of persons and property associated with the lifecycle of the Installation. This includes the design, fabrication, construction, maintenance and repair, and demolition at the end of the life cycle of the Installation.

The NSW Work Health and Safety Act 2011 requires that a Person Conducting a Business or Undertaking (PCBU) that designs a structure and the person who commissions that structure must ensure that the structure is without risks to health and safety so far as is reasonably practicable. The Designer also has a duty under the Act to provide information to each person who is issued with the design documents, indicating the purpose of the structure, the results of any analyses, testing or calculations, and any conditions necessary to ensure that the structure is without risks to health and safety.

“Schedule of Rates” means the schedule of rates (if any) set out in Annexure E.

“Site Manager” means the manager of the Site, being the person/entity specified in Item 8 of Annexure A or such other site manager nominated in Council in writing to the Consultant from time to time.

“Site” means the location for the Installation on part [#insert particulars] as specified in Item 7 of Annexure A.

“Specification” means Annexure B and any other the documentation developed by the Consultant and approved by Council in accordance with clause 4, as amended from time to time.

“Variation” means:

- (a) an increase, decrease or omission of any part of the Project;

- (b) any change in the character, quality or extent of the Project or of anything described in the Specification; and
- (d) the execution of additional services or works including additional work not included in the Specification,

and **'Vary'** has a corresponding meaning.

"WHS Laws" means the *Work Health and Safety Act 2011* (NSW), the *Work Health and Safety Regulation 2017* (NSW) and other instruments under them including any codes of practice and any consolidations, amendments, re-enactments, or replacements of them.

"WHS Principal Contractor" means the principal contractor under WHS Laws.

1.2 Headings are for convenience only, and do not affect interpretation. The following rules also apply in interpreting this Agreement, except where the context makes it clear that a rule is not intended to apply.

1.3 A reference to:

- (a) a legislative provision or legislation (including subordinate legislation) is to that provision or legislation as amended, re-enacted or replaced, and includes any subordinate legislation issued under it;
- (b) a document (including this document) or agreement, or a provision of a document (including this document) or agreement, is to that document, agreement or provision as amended, supplemented, replaced or novated;
- (c) a party to this document or to any other document or agreement includes a permitted substitute or a permitted assign of that party;
- (d) a person includes any type of entity or body of persons, whether or not it is incorporated or has a separate legal identity, and any executor, administrator or successor in law of the person; and
- (e) anything (including a right, obligation or concept) includes each part of it.

1.4 A singular word includes the plural, and vice versa.

1.5 A word which suggests one gender includes the other genders.

1.6 If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.

1.7 If an example is given of anything (including a right, obligation or concept), such as by saying it includes something else, the example does not limit the scope of that thing.

1.8 The words subsidiary, holding company and related body corporate have the same meanings as in the *Corporations Act 2001* (Cth).

- 1.9 A reference to dollars or \$ is to an amount in Australian currency.
- 1.10 Words defined in the *A New Tax System (Goods and Services Tax) Act 1999* (Cth) (**GST Act**) have the same meaning in clause 10.
- 1.11 This Agreement is not to be interpreted against the interests of a party merely because that party proposed this document or some provision in it or because that party relies on a provision of this document to protect itself.
- 1.12 This Agreement applies to the performance of all stages of the Project whether carried out before or after the date of this Agreement.

2 THE PROJECT

- 2.1 The Consultant must deliver a detailed creative design and provide consultant advisory services on the fabrication and installation of the Integrated Public Artwork on the terms of this Agreement.

3 PERFORMANCE

3.1 Warranty

The Consultant warrants that it has the skill and ability to undertake the Project in accordance with the requirements of this Agreement and acknowledges that Council has entered into this Agreement in reliance on this warranty.

3.2 Performance Standards

The Consultant must:

- (a) undertake the Project with the standard of skill, care and diligence expected of a skilled professional artist experienced in commissions and projects of that type; and
- (b) ensure that the Installation is fit for purpose and all materials used in the Installation (“materials”) and the construction, installation and Project comply with all applicable statutory requirements and Australian Standards.

3.3 Materials

- (a) The Consultant must use or specify in the design materials that are of quality that are safe and suitable for the proposed use of the Installation and that are aligned with the performance specification of the bridge design.

3.4 Stages

- (a) The Consultant must provide the Installation in accordance with the Project Stages and with the requirements set out in the Program, and ensure the Installation meets the requirements of the following:
 - (i) the Agreement;
 - (ii) legislative requirements;

- (iii) Council's instructions;
 - (iv) relevant Australian Standards; and
 - (v) if no other standard is specified in the Agreement, good industry standards in respect of public art and applicable to the Installation.
- (b) The Consultant must not commence work on a new Project Stage of the Program until Council has given written notice of its acceptance of the performance of the previous Project Stage. Council may decide not to proceed with a new stage of the Program in its absolute discretion.
- (c) Council may vary the Project Stages as it sees fit provided the Consultant is given 7 business days' written notice and any changes are specified in writing to the Consultant.

3.5 Consultant's Design & Advisory Responsibilities

- (a) The Consultant is responsible for the delivery of a creative detailed design of the Installation.
- (b) The Consultant must complete the Design of the Installation and carry out consultant advisory services in relation to the fabrication and installation (by others) of the Integrated Public Artwork or any other advisory services required in connection with the Project.
- (c) The Consultant must carry out its design responsibilities so that the Installation is fit for purpose and complies with the requirements of the Agreement and with the relevant Australian Standards, including structural engineering and Safety in Design. (The Safety in Design report applies to designs of structures which present hazards and risks that are unique to the design).
- (d) The Consultant must identify hazardous materials or structural features and provide an assessment of the risk of injury or illness for construction workers from those hazards;
- (e) The Consultant and the Principal Construction Consultant must consult each other on the hazards and risks associated with the fabrication, design and installation of the Integrated Public Artwork.
- (f) Comply with WHS Reg 295 Noted
- (g) The Consultant must provide maintenance and operational instructions, and performance specifications for the Installation.
- (h) Design or design development does not cause a Variation or reduce the Consultant's design responsibilities under this Agreement.
- (i) The Consultant must produce the Consultant's design documents, including materials and shop drawings in respect of the Installation which:

- (i) will ensure that the Installation is fit for the purposes required by the Agreement; and
- (ii) meet the requirements of all of the following:
 - a. the Agreement;
 - b. legislative requirements;
 - c. Council's instructions;
 - d. the Building Code of Australia and relevant Australian Standards; and
 - e. if no other standard is specified in the Agreement, good industry standards in respect of integrated public art and applicable to the Installation.
- (j) Unless the Agreement provides otherwise, the Consultant must submit the Consultant's design documents to Council for its consent at least 21 days before the date the Consultant proposes to use them for any procurement of an Artist in relation to the design of the Installation. Consultant reviews and assessments in respect of the Integrated Installation. Consultant's design documents must be submitted progressively to Council with sufficient detail to demonstrate what is proposed.
- (k) If Council objects to the Consultant's design documents, the Consultant must take into consideration the objections of Council and make reasonable efforts to discuss them with Council. The Consultant must correct any fault, error or omission in the Consultant's design documents. The parties will liaise in good faith in respect to the design development of the Installation and the Consultant must comply with Council's reasonable instructions in respect of the design development of the Installation.
- (l) Notwithstanding anything else contained in this Agreement, nothing Council does or omits to do in connection with any approval or acceptance of the Consultant's design documents makes Council responsible for the Consultant's design documents or prevents Council from relying on or enforcing any right under the Agreement or otherwise. The Consultant shall remain responsible for the design of the Installation.

3.6 Setting out the Installation

- (a) The Consultant must coordinate and specify the orientation and set out the Integrated Installation with the Principal Construction Contractor at the exact parts of the Site identified in item 1 of Annexure D.

3.7 The Consultant must coordinate with the Principal Construction Contractor to rectify any error in the position, level, dimensions or alignment of any element of the Integrated Installation, so that it complies with Annexure D.

3.8 Artist and Other Key Personnel

- (a) The Consultant warrants that the Artist nominated in Item 4 of Annexure A will create the concept and design and provide design consultancy services for the Installation. The parties acknowledge and agree that this is a fundamental term of this Agreement.
- (b) The Consultant must not use any alternate Artist to the Artist nominated in Item 4 of Annexure A in respect of the creation, design or design consultancy services of the Installation without Council's prior written consent.
- (c) The Consultant must use the key personnel nominated in Item 10 of Annexure A in relation to the Installation.

3.9 Warranties from subcontractors

- (a) The Consultant shall assign to Council the benefit of all warranties obtained by the Consultant from subcontractors and suppliers of materials in relation to the design development and detailed design of the Installation where such warranties continue to operate beyond the expiration of the Defects Liability Period. These warranties and the assigned rights must be such that they can be directly enforced by Council against the parties giving the warranties. The warranties and documents evidencing the assignment of rights must be delivered to Council at the times required by the Agreement, and if no time is stated, then prior to the Completion Date.
- (b) In addition to its obligations elsewhere under this Agreement and at law, if the Consultant warrants to Council there will be no failures or deterioration, apart from the deterioration caused by ordinary wear and tear, in the items of the Installation referred to in Annexure F (**Warranty Requirements**) for the periods referred to in that Annexure F from the Completion Date.
- (c) Nothing in this clause 3.9, nor assignment of rights as contemplated by this subclause, will limit or affect any of the Consultant's obligations or liabilities, or derogate from any rights which Council may have against the Consultant, in respect of the assigned warranties.

4 VARIATIONS

4.1 Council may from time to time request the Consultant to Vary the Project.

4.2 The Consultant must not Vary the Project unless it receives an express direction in writing from Council.

4.3 Prior to undertaking a Variation the Consultant will prepare and submit an Estimate to Council.

4.4 If:

- (a) Council accepts the Consultant's Estimate; or
- (b) the parties reach agreement on the price of the Variation,

Council may direct the Consultant in writing to Vary the Project specifically identifying that the direction is issued pursuant to clause 4.4.

- 4.5** Upon receipt of a direction pursuant to clause 4.4 above, the Consultant must vary the Project:
- (a) from the date specified in Council's written direction or if no date is specified in the written direction, from the date agreed between the parties;
 - (b) consistently with Council's requirements (if any) set out in the written direction; and
 - (c) otherwise in accordance with this Contract.
- 4.6** If the Consultant receives a direction or any other communication from Council, which the Consultant considers constitutes a Variation but was not issued in accordance with clause 4.1 or 4.4, then within 14 days of receipt of the direction or communication, the Consultant must notify Council in writing that it considers that it has been given a direction constituting a Variation.
- 4.7** Within 7 days of receipt of a notice pursuant to clause 4.6, Council shall:
- (a) confirm that the direction constitutes a Variation in which case clause 4.3 shall apply;
 - (b) withdraw the direction or communication; or
 - (c) confirm that the direction or communication does not constitute a Variation and require the Consultant to comply with the direction or communication.
- 4.8** If the Consultant does not give either notice within the time required by clause 4.6 the Consultant waives any entitlement to payment in respect of the direction or communication and is barred from making a Claim in respect of such direction or communication.
- 4.9** The Consultant acknowledges and agrees that:
- (a) a direction from Council to the Consultant to Vary the Project may involve the removal or omission of work or services from the scope of Project described under this Agreement;
 - (b) if Council gives the Consultant a direction to remove or omit work or services, Council may itself, engage others to carry out those work or services removed or omitted from the Consultant's services under this Agreement; and
 - (c) any one or more omissions will not constitute a basis to allege that Council has repudiated the Contract notwithstanding the extent or timing of the omission.
- 4.10** Council shall, as soon as possible, price each Variation using the following order of precedence:

- (a) prior agreement;
 - (b) applicable rates or prices in the Agreement (including Schedule of Rates) to the extent they are applicable to, or it is reasonable to use them for valuing, the Variation;
 - (c) if such rates are not applicable, at reasonable rates determined by Council.
- 4.11** The price of each Variation shall be added to or deducted from the Consultant's Fee.
- 4.12** The Consultant shall promptly perform any Variation directed under clause 4.4 without delay.
- 4.13** If a Variation the subject of a direction by Council omits any part of the Project, Council may thereafter carry out the omitted services either itself or by engaging another supplier.

5 VARIATIONS TO THE PROGRAM & HOLD POINTS

- 5.1** The Consultant must complete the Design of the Installation in accordance with the Specification and by the time stated in the Program.
- 5.2** Council may change the Program by issuing a revised Program (acting reasonably).
- 5.3** If the Consultant will be delayed in completing the for the Installation because of one of the reasons set out in clause 5.4, it may request Council to issue a revised Program. The Consultant must provide Council with written reasons for the delay and the anticipated length of the delay.
- 5.4** Council will issue a revised Program following a request under clause 5.3 if it is satisfied that the delay is due to:
- (a) an event beyond the reasonable control of the Consultant (including for the avoidance of doubt, the COVID-19 Pandemic);
 - (b) delay caused by Council, its employees, contractors or other agents; or
 - (c) breach of this Agreement by Council
- 5.5** The Consultant will not be entitled to claim any additional costs incurred by it as a result of the issue of the revised Program.
- 5.6** The Consultant acting for the Principal Construction Contractor, must not authorise the performance of any works at the Site (including any fabrication of any part of the Installation) until Council has issued the Consultant a written notice approving the final design of the Installation. The parties will liaise in good faith in respect of the Consultant's final development of the design of the Installation.
- 5.7** Notwithstanding that the Consultant is not entitled to or has not claimed an extension of time to the Program, Council may by written notice at any time before the Completion Date in its absolute discretion, and without being obliged to do so for the benefit of the Consultant or otherwise, extend the Program or the date for completion

of the Project.

6 LIAISON BETWEEN THE CONSULTANT AND COUNCIL

- 6.1 Council's Representative will be available on reasonable notice to the Consultant to discuss the Integrated Installation as required.
- 6.2 The Consultant must be available for discussions with Council's Representative, the Site Manager or other persons nominated by Council on reasonable notice.
- 6.3 The Consultant must support Council with:
 - (a) consultation with the Principal Construction Contractor, key stakeholders, sub-consultants and subcontractors; and
 - (b) marketing and promoting the Project.

7 MINIMUM LIFESPAN OF INSTALLATION

- 7.1 The Consultant acknowledges and agrees that as at the date of this Agreement, the Installation intended to be used by the Council for display in the outdoor public domain at the Site, for at least 100 years and may be subject to weather conditions, and estuarine environments. The Integrated Installation must be suitable for such use.
- 7.2 For the avoidance of any doubt, nothing in this Agreement compels Council to display the Installation for a minimum period.

8 CARE OF SITE AND INSTALLATION

- 8.1 The Consultant acknowledges and agrees that upon being granted access to the Site, it will coordinate responsibly and follow all WHS directives of the Principal Construction Contractor on Site.

9 PAYMENT & GST

- 9.1 Council will pay to the Consultant the Consultant's Fee in milestone (stage) payments in accordance with Item 9 of Annexure A following the Consultant's performance of each milestone (stage) to Council's satisfaction in accordance with the terms of this Agreement and the receipt of a valid tax invoice.
- 9.2 The Consultant's Fee is fixed and payable in Australian dollars.
- 9.3 Subject to satisfactory performance of the Consultant under this Agreement, the Consultant's Fee must be paid to the Consultant at the satisfactory completion of each milestone (stage) of the Project, or at other such times as agreed between the Consultant and Council. The Consultant must provide Council with a claim for payment supported by evidence of the completion of the relevant milestone (stage) and the amount due to the Consultant in respect of that relevant stage.
- 9.4 Council must:
 - (a) where Council does not dispute a claim, pay the Consultant the amount

claimed within 30 days of Council's receipt of a valid tax invoice from the Consultant for the undisputed claim; or

(b) notify the Consultant that it disputes the amount claimed.

9.5 If the Consultant and Council are unable to resolve a dispute which arises under clause 10.4(b), Council will pay the Consultant any undisputed amounts and clause 20 will apply.

9.6 Amounts referred to in this Agreement are exclusive of GST.

9.7 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.

9.8 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.

9.9 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 10.7 if the payment is consideration for a taxable supply.

9.10 Not used.

10 CONTRACTOR STATUS

10.1 The Consultant is an independent contractor without authority to bind Council by contract or otherwise and the Consultant is not an agent or employee of Council.

10.2 The Consultant must not assign or novate its rights or interests under this Agreement.

10.3 If the Consultant is more than one person, then the obligations of those persons are joint and several.

11 SUBCONTRACTORS

11.1 The Consultant must not engage any subcontractor other than those listed in Item 4 and Item 11 of Annexure A without Council's prior written consent. Council may withhold or condition its consent in its absolute discretion.

11.2 The appointment of one or more subcontractors does not relieve the Consultant of its obligations under this Agreement. The Consultant:

(a) is responsible for ensuring each subcontractor performs its subcontract in accordance with this Agreement; and

(b) is liable to Council for the acts and omissions of the Consultant's subcontractors as if they were acts or omissions of the Consultant.

11.3 The Consultant:

- (a) agrees that Council may direct the Consultant to remove any subcontractor from performing any part of the Project:
 - i) for misconduct; or
 - ii) for failure to perform its obligations; and
- (b) must comply with a direction given in accordance with clause 11.3(a) within the period specified by Council.

11.4 The Consultant must ensure that each subcontract contains a requirement that the subcontractor novates the subcontract to Council if directed by Council.

12 WORK HEALTH AND SAFETY

12.1 The Consultant must:

- (a) comply with all applicable legislation, including the WHS Laws;
- (b) have a work health and safety management system in place that is capable of complying with this Agreement and the WHS Laws;
- (c) comply with Council's reasonable direction regarding matters of work health and safety; and
- (d) provide Council with any safety documentation, White Cards (or general construction induction cards) or safe work method statements requested by Council from time to time.

12.2 The Consultant and Council will, if necessary, consult, cooperate and coordinate activities with each other and with any other persons who have a common duty under the WHS Laws.

13 INSURANCE

13.1 The Consultant must affect and keep current until the Completion Date insurance policies as specified in Item 12 of Annexure A.

13.2 On signing this Agreement and when requested in writing the Consultant must give Council:

- (a) acceptable proof of the insurance policies taken out; and
- (b) acceptable proof of the maintenance of insurance for the period required.

14 INTELLECTUAL PROPERTY

14.1 The Consultant or its Artist will retain ownership of the Intellectual Property Rights in the Installation.

14.2 The Consultant must ensure Council is granted a perpetual, worldwide, irrevocable,

royalty free and nonexclusive licence to use and reproduce the Intellectual Property Rights in the Installation including:

- (a) the right to retain a digital copy of the Installation for archival purposes;
- (b) the right to reproduce the Installation in annual reports, on the Council's website, print media or any other promotional publications; and
- (c) the right to reproduce images of and materials about the Integrated Installation for displays, documentaries and exhibitions.

14.3 Council may sublicense the rights in clause 16.2 to its contractors for the purposes of the Council enjoying its licence rights.

14.4 The Consultant warrants that:

- (a) it has the authority to enter into this Agreement; and
- (b) the Installation will be an original work and will not infringe the Intellectual Property Rights of any person; and
- (c) where the Installation contains third party material, the Consultant has obtained all consents and licences necessary to permit the use of the material in accordance with this Agreement (including for the avoidance of any doubt, consents and licenses from the Artist).

14.5 Council must not grant any third party the right to exploit the Installation commercially.

14.6 Not used.

14.7 The Consultant (including its subcontractors and Artist) must not at any time breach or infringe any Intellectual Property Rights of the Council or of any other person whether in the course of performing the Project or otherwise.

14.8 The Consultant agrees to indemnify and keep indemnified the Council and its officers, employees and agents from and against any claims and losses arising from or in connection with any infringement or alleged infringement of any Intellectual Property Rights.

14.9 The indemnity contained in this clause is not the exclusive remedy of the Council. The Council may at its option, in addition or in the alternative, pursue remedies at common law, in equity or under statute.

14.10 The Consultant must not use any Intellectual Property Rights of the Council other than for the purposes of complying with its obligations under this Agreement and must not:

- (a) purport to register, sell, license or otherwise deal with or dispose of any such Intellectual Property Rights; or
- (b) disclose the existence or detail of any such Intellectual Property Rights to a third party without the prior written consent of Council.

14.11 Without limiting Council's rights conferred by this Agreement, the Consultant acknowledges and agrees that the Council may:

- (a) make and keep records of the Installation in such form as it chooses;
- (b) retain a digital copy of the Installation for any purposes;
- (c) reproduce images of the Installation in annual reports, on Council's website, print media or other promotional publications;
- (d) reproduce images of and materials about the Installation for displays, documentaries and exhibitions;
- (e) carry out work described in clause 14.12 and 15 and
- (f) move or remove the Installation at Council's sole discretion (including permanently decommissioning the Installation at any time).

14.12 Subject to clauses 15 and 16, the Consultant acknowledges and agrees that following completion of the Installation, Council, the Site Manager or Council's authorised agents or contractors may at any time maintain and make alterations to any part of the Installation (provided that such alterations are not material) and the Consultant shall not be entitled to any claim arising from Council, the Site Manager or Council's contractors maintaining or making any such alterations to any part of the Installation.

14.13 The parties acknowledge and agree that nothing in this Agreement limits or restricts Council's powers or rights to make any changes land in the vicinity of the Installation at any time. If Council proposes to make any changes to any areas or land within the vicinity of the Installation, Council will not be required to consult with the Consultant or the Artist in respect of such matters. The Consultant shall not be entitled to make any claim against Council arising out of or in connection with any changes that Council makes, or proposes to make, to any areas or land within the vicinity of the Installation.

14.A INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY

14.A1 The parties acknowledge and agree:

- (a) There are ethical and moral considerations associated with the use of Indigenous cultural material in art and cultural projects; and
- (b) Australia's unique Indigenous artistic and cultural expression is rooted in thousands of years of heritage and continuing practice.

16.A2 Council supports the rights of Indigenous people to own and control their cultural heritage and supports Indigenous creative practice. Accordingly, the Consultant must not incorporate any form of Indigenous Cultural and Intellectual Property in the Installation without first complying with clause 14.1.

15.A3 If the Consultant proposes to incorporate any form of Indigenous Cultural and Intellectual Property in connection with the Installation, the Consultant must first:

- (a) consult and liaise in good faith with Council and any impacted Indigenous owners regarding any proposed Indigenous Cultural and Intellectual Property to be used in connection with the Installation; and
- (b) not incorporate the Indigenous Cultural and Intellectual Property in any part of the Installation without Council's prior written consent.

15.A4 Any consent provided by Council under clause 14.1 may be granted or withheld in Council's sole discretion and may be subject to the informed consent of relevant Indigenous owners being provided in respect of the use of any Indigenous Cultural and Intellectual Property in the Installation.

15.A5 In this clause 15, reference to 'Indigenous Cultural and Intellectual Property' refers to all aspects of Indigenous peoples' cultural heritage that is tangible and intangible, including but not limited to:

- (a) traditional knowledge (scientific, agricultural, technical and ecological knowledge, ritual knowledge);
- (b) traditional cultural expression (stories, designs and symbols, literature and language);
- (c) performances (ceremonies, dance and song);
- (d) cultural objects (including, but not limited to arts, crafts, ceramics, jewellery, weapons, tools, visual arts, photographs, textiles, contemporary art practices) human remains and tissues the secret and sacred material and information (including sacred/historically significant sites and burial grounds); and
- (e) documentation of Indigenous peoples' heritage in all forms of media such as films, photographs, artistic works, books, reports and records taken by others, sound recordings and digital databases.

15 LIFE OF AND SUBSEQUENT DEALINGS WITH THE INSTALLATION

The Installation will be designed as an integrated feature of the bridge design and construction. As such, the Installation is considered to be part of the overall bridge design. The lifespan of the Installation is a minimum period of 100 years (structural integration with bridge). Council may at any time decide that the condition of the bridge has deteriorated, or it is no longer suitable for the Site and Council may in its sole discretion remove, relocate, destroy or otherwise dispose of the Installation.

16 CONFIDENTIALITY

16.1 A party (receiving party) which acquires Confidential Information of another party (disclosing party) must not:

- (a) use any of the Confidential Information except to the extent necessary under this Agreement; or
- (b) disclose any of the Confidential Information to any third party without the other party's prior consent unless required by law (including the *Government*

Information (Public Access) Act 2009 (NSW), a stock exchange or government agency, or in the case of Council to its agents, contractors and advisors necessary to exercise its rights under this Agreement.

- 16.2 The receiving party must ensure that any person to whom Confidential Information is disclosed must, keep the Confidential Information confidential.

17 MORAL RIGHTS

- 17.1 The Consultant must ensure that it does not infringe the Moral Rights of any author of any work in performing the Project.
- 17.2 The Consultant indemnifies the Council, its officers, agents, employees, contractors and consultants against all claims, liability, cost, loss, damage or expense suffered or incurred arising out of breach of this clause 17.
- 17.3 Upon completion of the Installation and at all times whilst the Installation is being exhibited to the public, Council will, as far as practicable and reasonable in the circumstances, ensure that the Artist is identified as the creator of the Installation.

Subject to clauses 14 and 15, the Installation will not be subject to any material alternation, distortion, or mutilation that is prejudicial to the Installation or the reputation of the Artist without the Artist's prior consent.

Notwithstanding anything else contained in this Agreement, nothing in this Agreement will limit the Council's rights to move or remove the Installation at Council's sole discretion (including permanently decommissioning the Installation at any time) without the need of any prior consultation with, or consent from, the Artist.

The parties will liaise in good faith regarding the naming of the Installation. The parties will ensure that the naming of the Installation is not offensive or similar to other artworks. In the event that the Artist and Council cannot mutually agree to the name of the Installation, Council may determine the name of the Installation (acting reasonably).

18 TERMINATION

18.1 Termination by Council

In addition to the other termination rights set out in this Agreement, Council may terminate this Agreement by notice in writing if:

- (a) Council decides not to proceed to Project Stages as outlined in the Program or Item 15 of Annexure A;
- (b) the Consultant is in breach of this Agreement and the Consultant does not remedy the breach within 21 days of receiving written notice from Council requiring the breach to be remedied;
- (c) the Consultant or the Artist becomes bankrupt, insolvent, or enters into an arrangement with its creditors; or
- (d) the Consultant breaches any law, statutory requirement or work health and

safety obligation; or

- (e) for Council's sole convenience upon providing 30 days' prior written notice.

18.2 If this Agreement is terminated in accordance with clause 18.1(a), 18.1(e) or 5.3:

- (a) Council must pay the Consultant in accordance with clause 10 the portion of the Consultant's Fee due for performance of the Project in the relevant period up to the date of termination or the date the Consultant ceased performance of the Project;
- (b) Council may deduct from the portion of the Consultant's Fee paid in accordance with clause 18.2(a) any costs incurred or likely to be incurred by Council as a result of a breach of any Agreement by the Consultant; and
- (c) the Consultant is not entitled to any other payment, including for any consequential costs, losses (including loss of profits) or damages.

18.3 Termination by Consultant

- (a) The Consultant may terminate this Agreement by written notice if:
 - (i) Council is more than ninety (90) days late in making payment pursuant to this Agreement; and
 - (ii) the Consultant has given Council written notice that Council of the fact in (i) above; and
 - (iii) Council subsequently fails to pay the Consultant the amount due within 30 days of receiving the notice in (ii) above.

The Consultant shall thereupon be entitled to receive and retain payment for all work done up to the date of sending such notice.

18.4 This Agreement will terminate automatically on the death or incapacity of the Artist in which case the Consultant shall retain all payment made and owed to the Consultant for work performed prior to the termination of this Agreement and Council shall have the right to keep copies of the design documents in respect of the Installation and to keep the work in progress for the sole purpose of completing the Installation.

18.5 Effect of Termination

Termination of this Agreement is without prejudice to the accrued rights or remedies or either party. Upon termination, the Installation design and documentation, whether complete or incomplete, will become the property of Council.

19 **DISPUTES**

19.1 If a dispute arises at any time, the party raising the dispute is to notify the other party in writing of the nature of the dispute, including adequate particulars. Within 7 days of giving the written notice the dispute must be referred to a dispute resolution committee consisting of:

- (a) a nominee of the Consultant; and
- (b) a nominee of Council.

19.2 If the dispute resolution committee cannot resolve the dispute within 21 days of the dispute being referred to it, then the dispute must be referred to senior representatives of each party for further negotiation for a period of 14 days.

19.3 Despite the provisions of clauses 19.1 and 19.2:

- (a) the Consultant must proceed without delay to continue to perform the Project; and
- (b) both parties must perform their other obligations under this Agreement.

20 COSTS

The parties must each bear their own respective costs and expenses of and incidental to the preparing of this Agreement.

21 STEP-IN RIGHTS

21.1 If the Consultant fails to perform a material obligation strictly in accordance with the terms of this document and fails to rectify that failure within ten days of being required by written notice from Council to do so, then Council may, either by itself or through a third party, perform that obligation.

21.2 If Council:

- (a) has not yet paid the Consultant in relation to the obligation that the Consultant has failed to perform, then the costs, expenses, losses and damages incurred by Council in performing that obligation will be a debt due from the Consultant to Council; and
- (b) has already paid the Consultant in relation to the obligation that the Consultant has failed to perform, then any costs, expenses, losses and damages in excess of the proportion of the payment applicable to the obligation, incurred by Council in performing that obligation will be a debt due from the Consultant to Council.

Council will offset any debt from the Consultant arising under this clause or make appropriate adjustments to the future payments to the Consultant.

This clause 21 does not limit any other remedy which Council may have against the Consultant for any breach of this document.

22 GENERAL

22.1 This Agreement and the attached Annexures contain the entire agreement between the parties and any previous negotiations, agreements, representations or warranties relating to the subject matter of this Agreement are of no effect.

22.2 The waiver by either party of a particular breach is not a waiver of any other breach.

- 22.3** Nothing in this Agreement in any way restricts or otherwise affects Council's unfettered discretion to exercise its statutory powers as a public authority.
- 22.4** The invalidity, illegality or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provisions.
- 22.5** This Agreement may only be varied in writing by the agreement of the parties.
- 22.6** This Agreement is governed by, and construed in accordance with, the law for the time being in the State of New South Wales.
- 22.7** 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.

23 NOTICES

- 23.1** A notice or demand under this Agreement must be in writing and posted, delivered by email or delivered to the address of the recipient shown in Item 13 of Annexure A.
- 23.2** A notice is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by pre-paid post, three days (excluding Saturday, Sunday and any public holidays) after the date of posting;
 - (c) if sent by email:
 - (i) when the sender receives an email acknowledgement from the recipient's information system showing the notice has been delivered to the email address stated in the Schedule;
 - (ii) when the notice enters an information system controlled by the recipient; or
 - (iii) when the notice is first opened or read by the recipient, whichever occurs first.
- 23.3** If a notice would be taken to be given or made on a day that is not a business day in the place to which the notice is sent, or later than 4.00 pm (local time), it will be taken to have been given or made at the start of business on the next business day in that place.

24 PUBLICITY

- 24.1** The Consultant agrees that it and its Artist will make themselves available for reasonable media appearances in respect of the Installation, and if requested by Council, record an oral history about the Installation and the Artist's previous work as reasonably required by Council for the purpose of promotion of the Installation. No additional fee is payable by Council for any media appearance or recording.
- 24.2** The Consultant and its Artist must not issue any media release about the Installation

or participate in any media interviews regarding the Installation without Council's prior written consent. The Consultant must ensure that any media statements or publicity issued by the Consultant or the Artist in connection with the Installation adequately attributes Council's involvement in the Project.

- 24.3 The Consultant consents to Council or persons authorised by Council taking photos or recordings of the Installation, including the progressive development of the Installation.
- 24.4 The Consultant agrees that Council may use any recording or photo of the Installation (in whole or part) in any media format to promote the Installation. No additional fee is payable by Council for these rights.
- 24.5 The Consultant is responsible for promoting the Installation in accordance with the obligations set out in Item 5 of Annexure A.

25 CATALOGUE

- 25.1 If Council publishes a catalogue or online record regarding the Installation ("**Catalogue**"), Council will have full responsibility for the selection of its writers, editing, text and design.
- 25.2 At Council's request, the Consultant agrees to provide suitable material for inclusion in the Catalogue, or for use in the media including:
 - (a) a recent photograph and biography of the Artist; and
 - (b) reproduction-quality images of its earlier works of the Artist.
- 25.3 Council will endeavor to consult with the Consultant about:
 - (a) the proposed text in the Catalogue as it relates to the Consultant; and
 - (b) the quality of the reproduction of the Integrated Installation

26 MANUAL

- 26.1 At least 14 days prior to the completion of the Installation, the Consultant will provide Council with a written Manual containing comprehensive instructions for the proper cleaning and maintenance of the Installation. The Operations and Maintenance Manual (O+M) is to be incorporated into the bridge manual provided by the Principal Construction Contractor. ("**Manual**").
- 26.2 The Manual will include:
 - (a) a detailed description of the materials used, and any other key information reasonably requested by Council;
 - (b) equipment operating procedures and any details of any subcontractors and suppliers of the Consultant including names, addresses and telephone numbers;
 - (c) an inspection, testing and maintenance program detailing the routine required

to maintain the Installation; and

- 26.3 As-built drawings of the Installation relevant to O+M (supplied by the Principal Contractor).
- 26.4 If the Manual does not comply with the requirements of this Agreement (including Annexure B) Council may direct the Consultant to update the Manual which the Consultant must do within 14 days of the direction.
- 26.5 The parties will liaise in good faith in respect of the requirements of the Manual and the Consultant and Artist will, if requested by Council, attend a handover meeting with Council to discuss the Manual and cleaning and maintenance requirements of the Installation.

27 INDEMNITY

The Consultant indemnifies Council and each of its officers, employees, agents and contractors from and against all losses, liabilities, costs, expenses and taxes arising out of or incurred in connection with:

- (a) any injury to or death of any person, or any damage to or loss of property caused by any negligence, wrongful act or omission, breach of contract or breach of statutory duty by the Consultant or its subcontractors (including for the avoidance of any doubt, the Artist);
- (b) any negligence, wrongful act or omission, or breach of statutory duty by the Consultant or its subcontractors (including for the avoidance of any doubt, the Artist); or
- (c) any claim that the Integrated Installation, its use or any material provided by the Consultant or its subcontractors (including for the avoidance of any doubt, the Artist) infringes the Intellectual Property Rights of any person, except to the extent that any loss is caused by Council's negligence.

28 SUSPENSION

- 28.1 Council may immediately suspend the performance of any or all of the Project at any time and for any reason by giving notice to the Consultant (whether or not the Consultant is in default under this Agreement or otherwise).
- 28.2 On receipt of a notice of suspension the Consultant must:
 - (a) stop work as specified in the notice;
 - (b) take all available steps to minimise loss resulting from that suspension; and
 - (c) continue work on any part of the Project not affected by the notice.
- 28.3 If Council suspends any of the Project under this clause 28, Council may at any time give the Consultant a notice requiring the Consultant to resume performing the suspended Project. The Consultant must resume performing those parts of the Project as soon as practicable after the date of the notice, and in any event no later than 14

days after the date of the notice.

28.4 If Council requires suspension of any of the Project under this clause 28, then provided that the Consultant has complied with its obligations and the Installation has been delivered as required under this Agreement:

- (a) Council must pay those Consultant Fees due and payable for the Installation rendered before the effective date of suspension; and
- (b) Council must meet the additional reasonable costs incurred by the Consultant and directly attributable to the suspension, but Council shall not be required to compensate the Consultant for loss of profit or other costs, expenses or overheads incurred by the Consultant in deploying or re-deploying.

29 PARTIES' REPRESENTATIVES

29.1 The parties appoint as representatives the persons named in Item 2 and Item 3 of Annexure A, or another person the parties may nominate and notify to each other from time to time.

29.2 Each of the parties' representative has authority to:

- (a) exercise all of the powers and functions of their party arising out of or in connection with this Agreement; and
- (b) bind their party in relation to any matter arising out of or in connection with this Agreement.

29.3 The Consultant must communicate directly with Council's representative in relation to any matters within the authority of the Council's representative.

29.4 An instruction given to the Consultant's representative is deemed to be given to the Consultant.

29.5 The Consultant must ensure that the Consultant's representative and the Artist are available to attend on and provide advice to the Council and the Council's representative at all reasonable times during the currency of this Agreement.

29.6 Either party may terminate the appointment of its representative by notice in writing to the other party. The notice must identify and provide contact details for the party's new representative.

30 FORCE MAJEURE

30.1 If Council forms the view that a Force Majeure Event is, or the consequences of a Force Majeure Event are, likely to continue for more than 3 months, Council may terminate the Contract by notice in writing to the Consultant, effective from the time stated in the notice or, if no time is stated, at the time the notice is given.

30.2 Upon termination under clause 31.1, clause 18.2 will apply.

31 COVID-19

- 31.1** The parties acknowledge and agree that as at the date of this Agreement a pandemic, being an epidemic affecting a large geographical area of the world exists for a fast-spreading contagious disease known as "COVID-19" or the "Corona Virus" (**COVID-19 Pandemic**) is in existence;
- 31.2** Notwithstanding anything else contained in this Agreement, the parties acknowledge and agree that the COVID-19 Pandemic is not a Force Majeure Event for the purpose of this Agreement.
- 31.3** If the Project or any work under this Agreement is impacted by the COVID-19 Pandemic:
- (a) the Consultant will not be entitled to make any claim, action or demand for any costs, loss or expenses, arising from or in connection with the impact of the COVID-19 Pandemic, including any increase to the Consultant's Fee; and
 - (b) Council will, acting reasonably, issue a revised Program in accordance with clause 5.4(a).

ANNEXURE A		
Reference Schedule		
To be completed by Consultant		
Item	Name	Description
Item 1	Date of Agreement	[insert date]
Item 2	Consultant's Name:	[insert Artist/Consultant's Name]
	Consultant's ABN:	[Insert ABN]
	Consultant's Address:	[Insert Address]
	Consultant's Representative:	[Insert key representative]
Item 3	Council's Representative	[insert project key representative]
Item 4	Consultant [Artist]	[insert Artist name]
Item 5	Promotion Obligations	[insert publicity obligations, as per contract clauses]
Item 6	Installation	[describe the works to be completed – typically the stages in the contract]
Item 7	Site	[describe the site where the works will be installed]
Item 8	Site Manager	Name: City of Parramatta Council Address: 126 Church St, Parramatta NSW 2150 Contact: [insert project representative] Telephone: [insert contact number]
Item 9	Consultant's Fee	[insert total fees payable under this Agreement ex GST]. Reference relevant clause/s and payment per stages as required based on deliverables described in Annexure G to Council's satisfaction.
Item 10	Key Personnel	Key Personnel
		[insert]
Item 11	Approved Sub-consultants	Add additional here
		[insert]
Item 12	Insurance	The Consultant must hold and maintain the following insurances:

		<ul style="list-style-type: none"> [insert required insurances]. Typically, PL, PI and Worker's Comp, as required.
Item 13	Notices	<p>City of Parramatta Council: Postal Address: City of Parramatta Council 126 Church Street Parramatta, NSW 2150</p> <p>Attention: [insert key project contract and their role] Email Address: [insert email address]</p> <p>Consultant: Postal Address: [insert] Attention: [insert] Email Address: [insert]</p>
Item 14	Program	A copy of the Program as at the date of this Agreement is included at Annexure C.
Item 15	Project Stages	<p>The Project shall comprise the following stages of work. [insert stages for each contract issued]</p> <ol style="list-style-type: none"> 1 Stage 1 - Design Development 2 Stage 2 - Detailed Design 3 Stage 3 – Fabrication 4 Stage 4 – Installation 5 Stage 5 – Practical Completion 6 Operations and Maintenance Manual Instructions + Defects Liability <p>The Consultant must not proceed with a new stage of work until written notice is provided by Council of the Consultant's satisfactory completion of the prior Project Stage.</p>

ANNEXURE B**Specification** [insert your scope of works details in Annexure B]

To be supplied by City of Parramatta

ITEM	PAGE
Document Purpose	[insert]
Project Context	[insert]
Stakeholders	[insert]
Project Description	[insert]
Key Considerations	[insert]
Key Criteria	[insert]
Scope of Works	[insert]
Project Milestones	[insert]
Project Key Dates	[insert]
Functional Requirements	[insert]
Non-functional Requirements	[insert]
Environmental Factors	[insert]
WHS	[insert]
Maintenance	[insert]
Warranty	[insert]
Defects Liability	[insert]
Deaccession Plan	[insert]
Insurances	[insert]

CONTENT	
Document Purpose	[insert]
Project Context	[insert] [insert]
Stakeholders	<u>Primary Stakeholders</u> [insert] <u>Secondary Stakeholders</u> [insert]
Vision Alignment	[insert]
Project Description	[insert]
Key Considerations	[insert]
Key Criteria	[insert]
Scope of Works	LOCATION [insert] SITE CHARACTERISTICS [insert]

	<p>CONTRACT [insert]</p>
	<p>LICENCE The Artist will grant the City of Parramatta a non-exclusive, perpetual worldwide licence of the work.</p>
	<p>ARTWORK LIFESPAN [insert minimum lifespan period]</p>
	<p>BUDGET [insert]</p>
	<p>EXTERNAL [insert]</p>
	<p>SCALE [insert]</p>
	<p>PLANE [insert]</p>
Project Milestones	01 – [insert]
	HOLD POINT– Council Signoff
	02 – [insert]
	HOLD POINT– Council Signoff
	03 – [insert]
	HOLD POINT– Council Signoff

	04 – [insert]
	HOLD POINT– Council Signoff
	[insert]
Key Dates	Each Integrated Public Artwork must be completed and installed in line with the program dates below.
	[insert]
	[insert]
	[insert]
	[insert]
	[insert]
	[insert]
	[insert]
Functional Requirements	[insert]
	ARTWORK PROCESS [insert]
	DIMENSIONS AND WEIGHT [insert]
	ARTWORK ORIENTATION

	<p>[insert]</p>
	<p>MATERIALS</p> <p>[insert]</p>
	<p>LIGHTING (as required)</p> <p>[insert]</p> <p>Example below</p> <p>Consideration of light used in the artwork must address the following:</p> <ul style="list-style-type: none"> • Lighting as a mode for creative expression to reinforce a sense of place; • The NSW Heritage Council, CASA and Transport for NSW will review any lighting scheme; • Maintain required standards for safety lighting in pedestrian zones and not impeded CCTV coverage; • The direction of lighting in relation to activity and background environment; • Correlated colour temperature (CCT) of light sources (consistency, colour rendering and light direction); • Promote a glare free environment; • Impact on future asset management; • RGBW light; • As a minimum, the lighting scheme must be dimmable and controllable; • Controlled by a system that is easily accessed and maintained; • Programmable lighting for the artwork to be controlled by a PE Cell;

	<ul style="list-style-type: none"> • Materiality and design of luminaires and brackets must be able to withstand the conditions of the site and; • Fixings to be concealed and tamper proof with no public access
	<p>SAFETY IN DESIGN [insert] Example below</p> <ul style="list-style-type: none"> • Safety in design must apply to every stage in the life cycle of the artwork from conception through to decommission; • The artwork must be designed to prevent or reduce the risk of injury through systematically identifying, assessing, and controlling hazards; • No sharp or rough edges should be left in a position that may present a hazard or safety risk. All welds and edges are to be rendered smooth; • All bolts or other fastenings must be set flush to adjoining surfaces or covered over with smooth plugs that are not readily removable; • Internal structure and surface treatments must avoid entrapment hazards. Inverted angles are more likely to entrap a head than upright angles; • Horizontal openings are more likely to entrap than vertical openings; • Accessible spaces and holes must address finger and limb entrapment; • The artwork must address access and scalability issues; • Structure must not include any accessible hand holds and foot holds; • The artwork must comply with Australian Safety Standards; • Seamless integration with no gaps or trip hazards, and mitigation of variations in surface levels • In line with the relevant Australian Standards the design must successfully complete a Safety in Design review to be managed by the Principal Construction Contractor and bridge designer BECA <p>DATA AND POWER [insert]</p> <p>ENGINEERING CERTIFICATION [insert] Example below The design must comply with all relevant Australian Standards and undergo a structural engineering review prior to design sign off. The design must obtain engineering certification.</p>
<p>Non-functional Requirements</p>	<p>CURATORIAL VISION [insert]</p>

	<p>SUSTAINABILITY IN DESIGN [insert]</p> <p>ARTWORK TYPOLOGIES [insert]</p>
<p>Environmental Factors <i>Refers to the installation of the artwork on site. Offsite design and fabrication are not included.</i></p>	<p>ENVIRONMENTAL HAZARDS [insert] Example below</p> <p>The requirements below refer to the installation of the Installation on site. Off site design and fabrication is not included.</p> <p>Chemical Hazards</p> <p>Exposure to substances such as corrosives, fumes, vapours, liquids, and dust can be extremely harmful and may lead to irritation, sensitization, and carcinogenicity. The Artist is required to adhere to any WHS or safety protocols instigated by the Principal Construction Contractor during fabrication and installation to minimise or eliminate the possibility of inhaling or ingesting substances or absorbing them through their skin.</p> <p>Biological Hazards</p> <p>Interaction with other people, animals, or contagious conditions are prime candidates for exposure to biological hazards. The Artist is required to adhere to any WHS or safety protocols instigated by the Principal Construction Contractor during fabrication and installation to minimise or eliminate the possibility of encountering biological hazards.</p> <p>Unseen Hazards</p> <p>Working conditions that involve extremes of temperature, radiation, ultraviolet rays, or loud noise, pose the risk of injuring personnel with or without any contact. The artist is required to provide adequate industry standard PPE relevant to the work performed.</p> <p>Ergonomic Hazards</p> <p>Work involving manual labour poses a risk for ergonomic hazards, which can result in disabling injuries, (caused by working at height, material and manual handling, slips, trips and falls). The Artist is required to adhere to any Safe Work Method Statements (SWMS) provided by the Principal Construction Contractor which outline the correct procedures to safely conduct the work.</p> <p>Electrical Hazards</p> <p>Most electric hazards and incidents of electric shock involve personnel contacting power cables or the incorrect handling of electrical tools or</p>

	<p>machinery. All electrical and data works must be conducted by a qualified electrician. The Artist is required to adhere to any Safe Work Method Statements (SWMS) provided by the Principal Contractor which outline the correct procedures to safely conduct the work.</p>
<p>WHS</p>	<p>WORK SAFETY [insert] Example below</p> <p>The Artist is required to cooperate and comply with any processes for WHS matters instigated by the Principal Construction Contractor, consistent with WHS legislative requirements, subject to site conditions and risks.</p> <p>Where your Work Under the Contract includes design of structures, design of a part of a structure, or installation of a structure you must:</p> <ul style="list-style-type: none"> • Manage risks to health and safety arising from the installation of the structure in accordance with SafeWork NSW Safe Design of Structures Code of Practice; • Provide documentation which demonstrates risk mitigation; • Engage competent and trained resources; • Conduct due diligence checks and; • Coordinate Engineering Certification for all structural elements in the design <p>PPE</p> <p>When on site all authorised personnel are required to wear all required PPE, subject to site conditions and risks as directed by the Principal Construction Contractor.</p> <p>Heavy Vehicles</p> <p>In relation to the delivery of the artwork to site, heavy vehicles have limited access to the Aquatic Centre site. Maximum load bearing capacities will be provided in the Performance Specification.</p> <p>Trucks and Plant Equipment</p> <p>The Principal Construction Contractor is responsible for the delivery of the integrated artwork to each site, and as such is responsible for the maximum load bearing capacities of each bridge design specified in the Performance Specification by bridge designers BECA. This includes trucks and plant equipment.</p>
<p>Maintenance</p>	<p>[insert] Example below</p>

	<p>The Consultant must ensure the artwork is designed in a way that it can easily be maintained and presented to the highest standard, to ensure longevity and quality:</p> <ul style="list-style-type: none"> • The Maintenance and Operation Manual will include thorough documentation of any specific processes and methodologies involved in the future care, maintenance of the artwork. <p>The manual should include the following:</p> <ul style="list-style-type: none"> • Contact details for key subcontractors involved in the production of the artwork Performance Specification for all components; • Materials palette and supplier details for all components, fixtures, and fittings; • Design Documentation including electrical drawings showing location of power and data source and power supply (as required); • Warranty and lifespan details of all components; • Instructions on proprietary software or programmable components and; • Instruction for remedial work to any damaged artwork components
<p>Warranty</p>	<p>[insert] Example below</p> <p>The Consultant will provide manufacturer's warranty against faulty workmanship or components and/or 24-month warranty on supplied raw materials, subject to the definition of normal wear and tear.</p> <p>Warranty Inclusions</p> <p>This warranty must cover parts and labour for rectification or replacement of damaged or failed parts or components supplied under the Consultant.</p> <p>Warranty Exclusions</p> <ul style="list-style-type: none"> • Damage or harm caused by severe weather, force majeure, or any malicious or negligent act of the client, their agents, contractors or third parties; • Alteration or disassembly by unauthorised personnel; • Intentional or accidental misuse and; • Non-adherence to the maintenance and operational manual requirements
<p>Defects Liability</p>	<p>[insert] Example below</p> <p>The Defects Liability period commences after the installation of the artwork and handover of the asset to Council. The Artist will develop the Performance Specification for the artwork and is liable to remedy any defects in the</p>

	fabrication and installation of the artwork during the 12-month Defect Liability Period.
Deaccession Plan	[insert]
Insurances	[insert]

ANNEXURE C Program To be completed by Consultant					
PROJECT STAGE	ITEM	DELIVERABLES	CONSULTANT COMPLETION DATE	CLIENT APPROVAL DATE	NOTES
A	Contract Signing	<ul style="list-style-type: none"> Executed Contract 			<i>Council requires three weeks to execute the contract after signed and initialled contract returned.</i>
01	Design Development	<ul style="list-style-type: none"> Consultation – City of Parramatta Design Report [insert] 			<i>The Consultant must not proceed with a new stage of work until written notice is provided by Council of the Consultant's satisfactory completion of the prior Project Stage.</i>
HOLD POINT– Council Signoff – 3 weeks					
02	Detailed Design	<ul style="list-style-type: none"> Consultation – City of Parramatta Detailed Design Report [insert] 			<i>The Consultant must not proceed with a new stage of work until written notice is provided by Council of the Consultant's satisfactory</i>

						completion of the prior Project Stage.
HOLD POINT– Council Signoff – 3 weeks (Reviews and Consultation)						
03	Fabrication Advisory	<ul style="list-style-type: none"> • Fabrication Advisory Report • 100% Completion • Council Fabrication Inspection 				<i>The Consultant must not proceed with a new stage of work until written notice is provided by Council of the Consultant's satisfactory completion of the prior Project Stage.</i>
HOLD POINT – Council Signoff – 3 weeks						
04a	Installation	<ul style="list-style-type: none"> • Installation Advisory Report • 100% Completion • Council Installation Inspection • Testing and commissioning 				<i>The Consultant must not proceed with a new stage of work until written notice is provided by Council of the Consultant's satisfactory completion of the prior Project Stage.</i>
HOLD POINT – Council Signoff – 2 weeks						
05	Practical Completion	<ul style="list-style-type: none"> • Council Installation Inspection • Practical Completion certificate issued 				

06	Operations and Maintenance Manual	<p>Any specific maintenance requirements will be outlined in an Operations and Maintenance Manual,</p> <p>The Operation and Maintenance Manual will include thorough documentation of any specific processes and methodologies involved in the future care, maintenance of the Installation.</p>			

ANNEXURE D Plan of the Site To be supplied by City of Parramatta		
Item	Item	Image Reference
Item 1	Approved DA Artwork Location	Insert stamped DA drawing of site
Item 2	Service Access Route	Insert emergency vehicle and service route swept path drawing/s
Item 3	Maximum Capacity	Insert maximum capacity weight and load bearing requirements drawing/s and/or specification.
Item 4	Approved Loading Plan	Insert approved loading plan for site
Item 5	Bridge Truss Drawings	Insert plans, elevations and dimensions/weight information
Item 6	Concept Design for contracted bridge design	Insert concept sketch, renders and drawings

ANNEXURE E	
Schedule of Rates	
To be supplied by Consultant	
Role	Rate
[insert]	[insert]
[insert]	[insert]
[insert]	[insert]
[insert]	[insert]

- Required positions to be added.
- The above rates are exclusive of GST and based on standard business hours.
- The above rates do not include mobilisation, stand down rates, accommodation, travel costs, meal expenses or disbursements.
- Refer Clause 4 of the Contract.

ANNEXURE F Warranty Requirements To be supplied by Consultant	
Items of the Installation to be subject to a warranty as per clause 3.8	Warranty period applying to that item of the Works
[insert]	Manufacturer Warranty or 24 months after the Completion Date for raw materials
[insert]	Manufacturer Warranty or 24 months after the Completion Date for raw materials
[insert]	Manufacturer Warranty or 24 months after the Completion Date for raw materials
[insert]	Manufacturer Warranty or 24 months after the Completion Date for raw materials
[insert]	Manufacturer Warranty or 24 months after the Completion Date for raw materials
[insert]	Manufacturer Warranty or 24 months after the Completion Date for raw materials
[insert]	Manufacturer Warranty or 24 months after the Completion Date for raw materials
[insert]	Manufacturer Warranty or 24 months after the Completion Date for raw materials
[insert]	Manufacturer Warranty or 24 months after the Completion Date for raw materials
[insert]	Manufacturer Warranty or 24 months after the Completion Date for raw materials

- Required materials, coatings, fixtures, components, imagery to be added as required.
- Refer Clause 3 of the Contract.
- Additional materials added as required.

ANNEXURE G Consultant's Fee Breakdown To be supplied by Consultant						
PROJECT STAGE	ITEM	DELIVERABLES	COST (ex GST)	CONSULTANT COMPLETION DATE	INVOICE SUBMISSION DATE	NOTES
A	Contract Signing Fee (5%)	Executed Contract				<i>Upon contract execution</i>
01	Design Development	As per program				<i>Paid upon satisfactory completion of stage. Approval by City of Parramatta</i>
02	Detailed Design	As per program				<i>Paid upon satisfactory completion of stage. Approval by City of Parramatta</i>
03	Fabrication	As per program				<i>Paid upon satisfactory completion of stage. Approval by City of Parramatta</i>
04	Installation	As per program				<i>Paid upon satisfactory completion of stage. Approval by City of Parramatta</i>
05	Practical Completion	As per program				<i>Paid upon satisfactory completion of stage. Approval by City of Parramatta</i>

06	Operations and Maintenance Manual	As per program				<i>Paid upon satisfactory completion of stage. Approval by City of Parramatta</i>
	TOTALS (ex GST)		[insert]			

ANNEXURE H
Operational and Maintenance Guidelines
 To be completed by Consultant, relevant to design and maintenance of Installation

ITEM	PREVENTATIVE MAINTENANCE	MAINTENANCE FREQUENCY + DURATION			COMPLETED ✓	DATE [00/00/0000]	DOCUMENTATION [Insert Image]	NOTES [Insert Notes]
		Annually	Twice Per Year	Only if Required				
Lighting System (as required)	Operational Check							
	Software	■						
	Hardware	■						
	Globes							
Material 01	General Clean							
	Removal of Applied Materials							
	Touch-ups							
Material 02	General cleaning							
	Removal of Applied Materials	■						
Material 03	General Clean							
	Removal of Applied Materials	■						

	Touch Ups	■						
Material 04	General Clean							
	Removal of Applied Materials	■						
	Touch Ups	■						
Annual Engineering Inspection + Condition Report	Checklist Completion	■						
	Condition Report	■						
Annual Tag + Test	Checklist Completion							
	Condition Report							

ASSUMPTIONS

- [insert content]

EXCLUSIONS

- [insert content]

EXECUTED AS AN AGREEMENT

To be supplied by all Parties

Signed for and on behalf of **CITY OF**)
PARRAMATTA COUNCIL (ABN 49 907)
174 773) by its authorised officer in the)
presence of:

.....
Signature of Witness

.....
Name of Witness

.....
Signature of Authorised Officer

.....
Name of Authorised Officer

.....
Position of Authorised Officer

.....
Date

Signed for and on behalf of **CONSULTANT**)
by its authorised officer in the presence of:)
)

.....
Signature of Witness

.....
Name of Witness

.....
Signature of Authorised Officer

.....
Name of Authorised Officer

.....
Date