



## **Artwork Commissioning Agreement**

**Bayside Council**

and

**ARTIST NAME**

for

Her Way floor mural design – Astridge Lane, Rockdale

# Artwork Commissioning Agreement

## Parties

1. **Bayside council** (ABN 80 690 785 443) of 444 Princes Highway, Rockdale NSW 2216 (**Council**)
2. The Artist identified in Item 3 of the Schedule (**Artist**)

## Background

- A.** Council wishes to commission the Artist to produce and deliver the Artwork for the Project.  
**B.** The Artist has agreed to produce and deliver the Artwork to Council on the terms and conditions contained in this Agreement.

## Operative Part

### 1. Definitions

In this Agreement unless expressed or implied to the contrary:

**Agreement** means this document and includes all schedules and annexures to it.

**Artist Intellectual Property** means all Intellectual Property Rights in the Artwork.

**Artwork** means the Artwork described in Item 4 of the Schedule.

**Business Day** means any day on which trading banks are open for business in New South Wales other than a Saturday, Sunday or a public holiday in New South Wales.

**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.

**Commencement Date** means the commencement date specified in Item 6 of the Schedule.

**Completion Date** means the completion date specified in Item 7 of the Schedule.

**Electronic Communication** has the same meaning as in the Electronic Transactions Act 1999 (Cth).

**Fee** means the fee described in Item 8 of the Schedule.

**Intellectual Property Rights** means all patents, trademarks, designs, copyright, trade names, business names or other related rights whether created before, on, or after the date of this Agreement.

**Moral Rights** mean moral rights created by the *Copyright Act 1968* (Cth), which include the right of integrity of authorship (that is, not to have a work subjected to derogatory treatment), the right of attribution of authorship of a work, and the right not to have authorship of a work falsely attributed, and any similar rights capable of protection under the laws of any other jurisdiction.

**Payment Milestones** means the payment milestones specified in Item 8 of the Schedule.

**Project** means the Project specified in Item 5 of the Schedule.

**Project Site** means the project site specified in Item 5 of the Schedule.

**Schedule** means the schedule set out in clause 19.

**Term** means the period beginning on the Commencement Date and ending on the Completion Date, unless otherwise varied or terminated in accordance with this Agreement.

## 2. Interpretation

### 2.1 Persons

In this Agreement, a reference to:

2.1.1 a person includes a firm, partnership, joint venture, association, corporation or other corporate body;

2.1.2 a person includes the legal personal representatives, successors and permitted assigns of that person; and

2.1.3 any body which no longer exists or has been reconstituted, renamed, replaced or whose powers or functions have been removed or transferred to another body or agency is a reference to the body which most closely serves the purposes or objects of the first-mentioned body.

### 2.2 Joint and Several

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

### 2.3 Clauses and Headings

In this Agreement:

2.3.1 a reference to this Agreement or other agreement includes this Agreement or the other agreement as varied or replaced regardless of any change in the identity of the parties;

2.3.2 a reference to writing includes all modes of representing or reproducing words in a legible, permanent and visible form;

2.3.3 headings and sub-headings are inserted for ease of reference only and do not affect the interpretation of this Agreement;

2.3.4 where an expression is defined, another part of speech or grammatical form of that expression has a corresponding meaning;

2.3.5 a reference to a statute includes regulations under it and consolidations, amendments, re-enactments or replacements of any of them;

2.3.6 where the expression **including** or **includes** is used it means 'including but not limited to' or 'including without limitation';

2.3.7 a reference to any notice, claim, demand, consent, agreement, approval, authorisation, specification, direction, disclosure, notification, request, communication, appointment, or waiver being given or made by a party to this Agreement is a reference to its being given or made in writing, and the expression **notice** includes any of the foregoing.

### 2.4 Severance

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

2.4.2 If it is not possible to read down a provision under clause 2.4.1, that provision is severable without affecting the validity or enforceability of the remainder of that provision or any other provisions of this Agreement.

### 2.5 Business Day

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

## 3. Term

This Agreement will commence on the Commencement Date and will continue until the Completion Date unless otherwise varied or terminated in accordance with this Agreement.

## 4. Obligations

### 4.1 Artist's Responsibilities

The Artist must:

- 4.1.1 complete the Artwork by the Completion Date in accordance with the timetable in clause 20 and otherwise in accordance with the terms of this Agreement;
- 4.1.2 supply all resources necessary to produce the Artwork in accordance with the terms of this Agreement;
- 4.1.3 use high quality materials which are free from defects and suitable for the purpose of the Artwork;
- 4.1.4 carry out its own inquiries and inspections about the adequacy and suitability of the Project Site for the Artwork;
- 4.1.5 ensure that the Artwork will not put the health and safety of any person, including the Artist, at risk;
- 4.1.6 repair any damage caused by the Artist to the Project Site;
- 4.1.7 provide all information, reports and documents relating to the Artwork reasonably required by Council;
- 4.1.8 pay for all costs and expenses incurred in connection with the Artwork (unless otherwise specified in this Agreement);
- 4.1.9 comply with any direction given by Council or any other person authorised by Council in connection with the logistics of completing the Artwork or in respect of entering, exiting and being present on the Project Site;
- 4.1.10 immediately comply with any direction given by Council or the Project organiser concerning matters of health and safety;
- 4.1.11 attend any meetings reasonably required by Council;
- 4.1.12 obtain all necessary consents, approvals, licences associated with the Artwork;
- 4.1.13 ensure that they comply with all laws, including work health and safety;
- 4.1.14 notify Council as soon as practicable after the Artwork is completed.

### 4.2 Warranties

The Artist warrants that:

- 4.2.1 the Artist has the skill and ability to produce and deliver the Artwork in accordance with the requirements of this Agreement and acknowledges that Council has entered into this Agreement in reliance on this warranty;
- 4.2.2 the Artist has the authority to enter into and to perform the Artist's obligations under this Agreement;
- 4.2.3 the Artwork will be the Artist's original work and will not infringe any Intellectual Property Rights or Moral Rights of any person or corporate entity;
- 4.2.4 where the Artwork contains third party material, the Artist has obtained all consents and licences necessary to permit the lawful inclusion of the material in the Artwork; and
- 4.2.5 the Artist will not licence any Intellectual Property Rights relating to the Artwork to a third party without Council's prior written consent.

## 5. Fee

### 5.1 Payment

5.1.1 Subject to:

- (a) the satisfactory performance of the Artist's obligations under this Agreement; and
- (b) upon receipt of a valid tax invoice from the Artist, Council will pay the Artist the Fee in accordance with the Payment Milestones.

### 5.2 GST

5.2.1 In this clause 5.2, words that are defined in *A New Tax System (Goods and Services Tax) Act 1999* have the same meaning as their definition in that Act.

5.2.2 Except as otherwise provided by this clause 5.2, all consideration payable under this Agreement in relation to any supply is exclusive of GST.

5.2.3 If GST is payable in respect of any supply made by a supplier under this Agreement, subject to clause 5.2.4, the recipient will pay to the supplier an amount equal to the GST payable on the supply

at the same time and in the same manner as the consideration for the supply is to be provided under this Agreement.

5.2.4 The supplier must provide a tax invoice to the recipient before the supplier will be entitled to payment of the GST payable under this clause 5.2.

## 6. Artwork

### 6.1 Defects

6.1.1 The Artist must promptly rectify any defects and repair any damage to the Artwork prior to its completion if appropriate to the nature of the Artwork as directed by Council, including any defects notified by Council following the Artist's notification of completion of the Artwork in accordance with clause 4.1.14.

### 6.2 Removal by Council

6.2.1 The Artist acknowledges and agrees that Council may move or remove the Artwork from the Project Site at any time for any reason at Council's sole discretion.

6.2.2 The Artist will not be entitled to claim any cost, expense, loss or damage against Council arising out of or in connection with any relocation or removal of the Artwork or the Artist's property from the Project Site.

## 7. Project

### 7.1 Variation

7.1.1 Council may, at its sole discretion, vary the Project.

7.1.2 Council will use all reasonable endeavours to consult with the Artist in connection with any variations relevant to the Artwork.

### 7.2 Cancellation

7.2.1 Council may, at its sole discretion, decide not to proceed with the Project.

7.2.2 If the Project is cancelled by Council, this Agreement will automatically terminate. The Artist must not make a Claim against Council (other than any Fee due and payable to the Artist prior to the termination of the Agreement).

## 8. Intellectual Property

8.1.1 The Artist will retain all Intellectual Property Rights in the Artwork.

8.1.2 The Artist grants to Council a perpetual, irrevocable, royalty free and exclusive licence to use and reproduce the Artist Intellectual Property for the sole purposes of promoting the project on Council's website and official publications. Council must not use images of the Artwork for any other purpose without the approval of the Artist.

8.1.3 The parties acknowledge that Indigenous Cultural and Intellectual Property represented within any artworks, including traditional stories, will remain with the traditional custodians, and that this Agreement does not give Council a right to claim a connection to the Indigenous Cultural and Intellectual Property represented within the Artwork.

8.1.4 Other than as permitted by the *Copyright Act 1968* (Cth), the Artist must not duplicate or in any other way reproduce additional copies of the Artwork. Where the Artwork is re-exhibited by the Artist with Council's prior written consent, the following statement must be included in any promotional material or signage created in relation to the re-exhibition of the Artwork: "This Artwork was commissioned by Bayside Council as part of the "Her Way Astridge Lane mural project."

8.1.5 The Artist must indemnify Council against any Claim arising out of or in connection with any infringements of Intellectual Property Rights of any third party.

8.1.6 This clause 8 survives termination of this Agreement.

## 9. Promotion

9.1.1 The Artist acknowledges and agrees that Council may disclose information regarding the Artist and the Artwork to the public.

9.1.2 The Artist must provide appropriate publicity material to Council for promotional purposes.

9.1.3 The Artist must be available for media interviews reasonably required by Council for publicity and promotional purposes. No additional fees are payable by Council in connection with such media involvement.

9.1.4 The Artist must not disclose any information regarding the Artwork or Project without Council's prior written consent.

9.1.5 The Artist must not issue press releases, announcements or statements relating to Council, the Artwork or Project without Council's prior written consent.

## 10. Confidentiality

10.1.1 The Artist acknowledges and agrees that certain information disclosed to them under or in connection with this Agreement may be confidential.

10.1.2 The Artist must take all precautions necessary to maintain secrecy and confidentiality and prevent disclosure of Council's confidential information.

10.1.3 Unless compelled by law to disclose, the Artist must not disclose to a third party any confidential information of Council without Council's prior written consent.

## 11. Insurance

11.1.1 Unless Council agrees expressly to the contrary, the Artist must hold and maintain the following insurances:

(a) public liability insurance for the amount of \$20 million for any one occurrence and unlimited in the aggregate annually as to the number of occurrences; and

(b) worker's compensation insurance in accordance with any applicable laws.

11.1.2 The insurances must:

(a) be in terms satisfactory to Council;

(b) cover the Artist's rights, interests and liabilities to third parties, including the liability of the Artist to Council; and

(c) be valid for the duration of the Term.

11.1.3 The Artist must provide Council with evidence of its insurances required under this Agreement in the form of certificates of currency prior to the Commencement Date and whenever requested by Council.

## 12. Indemnity

12.1.1 The Artist carries out its obligations under this Agreement and uses the Project Site at its own risk.

12.1.2 The Artist must indemnify Council against all Claims made against Council arising out of or in connection with the Artwork or any breach of this Agreement.

12.1.3 The Artist's liability to indemnify Council under clause 12.1.1 will be reduced proportionately to the extent that Council's act or omission contributed to the Claim.

## 13. Termination

### 13.1 Termination by Council

13.1.1 Council may terminate this Agreement by notice given to the Artist (and such termination will operate from the date stated in the notice which must be not less than 3 Business Days after the date on which the notice is given to the Artist) if any one or more of the following occur:

(a) the Artist becomes bankrupt or insolvent or a receiver or administrator is appointed to them;

(b) the Artist commits a breach of this Agreement and does not remedy the breach within 5 Business Days upon Council's request; or

(c) Council considers that the Artist is involved in any activity, project or controversy that may reflect adversely on the Project and/or Council.

### 13.2 Termination by Artist

13.2.1 The Artist may terminate this Agreement by giving Council at least 5 Business Days written notice if it cannot produce or deliver the Artwork in accordance with this Agreement.

13.2.2 If this Agreement is terminated by the Artist, the Artist must repay the Fee paid by Council within 5 Business Days of termination.

### **13.3 Termination by Mutual Agreement**

The parties may terminate this Agreement at any time by written agreement.

### **13.4 Termination Effect**

Termination of this Agreement does not affect any provision expressed to operate or have effect subsequent to termination and without prejudice to any accrued right or remedy of a party in relation to any antecedent default by a party.

## **14. Dispute Resolution**

### **14.1 Resolution by Negotiation**

If a dispute between the parties arises out of or in connection with this Agreement, the parties will use reasonable endeavours to resolve any such dispute by negotiation within the period of 10 Business Days after the date on which either party gives a notice to the other party stating the matters in dispute and designating as its representative a person to negotiate the dispute.

### **14.2 Resolution Proceedings**

If the dispute between the parties referred to clause 14.1 is not resolved by negotiation:

14.2.1 the parties may refer the dispute to mediation on such terms as they may agree; or

14.2.2 either party may commence legal proceedings.

### **14.3 Continue to Perform Obligations**

Each party must continue to perform its obligations under this Agreement, notwithstanding the existence of a dispute.

## **15. Personal Engagement**

This Agreement is personal to the Artist and cannot be assigned, transferred or subcontracted to another person.

## **16. Costs**

Each party is responsible for the payment of their own costs and expenses in relation to the negotiation, preparation and execution of this Agreement.

## **17. Notices**

17.1.1 A party giving notice or notifying under this Agreement must do so in English and in writing or by Electronic Communication:

(a) directed to the other party's representative and contact details (as set out in the Schedule and as varied by any notice); and

(b) hand delivered or sent by prepaid post or Electronic Communication to that address.

17.1.2 A notice given in accordance with clause 17.1.1 takes effect when it is taken to be received (or at a later time specified in it), and is taken to be received:

(a) if hand delivered, on delivery;

(b) if sent by prepaid post, on the third Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Australia); or

(c) if sent by Electronic Communication, at the time that would be the time of receipt under the *Electronic Transactions Act 1999* (Cth), but if the delivery, receipt or transmission is not on a Business Day or is after 4.00pm on a Business Day, the notice is taken to be received at 9.00am on the next Business Day.

## 18. General

### 18.1 Governing Law and Jurisdiction

This Agreement is governed by and is to be construed in accordance with the laws of New South Wales. Each party irrevocably and unconditionally submits to the non-exclusive jurisdiction of the courts of New South Wales and waives any right to object to proceedings being brought in those courts.

### 18.2 Amendment

This Agreement may be varied by the agreement of the parties in writing.

### 18.3 Entire Understanding

This Agreement contains the entire understanding between the parties as to the subject matter contained in it. All previous agreements, representations, warranties, explanations and commitments, expressed or implied, affecting this subject matter are superseded by this Agreement and have no effect.

### 18.4 Waiver and Exercise of Rights

18.4.1 A single or partial exercise or waiver of a right relating to this Agreement does not prevent any other exercise of that right or the exercise of any other right.

18.4.2 No party will be liable for any loss or expenses incurred by the other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

### 18.5 Counterparts

This Agreement may be signed in any number of counterparts, all of which taken together will be deemed to constitute one and the same document.

## 19. Schedule

Item	Name	Description
1	Date of Agreement	
2	Council	Bayside Council ABN 80 690 785 443 Address 444-446 Princes Highway Rockdale 2216 NSW Contact: Patrick Cremin, Arts and Culture Specialist
3	Artist	ABN: Address: Phone: Email:
4	Artwork	Her Way ground surface artwork design
5	Project	As above
6	Commencement Date	26 February 2024
7	Completion Date	TBC
8	Fee	\$ __. __ for works outlined in project EOI delivery schedule  To be paid in accordance with completion of stages: Stage 1 – 50% Stage 2 – 40% Stage 3 – 10%



## 20. Program of Works and Completion Date

Refer project EOI

## 21. Responsibilities

The parties will ensure that their personnel attend to the responsibilities set out below:

<b>Name</b>	<b>Role</b>	<b>Responsibility</b>
XX	Artist	Provide works outlined in project EOI delivery schedule
Patrick Cremin	Arts and Culture Specialist, Bayside Council	Artist liaison and arts representative within Bayside Council
Joel Harvey	Project manager	Project liaison, review and approval

### 23. Artist's schedule of works and costings

Attach quote here

#### Notes:

- Individual amounts and work items within the attached quote are for information only to assist with evaluation. The fee will be the total quote price and will not be adjusted if actual costs or time spent on production differ from those listed.

**Executed by the parties**

Signed for and on behalf of **BAYSIDE COUNCIL** by its authorised officer in the presence of

**Signature of witness -**

Name of witness -

Address of Witness -

**Signature of authorised officer:**

Name of authorised officer:

Position of Authorised officer:

Signature by **ARTIST** in the presence of

Signature of witness

Name of witness

Address of witness

Signature of Artist

Name of Artist

Address of Artist

**Annexure A**