



**CITY OF  
PARRAMATTA**

# **5 PARRAMATTA SQUARE PUBLIC ART - SCULPTURAL**

**CALL FOR EXPRESSION OF INTEREST FROM ARTISTS**

**Applications Open**

Monday 15 November 2021 [12am time/Gmt+10]

**Application Deadline**

Tuesday 30 November 2021 [11:59pm time/ (Gmt+10)]





Artist impression of the interior first floor of PS5.

# INTRODUCTION

## CITY OF PARRAMATTA'S VISION

5 Parramatta Square (5PS) will be the jewel in Parramatta Square. Parramatta Square will be the civic and commercial heart of the City of Parramatta. It will be the central public domain space and 5 Parramatta Square will be the civic seat of government for the City of Parramatta local government area. Parramatta Square will be an important gathering place, destination and transit area for the many people who move through Parramatta on a daily basis.

5 Parramatta Square (5PS) reflects Council's vision for a multipurpose, sustainable and smart project. This facility will be a new form of social space for the community to gather, learn and play, and enhance wellbeing.

Due to open in 2022, 5PS will be a six level (4 levels above and 2 levels below ground) Council owned and operated cultural and civic building, housing Council's central library, Council chambers (seat of government), meeting rooms, a Dharug Keeping Place, and flexible programmable spaces.

Designed by award-winning French architect Manuelle Gautrand, in partnership with Australian firms Lacoste Stevenson and DesignInc, 5PS will be a 21st century smart building, sympathetically designed to incorporate the neighbouring historic, restored, Parramatta Town Hall.

This commission provides a challenge for artists to create a distinctive 'signature work' that will engage the audience and create a pause point on their journey. The commission of artworks for 5PS will be based on a high-level analysis of the site, its history, curatorial themes, the City of Parramatta's vision and aspirations, Parramatta Square Public Art Plan, the City of Parramatta Public Art Policy, and architectural plans.

# PROJECT OVERVIEW

## ARCHITECT'S VISION

As the community heart of Parramatta Square, 5 Parramatta Square's physical form offers a generous cantilever in a natural escarpment of public spaces. The design delivers permeability through the building with the use of voids and linking stairs, and the use of transparent materials, to create a welcoming, open and expressive building.

The architecture embraces the existing Town Hall building to the west, with the eastern end raised to fit with 3PS, and delivers a generous promenade, bringing together all the panoramic views and flows, from old to new. The building is divided in a series of stacked, fragmented crystalline blocks. Like a succession of escarpments, the architecture can be seen as a sculpture, following the constraint of the solar path to allow generous sun penetration.

## BUILDING DESIGN PRINCIPLES

- Accessible
- Flexible & Functional
- Transparent
- Connected
- Coordinated
- Sustainable
- Inspiring
- Uniquely Parramatta
- Welcoming & Inclusive



# SITE CHARACTERISTICS

15 to 29 million years ago water began to cut a valley into sandstone and shale, creating the Parramatta River. As the climate changed over the millennia, a large sand body was deposited from a series of river floods through what is now Parramatta's CBD. Approx. 10,000 years ago the valley that now forms Sydney Harbour began to fill with rising seawater released from melting glaciers. Considered to be part of the harbour, Parramatta is where the tidal brackish water stops and fresh river water flows east.

The Dharug People have continuously inhabited the Parramatta area for over 30,000 years. Before colonial settlement, Aboriginal People moved through and gathered in the Parramatta region along seasonal routes related to resources and ritual returns.

Parramatta was the place where Governor Captain Arthur Phillip established the town of Parramatta. As the colonial town grew into a city, it became a hub for European agriculture, trade and administration. Today, the concept of gathering is still strong, with a diverse multicultural community and a thriving City centre.

A 2019 Salvage Excavation and Heritage Report describes the archaeological works conducted at the 5PS site, and found that Aboriginal stone artifacts, rock shelters with deposits, open campsites, shell middens, scarred trees, hand stencils and drawings were present from as early as 12,000 years. Non-Aboriginal archaeological finds linked to this site from the 1820s - 1880s include stone foundations, the town drain c1820/40s, and the remains of a sandstone Convict Pound.

The climate of Parramatta is typical of the western suburbs of Sydney, with temperatures ranging between 4-34 degrees C. Since 2020, Parramatta has experienced an increase in days per year reaching over 35 degrees. The average rainfall is 970mm per year. Due to a history of post-colonial land modification, much of the vegetation is not endemic, and now includes Chinese Elms, Canary Island Date Palms, Cabbage Palm Trees, Port Jackson figs, Moreton Bay figs and European oak trees.

Information contained in this text references:

*Waves of People, Exploring the Movements and Patterns of Migration That Have Shaped Parramatta Through Time.* City of Parramatta (2018)  
*Final Excavation Report - S140 for archaeological testing at 182 Church Street Parramatta.* CRM Cultural Resources Management (2019)

## SITE LOCATION AND ACCESS

5PS sits in the centre of the major public domain development known as Parramatta Square. Parramatta Square is approx. 20 Ha, and 5PS is approx. 12,000m<sup>2</sup>. 5PS is bordered by 3PS and the University of Western Sydney's 1PS, and sits adjacent to the Heritage Town Hall. It is neighboured by commercial towers to the south and the northern entry to Parramatta Train Station. Pedestrian access to Parramatta Square is via Church St to the west, Macquarie St to the north, Smith St to the east and Parramatta Train Station underpass to the south.

5 Parramatta Square is serviced by the T1, T2 and T5 Train lines, and the 811, 810, T80 bus routes, and in 2023 will be serviced by the Parramatta Light Rail stops at Eat St, Parramatta Square and Harris St. There is no vehicular access to Parramatta Square, other than emergency vehicle access via Centenary Square, and a new minor lane-way to the rear of 5 Parramatta Square.

# CONTEXT + KNOWLEDGE

The City of Parramatta embraces what was, is, and always will be Aboriginal Country. Parramatta has been home to the Dharug People for over 60,000 years and we support and value the continuing connection this community maintains to Country. We recognise it as a place of shared and challenging histories: a place of early contact and colonisation, the site of resistance and sustained frontier wars.

Parramatta's name is Aboriginal and comes from the Aboriginal word Baramada or Burramatta. It is commonly translated as 'the place where the eels lie down' or 'head of waters'. The Burramattagal People belong to the Dharug Nation of the Parramatta area, and in this Aboriginal language 'burra' means eel and 'matta' means place. The Burramuttagal People's connection to this place is tens of thousands of years long.

Parramatta is an ancient place of deep belonging with a rich history of waves of settlement coming from across the globe. Its history must not be confined to the comparatively short span of years since Governor Arthur Phillip's arrival in 1788.

Parramatta's landscape has been shaped by different patterns of occupation for many thousands of years. Prior to European settlement, the Dharug People continuously inhabited and managed the landscape. Their relationships to the river, the importance of water in the landscape, the importance of being on country, and the traditional land management techniques practiced in caring for country are key to understanding the site.

The impacts of colonisation were felt deeply by the Dharug Nation. The Burramuttagal People were forced off their lands, and existed as fringe dwellers away from Burramatta. The period between 1788 and 1816 is documented as a 28-year period of conflict known as 'The Frontier Wars', including the 'Battle of Parramatta'.

Parramatta has a significant colonial history and played a central role in early colonial experiments in European-style farming and government administration. Arthur Phillip's establishment of the first and oldest inland European settlement in Australia and Governor Macquarie's role in the establishment of Parramatta as the first seat of



European government are key to the 'foundation narrative' of white history.

Parramatta, is the Central River City in the Greater Sydney Commission's vision of the Metropolis of Three Cities - the Eastern Parkland City, the Central River City and the Eastern Harbour City, designed to meet the needs of an evolving Sydney population.

Parramatta's diverse range of migration experiences are central to its contemporary cultural identity. From labour migration, family reunions and chain migration to refugee movements and, growing temporary and skills-based migration, each of these different experiences shape the diversity of lived experiences in Parramatta.

Parramatta is constituted by people from many diverse parts of the globe, each with varying connections and different attachments, which offer different narratives of belonging and place in Parramatta. These are vital to understanding Parramatta as a distinct gathering place, and are told in the stories of different festivals, events, institutions, and moments in Parramatta's contemporary history, from the Parramasala Festival, the Parramatta Lanes Festival and the opening of the Parramatta Mosque.

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The talented dancers of Jannawi Dance Clan



H. King, Parramatta River, 1880 - 1890, Parramatta



Patrons seated in the Australian Lebanese Club c.1953  
(From the collection of the National Archives of Australia)



Dancing at Parramasala (Image courtesy of Peter Dovgan)

# CURATORIAL VISION

## BACKGROUND

The following themes were derived from the Cultural Plan for Parramatta's CBD 2017-2022 and the Parramatta Square Public Art Masterplan.

### GATHERING PLACE

Parramatta Square is associated with gathering, understood in the histories of Indigenous fresh and saltwater Peoples, and the geological river valley. It refers to the gathering of Eels, the gathering of data, gathering for debates and ceremonies. Parramatta's history and future are told through the gathering of many threads, of wanderers of many cultures past and present, gathered towards a common future.

*Parramatta Square will be the 'city's hands' – holding, gathering, embracing.*

### URBAN RHYTHMS

Parramatta as the origin of European civic government, then suburbanised, and now an example of urban leadership and an economic driver as Sydney's new Central City. Parramatta Square, as a key destination in the City of Parramatta leads and responds to the rhythm of growth and change.

*Parramatta Square as the 'city's feet' – striding, connecting, reliable.*

### CITY BAROMETER

Parramatta Square as the city's barometer – collecting, responding, and sharing real time information and data, referencing, and interrogating historical data, and imagining the future. This theme looks back to the ancient custodians of the land, and forward to a city and world transformed by climate and technological change.

*Parramatta Square as the 'city's brain' – thinking, communicating, responding.*



## CURATORIAL VISION *GATHERING THE SUN*

*Gathering the Sun* brings together the sustaining warmth of the sun and the building's aspiration to be the gathering heart of the City. 5 Parramatta Square (5PS) encourages people to come together, as they have for thousands of years. This ancient continent, and the hot burning sun, provide a context for change that is both rapid and glacial, acting as the city's 'living' barometer. Without heat from the sun, the Earth would freeze. So too, without the gathering heart of the City, the nature of urban life would shift.

An understanding of the architectural scheme is crucial. A generous cantilever greets people as the building form appears to grow out of the Square in a fragmented pattern, providing a natural escarpment of public spaces. This urban 'escarpment' mimics the natural changes in elevation usually found at the bottom of a steep slope to create a place of discovery and journey. With its form based on the path of the sun to allow generous sun penetration, the building creates a community heart that is welcoming, open and expressive.

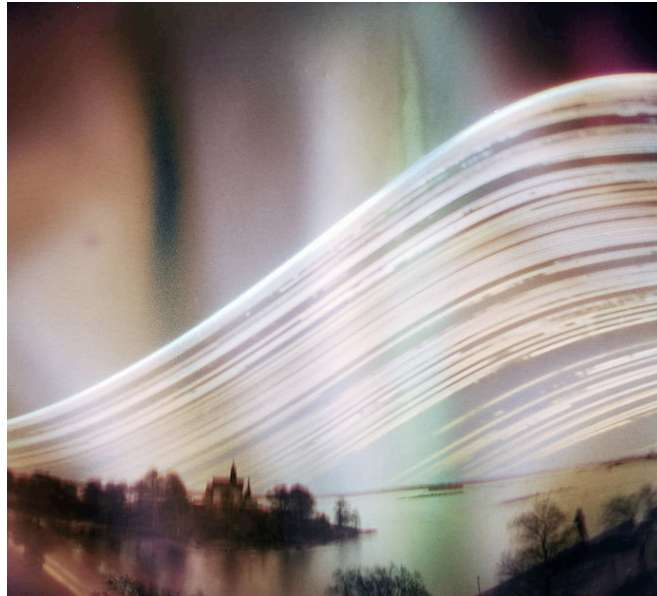
*Gathering the Sun*, invites Artist/Artist led teams to explore 5 Parramatta Square as an environment, which gathers people's lived experience and supports the ebb and flow of living in a 21 century City centre.

*Gathering the Sun* asks what does it mean and how does it feel to be embraced by the sun's warmth in an ancient place. It invites us to contemplate ideas of respite, renewal and reclaim in an urban environment. Artist/Artist led teams are invited to submit a response to this landmark location for public art within the 5PS building envelope.

*The Sun's Path*

Tarja Trygg, *Cosmic Radiation*, 2019  
Helsinki, 60°N, 24°E

Solargraphy, Observing the Universe through pinhole photography without a lens.



*Escarpment Formations*

Wave Rock, WA, Australia  
Known as *Katter Kich* by the Noongar People

A granite cliff, 15 meters high and more than 100 meters long. Its rounded shape has been caused by weathering and water erosion.



*Waves of People*

Tamara Dean, *Endangered 1*, 2018

One of a series of photographs inspired by the Great Barrier Reef and is a personal response to the politics of climate change using a contemporary photographic language.



# ARTIST SELECTION

## STAGE ONE: EXPRESSION OF INTEREST

Suitably qualified artists are invited to submit a response to an Expression of Interest (EOI). All submissions are assessed against the EOI Selection Criteria and a long list of suitably qualified Artist applications is established.

### EOI ELIGIBILITY CRITERIA

The compliance (mandatory) evaluation criteria are:

- Application submitted prior to the EOI deadline
- Artwork examples must be submitted and must represent the artist's own original creative work and reflect artistic merit relevant to the project (maximum 10 examples).
- The Artist's professional experience is adequate to meet the demands of the project.
- Ability to comply with the Sample Contract
- Provision of two (2) references.
- Insurances as follows:
  - Public Liability \$20M
  - Professional Indemnity \$10M
  - Contract Works Insurance for the value of the installation
  - Workers Compensation (as required by law)
  - Motor Vehicle Insurance (third party property and CTP)

The qualitative evaluation criteria to measure key deliverables are:

- The Artist's demonstrated understanding of the discipline of Public Art and the requirements of creating artworks for the public domain.
- The Artist's demonstration of creativity and artistic merit.
- The Artist's professional experience including exhibition record and public and private commissions.



# STAGE TWO: LIMITED (SELECT) ARTISTIC DESIGN COMPETITION

After assessing the submissions in relationship to the Design Competition Selection Criteria, the Artist Selection Panel will identify a shortlist of up to seven (7) shortlisted artists to proceed per commission.

Shortlisted artists will be invited to develop a conceptual proposal in response to the Limited Competition. The Artist Selection Panel will review the conceptual proposals via a presentation format, to select the Artists for commission.

## DESIGN COMPETITION SELECTION CRITERIA

### 1. Artistic Response:

- The Artist's conceptual proposal reflects artistic excellence, innovation, and originality in response to Council's Curatorial Vision for the project.

### 2. Suitability of Project:

- The Artist's proposal is judged to be appropriate to the goals of the project.
- Response to the Specification

### 3. Site Responsiveness:

- Response to the Architectural Scheme
- Response to the conditions and location of the artwork site
- Response to the functionality and activities of the building

### 4. Project Management:

- Response to the budget
- Inclusion and merit of an indicative program of works
- Ability to manage sub-contractors
- Demonstrated ability to deliver an end-to-end project

# SCOPE OF WORKS

This Scope of Works describes the services to be provided by the Artist/Artist led team commissioned to create a sculptural artwork. The artwork is located on the ground floor of 5 Parramatta Square, spans the double height void, and will aim to elevate the permeability of the building's form. The work can either be suspended from the ceiling via anchor points, from the first floor angular void via anchor points, or installed at ground level via concealed footings and extend upwards in a vertical composition. All structural works require engineering certification.

## CONTRACT

Full terms of the contract are detailed in the Draft Contract. Council strongly recommends that Artists refer to the Draft Contract before submission.

## LICENCE

The artist will grant the City of Parramatta a non-exclusive, perpetual worldwide licence of the work.

## BUDGET:

The budget for this sculptural commission is \$400,000 (ex GST) and inclusive of all costs associated with artist fees, design, fabrication, transport, installation, make good and defects liability and maintenance regime.

## SCULPTURAL ARTWORK LIFESPAN

This large scale permanent sculptural artwork will have a minimum 20 year lifespan.

## SCALE:

This 3D sculptural artwork is large scale and fills the double height void.

## **DIMENSIONS + WEIGHT:**

- The artwork must fit within an approximate 5m x 5m x 7m area with consideration of high volume pedestrian traffic, site lines, and the following curtilage requirements.
  - 3m curtilage beneath a suspended artwork
  - 1m curtilage surrounding the artwork in the void
  - 3m curtilage surrounding the footprint on the ground plane
  - 1m curtilage above the artwork
- The first floor void area is 21m<sup>2</sup>.
- The artwork must not exceed a load bearing weight of Concentrated Load: 5T (50kN) over 1m<sup>2</sup>.

## **ARTWORK ORIENTATION**

The orientation of the artwork must consider surrounding design elements such as the angular void shape, the primary entry to the building, desire lines through the building, access points, structural adjacencies, curtilage requirements and pedestrian movement.

## **MATERIALS**

To withstand the site conditions of this busy internal public space, the Artist/Artist led team must ensure the artwork is robust, has structural integrity and incorporates technologies and fabrication methodologies that are easily replaced, preferably with a modular system approach and constructed from high quality materials designed to meet the required minimum 20 year lifespan. Materials that are toxic in nature or emit toxic gases, fumes, or droplets are not permitted.

All materials, including cladding must comply with Australian regulatory and fire safety requirements. All fixtures and fittings must be made from high quality materials. Any inclusion of technology must use high quality, warrantied and readily available proprietary items for hardware and software.

## **LIGHTING**

Any lighting design used in the creation of the artwork must not include strobe



light effects. It must support a legible audience experience and enhance the aesthetic quality of the building. Consideration of light used in the artwork must address the following:

- Lighting as a mode for creative expression to reinforce a sense of place
- Correlated colour temperature (CCT) of light sources (consistency, colour rendering and light direction).
- Promote a glare free environment
- Enhance the aesthetic quality of the building at night
- Impact on future asset management
- RGBW light
- As a minimum, the lighting scheme must be dimmable and controllable
- Building lighting is controlled by a BMS system.
- Programmable lighting for the artwork to be controlled by a PE Cell
- The direction of lighting in relation to activity and background environment.
- Materiality and design of luminaires and brackets must be able to withstand the conditions of the site
- Fixings to be concealed and tamper proof with no public access

## **ARMATURE**

The internal structure or armature that provides the main support for the artwork, as well as maintenance access, must be certified by a qualified engineer and fabricated from high quality materials and comply with all relevant Australian Standards to meet the minimum 20 year lifespan requirement. The armature design must consider access requirements, with discrete lockable access where required.

## **SAFETY IN DESIGN**

- Safety in design must apply to every stage in the lifecycle 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
- The artwork must comply with Australian Safety Standards
- Seamless integration of plinth, footings and ground plane surface with no gaps or trip hazards, and mitigation of variations in surface levels.

## **PLINTH**

Any plinth used at the base of the artwork, must adhere to the following requirements:

- Fabricated from robust materials able to endure the long term internal conditions of the building and any load bearing requirements.
- Seamless integration of plinth, footings and ground plane surface with no gaps or trip hazards. This includes the possible inclusion of a skirting to mitigate variations in surface levels.

## **DATA AND POWER**

Data and electrical connectivity will be provided to the artwork site, as required. The Artist/Artist led team must coordinate all Works with Council, and the Works must be performed by a qualified electrician. The Consultant must avoid Works that will damage existing service provisions (supplied by others).

## **ENGINEERING CERTIFICATION**

In line with the Safety in Design and WHS requirements of the project, the Artist/Artist led team is required to obtain engineering certification through a qualified agent.

## **FOOTINGS**

The Artist/Artist led team will supply Council with loadings and HD bolts, with footings to be supplied by others.

## **SITE PREPARATION**

The artwork will be installed during the building' commissioning period, prior to opening to the public. The Artist/Artist led team must coordinate access and establish the installation site perimeter with Council.

- Data and power will be supplied to the artwork site before installation
- Artwork site sits on a suspended slab above a basement
- Swept paths map for emergency and delivery vehicles provided
- Weight bearing capacities provided
- Maximum truck load capacities provided
- The interior fit-out of the building will be complete.
- Exterior Stage One (eastern side) - Parramatta Square is complete and operational
- Exterior Stage Two (5PS/7PS) - the building will be in the commissioning phase.
- Exterior Stage Three (western side) - Parramatta Square will be a live construction site.
- Artwork site is surrounded by close structural adjacencies.

## **INSTALLATION**

The Artist/Artist led team is required to provide a turnkey solution for the delivery of the artwork. As Principal Contractor on this site, the Artist/Artist led team is expected to manage all transport, access, traffic control, security, crane, fencing and permits and clearances required to effectively install the completed artwork in its final location.

## **MAKE GOOD**

The Artist/Artist led team is required to make good all Works, post installation of the artwork (includes repair and returning the site to a finished standard).

## **SUSTAINABILITY IN DESIGN**

The Artist/Artist led team must demonstrate a contribution to environmental sustainability via artistic themes, engagement strategies, contents, or process to contribute to the quality of the physical environment for future generations.

## ENVIRONMENTAL HAZARDS

The requirements below refer to the installation of the artwork on site. Off site design and fabrication is not included.

### Chemical Hazards

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/Artist led team is required to mitigate any risks through implementing safety protocols that minimize or eliminate the possibility of personnel inhaling or ingesting substances or absorbing them through their skin.

### Biological Hazards

Interaction with other people, animals, or contagious conditions are prime candidates for exposure to biological hazards. The Artist/Artist led team must mitigate their personnel encountering biological hazards in relation to the installation of the artwork, or make good the site.

### Unseen Hazards

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/Artist led team is required to provide adequate industry standard PPE relevant to the work performed.

### Ergonomic Hazards

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/Artist led team is required to provide Safe Work Method Statement (SWMS) which outline the correct procedures to safely conduct the work.



## Electrical Hazards

Most electric hazards and incidents of electric shock involve personnel contacting power cables or the incorrect handling of electrical tools or machinery. The Artist/Artist led team is required to assign electrical work only to qualified electricians, and to ensure appropriate safety measures are in place for all electrical work.

## **WHS**

The requirements below refer to the installation of the artwork on site. Off site design and fabrication is not included. The Artist/Artist led team is required to establish consultation, cooperation, compliance, and coordination processes for WHS matters which are consistent with WHS legislative requirements, subject to site conditions and risks.

## Permits and Clearances

The Artist/Artist led team is required to coordinate and cost all permits and clearances required for the transport, installation, and maintenance of this work.

## Work Safety

The Artist/Artist led team is required to establish consultation, cooperation, compliance, and coordination processes for WHS matters which are consistent with WHS legislative requirements. Where your Work Under the Contract includes design of structures, design of a part of a structure, or installation of a structure you must:

- 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
- Provide Engineering Certification for all structural elements in the design.

## Site Induction

- The Artist/Artist led team must comply with section 19 (3) (f) of the WHS Act as

part of your primary duty of care to ensure, so far as is reasonably practicable, the provision of any information, training, instruction, or supervision that is necessary to protect all personnel from risks to their health and safety arising from the work carried out on site.

- Provide a WHS Management Plan and revise where necessary to ensure that it remains up to date throughout the duration of the Installation.
- Prepare Safe Work Method Statements (SWMS) and use them to train and induct personnel prior to the commencement of high-risk activities, in accordance with Clauses 299 to 303 of the WHS Regulation. Keep records of the training and induction.

### PPE

When on site all authorised personnel are required to wear all required PPE, subject to site conditions and risks.

### Nominated Site Safety Representative

The Site Safety Representative, must be a full-time member of your on site team and must be in regular attendance on the site throughout the duration of the installation. The qualifications, experience and authority of your Site Safety Representative must be commensurate with the risks associated with the Work Under the Contract.

### Emergency Planning and Response

Include in the plan, prepare a site specific plan for dealing with emergency situations in accordance with Clause 43 of the WHS Regulation.

### Prequalified or Registered Subcontractors

Where the Contract specifies that a part of the Works can only be undertaken by a subcontractor with Prequalification or Registration in a specialist Category, the subcontractor must implement their WHS management system for which they are prequalified or registered, for that part of the subcontracted work, unless approved otherwise by Council.

### Submission of WHS Documentation

The Consultant must submit a digital copy of the plan at least ten working days prior to commencing work on site.

### Heavy Vehicles

In relation to the delivery of the artwork to site, heavy vehicles have limited access to Parramatta Square. Maximum load bearing capacities will be provided in the PS5 Performance Specification.

### Trucks and Plant Equipment

The Artist/Artist led team must coordinate access to the site for all vehicles and equipment. All trucks and plant or equipment used for the installation must comply with the requirements in the PS5 Performance Specification.

## **MAINTENANCE**

The Artist/Artist led team must ensure the artwork is maintained and presented to the highest standard, to ensure longevity and quality:

- The 12-months Maintenance Regime commences after the practical completion of the artwork and handover of the asset to Council and runs parallel to the Defects Liability period.
- The 12-month Maintenance Regime forms part of the Consultant's 12-month post completion program. After this period, the asset will be managed by Council's Asset and Operations team.
- The Consultant must produce a Maintenance and Operation Manual for the artwork with thorough documentation of the processes and methodologies involved in future care, maintenance, and remediation of the artwork.
- The Artist/Artist led team is required to produce one Condition Report at the end of the 12-month Maintenance Regime period.
- The Maintenance and Operation Manual and completion certificate form the final handover of the asset to Council. The manual should include the following:

- Contact details for all subcontractors involved in the production of the artwork
- Performance specification for each item
- A materials palette, and supplier details for all components, fixtures, and fittings
- Complete Design Documentation including structural and electrical drawings including location of power and data source and power supply
- Warranty and lifespan details of all components
- Location of power and data source and power supply.
- Instructions on proprietary software or programmable commentary
- Details for remedial work to damaged artwork materials

## WARRANTY

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.

### Warranty Inclusions

This warranty must cover parts and labour for rectification or replacement of damaged or failed parts or components supplied under the Contract.

### Warranty Exclusions

- 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
- Non-adherence to the maintenance and operational manual requirements

## DEFECTS LIABILITY

The Defects Liability period commences after the installation of the artwork and handover of the asset to Council. The Artist/Artist led team as Principal Consultant, (and all subcontractors performing work under the Principal Consultant), is responsible for



the performance specification of the artwork, and is liable to remedy any defects in the fabrication and installation of the artwork during the 12-month Defect Liability Period.

## DEACCESSION PLAN

Council may at any time decide that the condition of the artwork has deteriorated, or it is no longer suitable for the site and Council may in its sole discretion remove, relocate, deaccession, or otherwise dispose of the Installation.

## INSURANCES

The following insurances are required for the duration of the Contract:

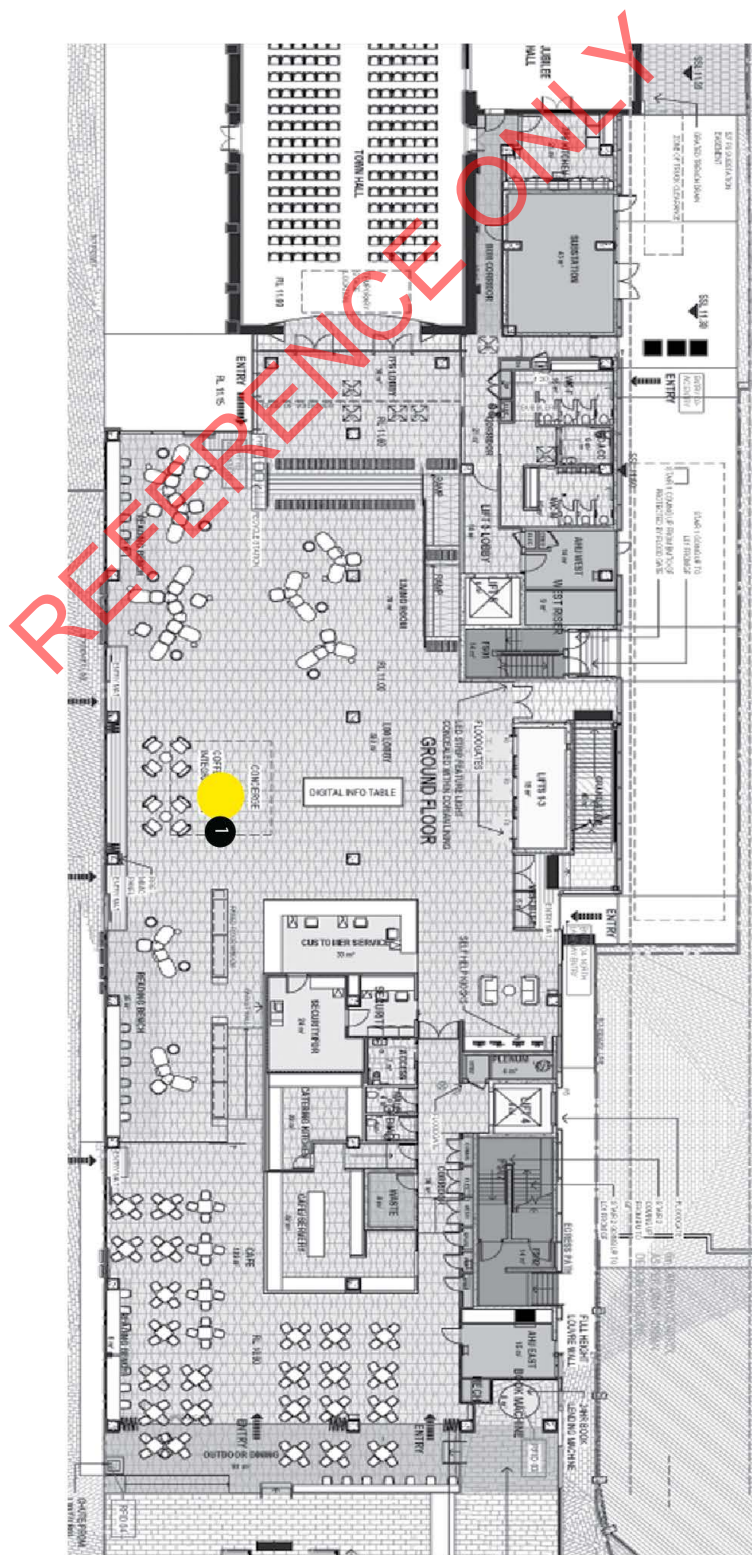
- Public Liability: \$20 million
- Professional Indemnity Insurance: \$10 million and \$10M in the aggregate
- Insurance in respect of the installation for the value of the installation under the Contract
- Workers Compensation as required by law
- Motor vehicle insurance (third party property and CTP)

## APPENDICES

- PS5 Public Art location map
- PS5 Architectural drawings
- Swept Paths maps
- PS5 Performance Specification - Structural Coordination

# APPENDICES

## LOCATION



# APPENDICES

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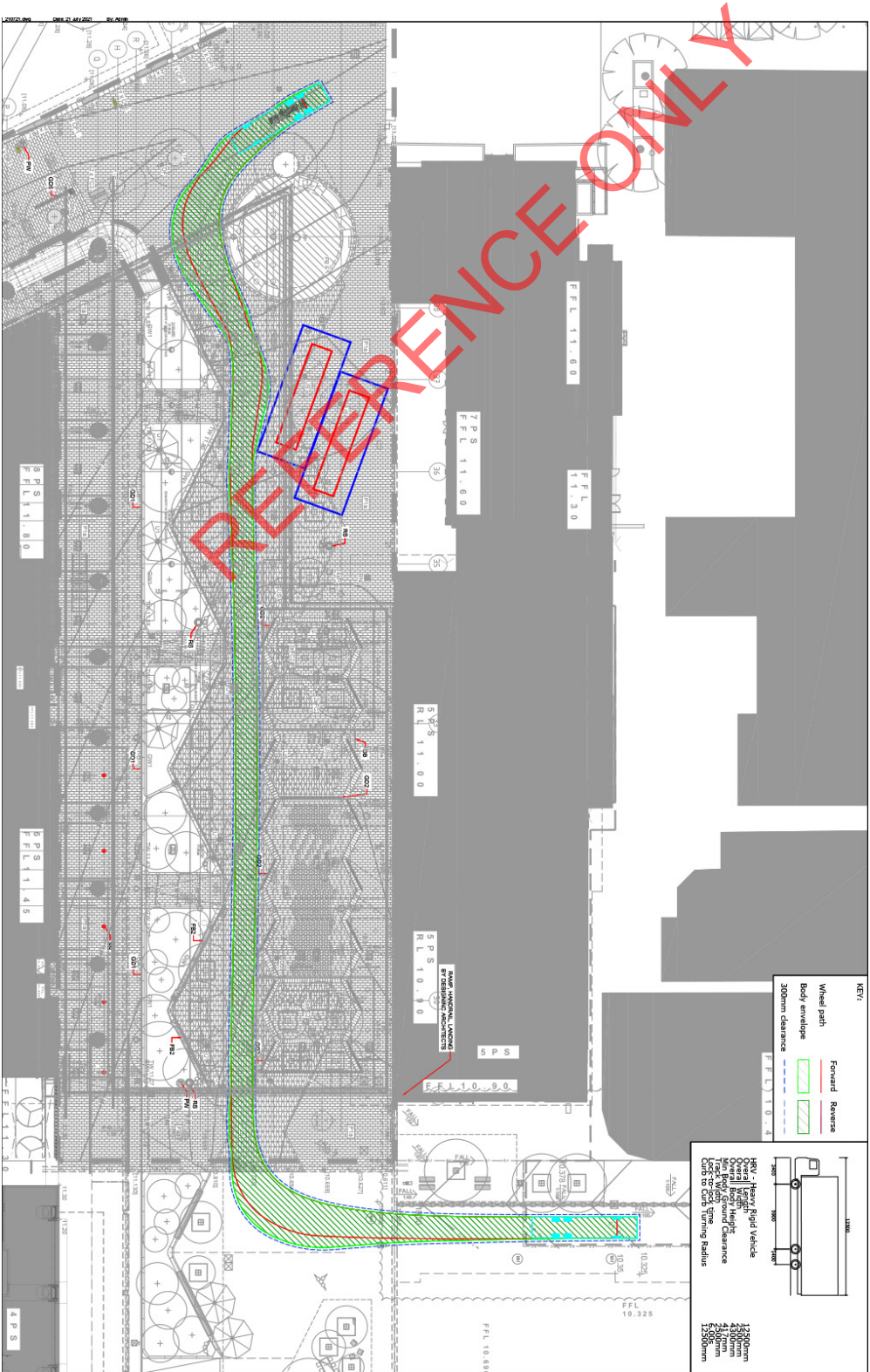


- Landmark Artwork Location – Ground Floor entry
- Ground floor double height void
- Void has an angular shape
- 3D Sculptural Artwork
- Connection between ground floor and first floor



# APPENDICES

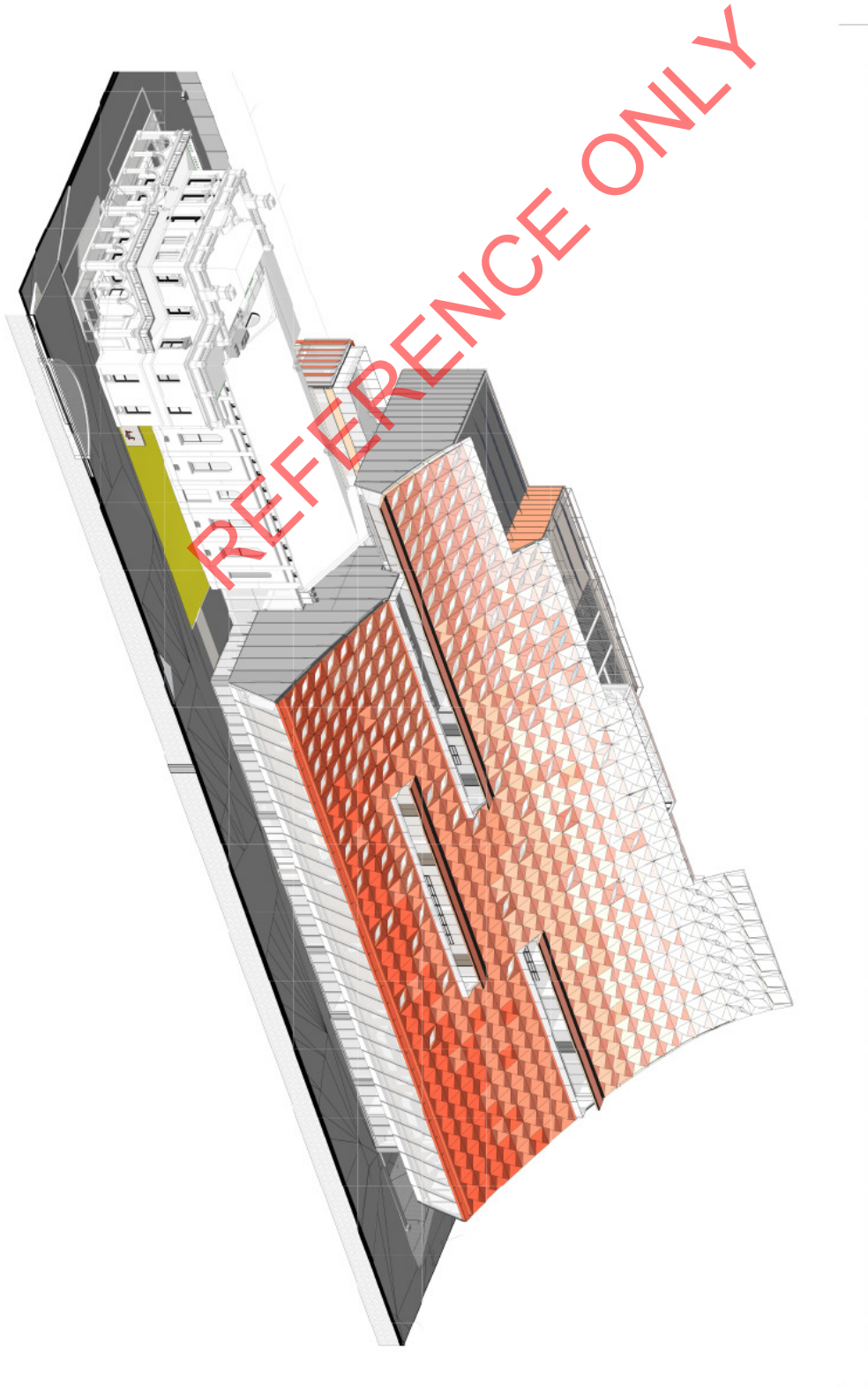
## SWEPT PATHS





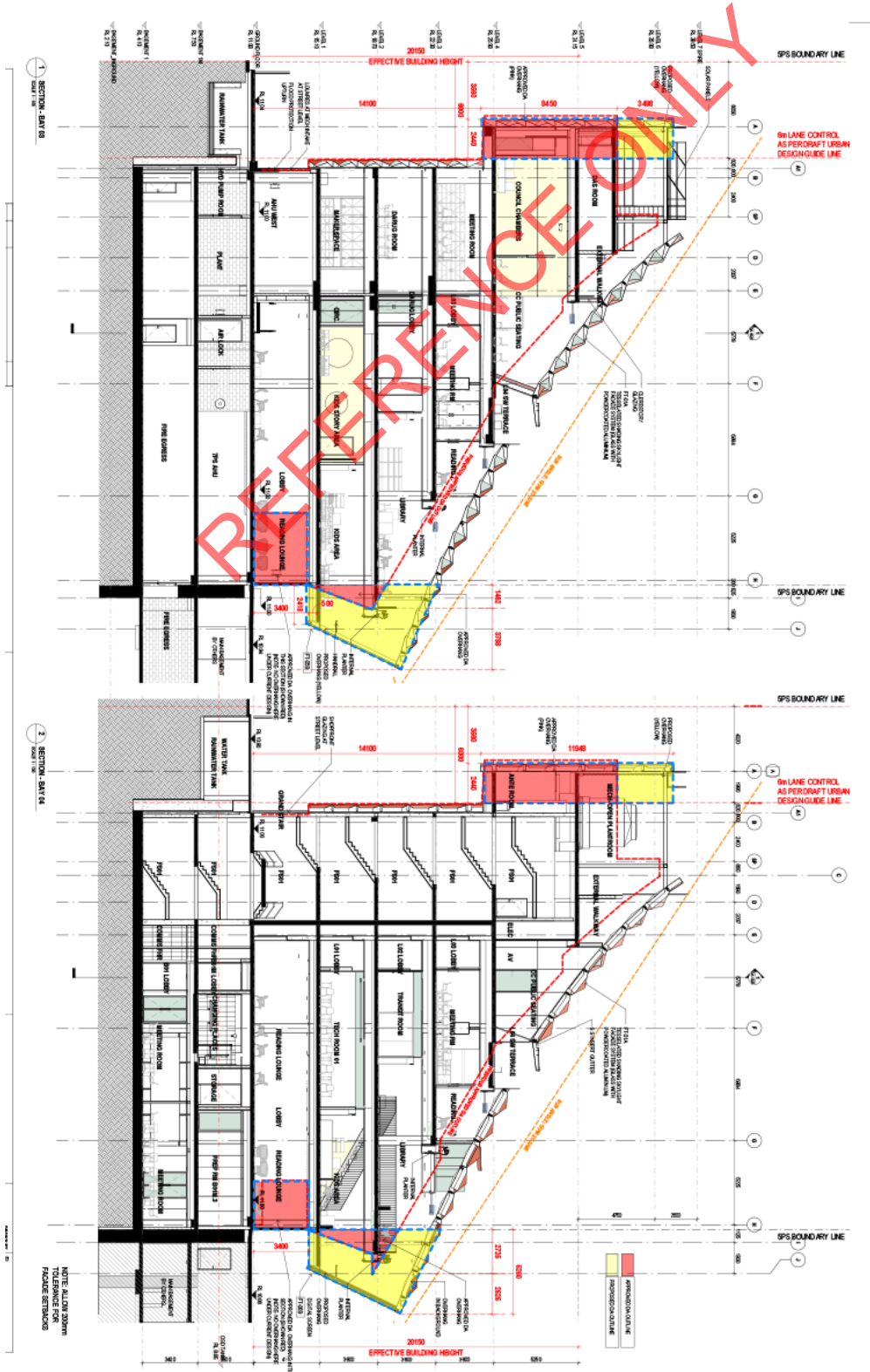
# APPENDICES

## ARCHITECTURAL DRAWINGS



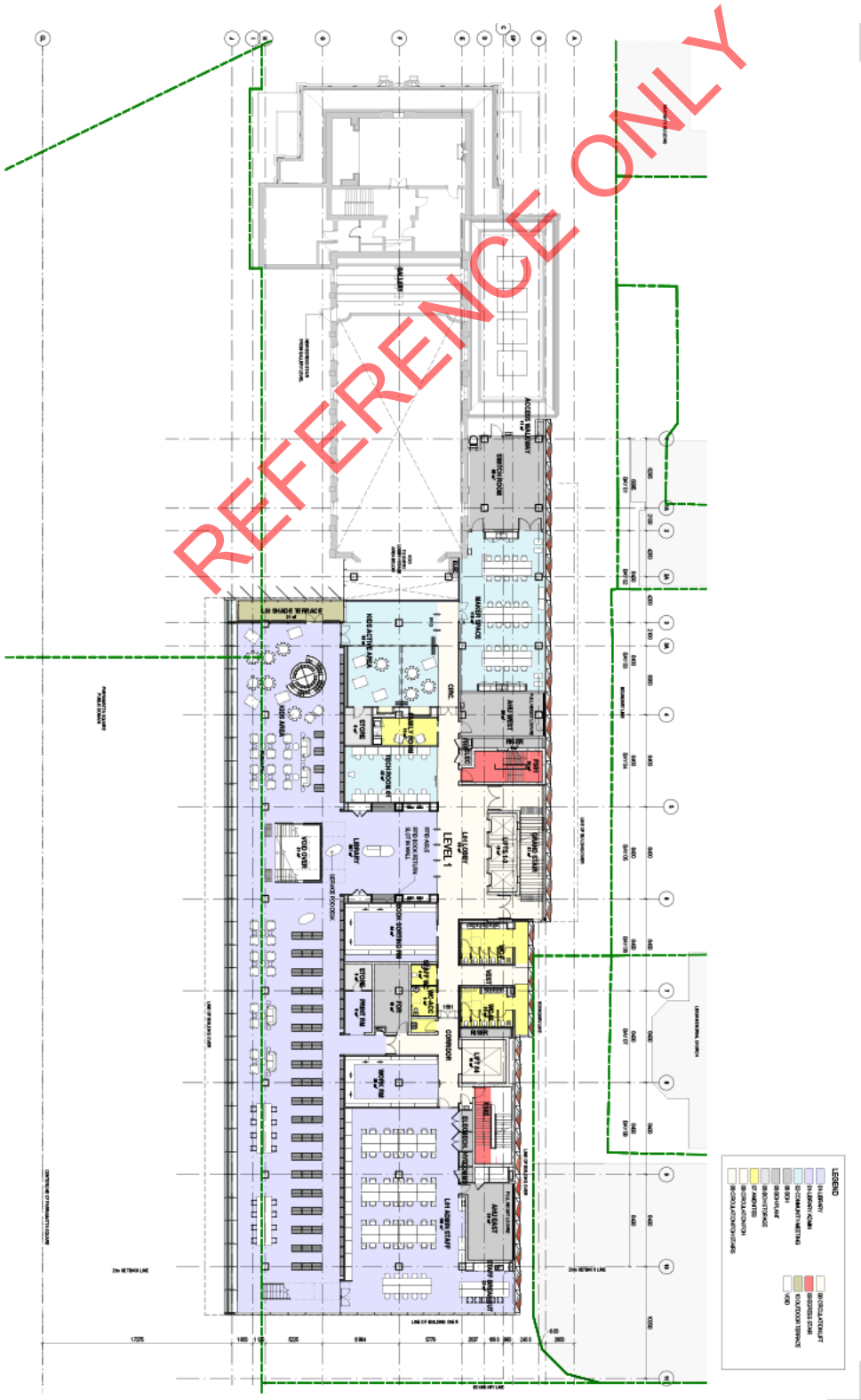
# APPENDICES

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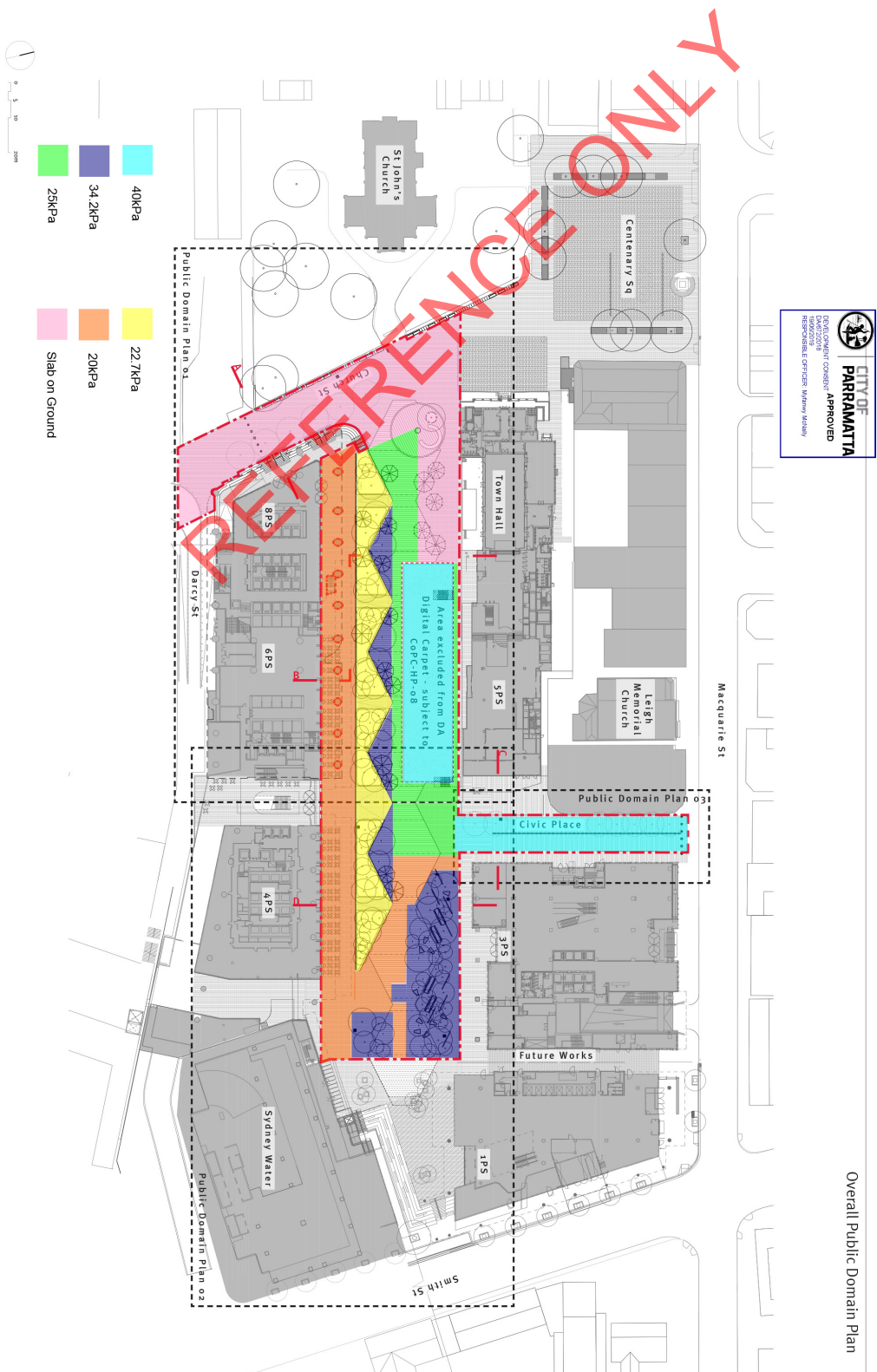
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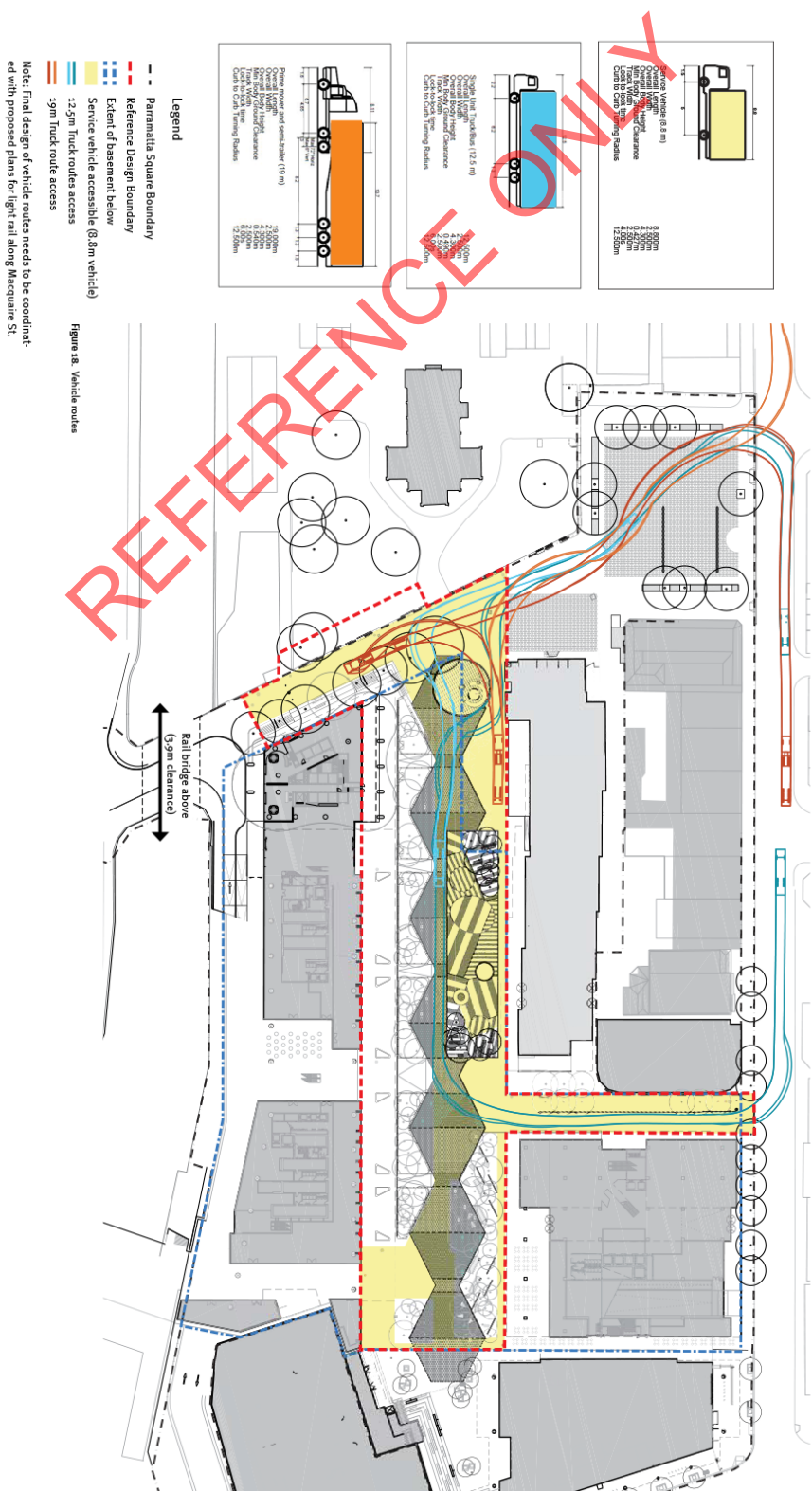
# APPENDICES

## STRUCTURAL COORDINATION



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## STRUCTURAL COORDINATION



# CONTACT DETAILS

ALL EXPRESSION OF INTEREST INQUIRIES CAN BE  
DIRECTED TO:

Kylie Chain via [tenders@cityofparramatta.nsw.gov.au](mailto:tenders@cityofparramatta.nsw.gov.au)



# **CONTRACT FOR 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, engineered, fabricated, transported, installed and maintained 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 26.1.

**“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 9.

**“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 34.1.

**“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.

**“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 of 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 in the course of 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,

**“Maintenance Period”** means the period of time identified in Item 15 of Annexure A from the Completion Date.

**“Manual”** has the meaning given in clause 27.1.

**“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 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 and/or the Program.

**“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 design, create, transport, project manage, deliver and install the Installation at the Site 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 high quality materials which are safe and suitable for the proposed use of the Installation.
- (b) The Consultant must (at its cost) store the materials in a secure facility and be protected from damage and theft until they are installed at the Site.
- (c) The Consultant must, and must ensure that any subcontractors:
  - (i) permit Council and its contractors to inspect the materials and storage facilities prior to installation of the material at the Site;
  - (ii) clearly label the materials as being owned by Council; and
  - (iii) ensure that Council and its contractors can take possession of the materials if the Consultant or its subcontractors are in breach of their obligations under this Agreement or if they suffer an insolvency event.
- (d) Unless otherwise provided the Consultant shall use suitable new materials and proper tradesman like workmanship.

### **3.4 Stages**

- (a) The Consultant must create, project manage, design, transport deliver and install the Installation in accordance 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 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.

### **3.5 Consultant's Design Responsibilities**

- (a) The Consultant is responsible for the design of the Installation.
- (b) The Consultant must complete the design of the Installation and carry out all other design necessary 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.
- (d) Design or design development does not cause a Variation or reduce the Consultant's design responsibilities under this Agreement.
- (e) The Consultant must produce the Consultant's design documents 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 public art and applicable to the Installation.
- (f) Unless the Agreement provides otherwise, the Consultant must submit Consultant's design documents to Council at least 21 days before the date the Consultant proposes to use them for any procurement, manufacture, fabrication or construction in respect of the Installation. Consultant's design documents must be submitted progressively to Council with sufficient detail to demonstrate what is proposed.
- (g) If Council objects to the Consultant's design documents, the Consultant must take the objections into account and 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 Installation's design development.
- (h) 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 install, orientate and set out the Installation at the exact part of the Site identified in item 1 of Annexure D.
- (b) The Consultant must rectify any error in the position, level, dimensions or alignment of any element of the Installation, so that it complies with Annexure D.
- (c) The Consultant must:
  - (i) coordinate all traffic management and safety management in respect of any traffic accessing the Site;
  - (ii) ensure that any traffic accessing the Site adheres to:
    - (A) the access routes and swept paths shown in item 2 of Annexure D; and

(B) the vehicle maximum weight descriptions described in item 3 of Annexure D; and

- (iii) ensure that its use of the Site, access to the Site and the construction of the Installation does not result in any exceedance to the maximum kilopascals for each area shown in the plan at item 4 of Annexure D.

### **3.7 Artist and Other Key Personnel**

- (a) The Consultant warrants that the Installation will be designed, created and installed by the Artist nominated in Item 4 of Annexure A. 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 installation 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 connection with the items of work described in Item 10 of Annexure A.

### **3.8 Warranties from subcontractors**

- (a) The Consultant shall assign to Council the benefit of all warranties obtained by the Consultant from subcontractors and from manufacturers and suppliers of plant, equipment, materials and other items incorporated into 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 Annexure F has been completed, 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 subclause 3.8, 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 Installation 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 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 must not commence 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 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** If required in accordance with any legislative requirements, the Consultant will apply for consents, permits and other approvals needed to install the Installation at the Site. Council may terminate this Agreement immediately if the consents, permits or other approvals are not granted or if an authority prevents the Project from proceeding as set out in this Agreement.
- 6.4** The Consultant must support Council with:
- (a) consultation with key stakeholders and subcontractors; and
  - (b) marketing and promoting the Project.

The Consultant must secure all permits and other approvals required by any legislative requirements to install the Installation.

## **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 20 years and may be subject to weather conditions. The 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 be responsible for the care of the Site.
- 8.2** The Consultant must keep the Site in a safe and clean condition until the installation of the Installation is completed and Council issues a completion notice under clause 9.
- 8.3** Council may at any time direct the Consultant to undertake any restoration of the Site which Council reasonably considers necessary. The Consultant must comply with the direction within the time specified in the direction at its own cost.
- 8.4** If the Consultant does not comply with a direction under clause 8.3:
- (a) Council may engage others to carry out the restoration of the Site;
  - (b) the Consultant will be responsible for the costs of the restoration;
  - (c) the Consultant must pay those costs on demand, and Council may offset those costs against any money Council owes the Consultant.
- 8.5** The Consultant shall be responsible for care of:
- (a) the whole of Installation from and including the date of commencement of this Agreement to 4:00pm on the Completion Date, at which time responsibility for the care of the Installation (except to the extent provided in clause 8.4(b)) shall pass to Council; and
  - (b) outstanding work and items to be removed from the Site by the Consultant after 4:00pm on the Completion Date until completion of outstanding work.
- 8.6** Without limiting the generality of paragraph 8.5(a), the Consultant shall be responsible for the care of unfixed items accounted for in any payment claim and the care and preservation of things entrusted to the Consultant by Council or brought onto the Site by subcontractors for carrying out the Project.
- 8.7** If loss or damage occurs to the Installation or the Site occurs during the period of the Consultant's care, the Consultant shall at its cost, rectify such loss or damage.
- 8.8** The Consultant is responsible for and shall make good (and is liable for all costs and charges associated with making good) any damage to footways, roadways, kerbs and gutters, pits and covers, surfaces, structures, services, whether on or adjacent to the Site disturbed or damaged during and as a result of the execution of the work of the Agreement and incidental work, including movement of material, plant and equipment, and the Consultant must leave the whole Site in as good a state or repair as it was when the Consultant commenced the Installation (save for the addition of the Installation itself).

## **9 COMPLETION AND DEFECTS**

- 9.1** Subject to the Consultant's provision of the manual in accordance with clause 27, when the Consultant is of the opinion the Installation is satisfactorily completed in accordance with this Agreement the Consultant must deliver to Council a written notice requesting Council to inspect the Installation and the Site.
- 9.2** Following receipt of a notice under clause 9.1, Council will inspect the Installation and the Site and if Council is satisfied that:
- (a) the Installation has been satisfactorily completed; and
  - (b) the Site has been restored to the satisfaction of Council and the Site Manager,

Council will issue a notice of completion to the Consultant nominating the Completion Date. Upon issue of the notice of completion, all title and risk in the Installation will pass to Council.

- 9.3** If Council disputes that the Installation has been satisfactorily completed according to the Agreement, the Specification or that the Site has been satisfactorily restored, Council must provide to the Consultant within 14 days of the inspection a written notice stating the nature of the dispute and the required action by the Consultant to achieve completion within a reasonable specified period.
- 9.4** If the Consultant does not comply with a direction under clause 9.3:
- (a) Council may engage others to carry out the work required to achieve completion of the Project;
  - (b) the Consultant will be responsible for the reasonable costs of any work required to achieve completion of the Project;
  - (c) the Consultant must pay those costs on demand, and Council may offset those costs against any money Council owes the Consultant.
- 9.5** The Consultant must promptly rectify any Defects directed by Council to the Consultant in writing during the performance of the Installation, at completion of the Installation and during the Defects Liability Period.
- 9.6** If the Consultants fails to do so, Council may have the Defects rectified and any costs incurred will be a debt due and payable by the Consultant to Council. Council may offset those costs against any money Council owes the Consultant.
- 9.7** The Consultant must, on or before the Completion Date, meet with Council in good faith to agree upon a Defects rectification program to be followed during the Defects Liability Period.
- 9.8** Instead of a direction under clause 9.5, Council may direct the Consultant that Council elects to accept the subject work, whereupon there shall be a deemed Variation.

## **10 PAYMENT & GST**

- 10.1** Council will pay to the Consultant the Consultant's Fee in milestone payments in accordance with Item 9 of Annexure A following the Consultant's performance of each milestone to Council's satisfaction in accordance with the terms of this Agreement and the receipt of a valid tax invoice.
- 10.2** The Consultant's Fee is fixed and payable in Australian dollars.
- 10.3** Subject to satisfactory performance of the Consultant under this Agreement, the Consultant's Fee must be paid to the Consultant at the completion of each 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.
- 10.4** 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.
- 10.5** 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.
- 10.6** Amounts referred to in this Agreement are exclusive of GST.
- 10.7** 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.

- 10.8 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.
- 10.9 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.
- 10.10 Council will not be liable to pay for unfixed plant and materials unless the Consultant satisfies Council by providing Council with copies of paid invoices, such reasonable additional evidence as Council may require from time to time and that the unfixed plant and materials have been paid for, title has passed to Council, the plant and equipment are properly stored, protected and labelled property of Council. The Consultant agrees that Council may, but is not obliged to, perfect, for the purposes of the *Personal Property Securities Act 2009* (Cth) and the *Personal Property Securities Regulations 2010* (Cth) (**PPS Laws**), any security interest (as defined in the PPS Laws) it holds in the unfixed plant and materials for which Council pays.

## 11 CONTRACTOR STATUS

- 11.1 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.
- 11.2 The Consultant must not assign or novate its rights or interests under this Agreement.
- 11.3 If the Consultant is more than one person then the obligations of those persons are joint and several.

## 12 SUBCONTRACTORS

- 12.1 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.
- 12.2 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.
- 12.3 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 12.3(a) within the period specified by Council.
- 12.4 The Consultant must ensure that each subcontract contains a requirement that the subcontractor novates the subcontract to Council if directed by Council.

## **13 WORK HEALTH AND SAFETY**

### **13.1** 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.

### **13.2** 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.

### **13.3** Without limiting or in any way affecting the Consultant's obligations under this Agreement, Council appoints and engages, and the Consultant accepts its appointment and engagement as WHS Principal Contractor for the work under this Agreement.

### **13.4** The Consultant shall have sufficient access to the Site for the purpose of discharging its obligations as WHS Principal Contractor.

## **14 INSURANCE**

### **14.1** The Consultant must effect and keep current until the Completion Date insurance policies as specified in Item 12 of Annexure A.

### **14.2** 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.

## **15 INTELLECTUAL PROPERTY**

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

### **15.2** 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 Installation for displays, documentaries' and exhibitions.

### **15.3** Council may sublicense the rights in clause 15.2 to its contractors for the purposes of the Council enjoying its licence rights.

### **15.4** 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).
- 15.5** Council must not grant any third party the right to exploit the Installation commercially.
- 15.6** Not used.
- 15.7** 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.
- 15.8** 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.
- 15.9** 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.
- 15.10** 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.
- 15.11** 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 15.12, 16, 29 and 30; and
  - (f) move or remove the Installation at Council's sole discretion (including permanently decommissioning the Installation at any time).
- 15.12** Subject to clauses 15.11(f) 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.
- 15.13** 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.

## **15.A INDIGENOUS CULTURAL AND INTELLECTUAL PROPERTY**

### **15.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 15A.3.

### **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 prior consent provided by Council under clause 15A.3 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 15A, 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.

## **16 LIFE OF AND SUBSEQUENT DEALINGS WITH THE INSTALLATION**

Council may at any time decide that the condition of the Installation 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.

## **17 CONFIDENTIALITY**

### **17.1** 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.

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

## **18 MORAL RIGHTS**

**18.1** The Consultant must ensure that it does not infringe the Moral Rights of any author of any work in performing the Project.

**18.2** 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 18.

**18.3** 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 15.11(f) and 16, 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).

## **19 TERMINATION**

### **19.1 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 16;
- (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.

**19.2** If this Agreement is terminated in accordance with clause 19.1(a), 19.1(e) or 6.3:

- (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 19.2(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.

### **19.3 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.

- (b) 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. The Installation may be completed by an artist appointed by Council in its absolute and sole discretion however following consultation with the Consultant and the Artist's estate. If Council does not wish to have the Installation completed all copies of the design documentation, project record of the Installation and the Installation in progress will become the property of Council on payment of all fees due to the Consultant for the amount of artistic work completed at the time.

### **19.4 Effect of Termination**

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

## **20 DISPUTES**

**20.1** 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.

**20.2** 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.

**20.3** Despite the provisions of clauses 20.1 and 20.2:

- (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.

## **21 COSTS**

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

## **22 STEP-IN RIGHTS**

**22.1** 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.

**22.2** 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 22 does not limit any other remedy which Council may have against the Consultant for any breach of this document.

## **23 GENERAL**

**23.1** 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.

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

**23.3** Nothing in this Agreement in any way restricts or otherwise affects Council's unfettered discretion to exercise its statutory powers as a public authority.

**23.4** The invalidity, illegality or unenforceability of any provisions of this Agreement will not affect the validity or enforceability of any other provisions.

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

**23.6** This Agreement is governed by, and construed in accordance with, the law for the time being in the State of New South Wales.

**23.7** 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.

## **24 NOTICES**

**24.1** 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.

**24.2** 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.

**24.3** 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.

## **25 PUBLICITY**

**25.1** 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.

**25.2** 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.

**25.3** The Consultant consents to Council or persons authorised by Council taking photos or recordings of the Installation, including the progressive development of the Installation.

**25.4** 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.

**25.5** The Consultant is responsible for promoting the installation in accordance with the obligations set out in Item 5 of Annexure A.

## **26 CATALOGUE**

**26.1** 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.

**26.2** 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.

**26.3** 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 Installation.

## **27 MANUAL**

- 27.1** 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, operation and maintenance of the Installation ("**Manual**").
- 27.2** 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
  - (d) As-built drawings of the Installation.
- 27.3** 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.
- 27.4** 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.

## **28 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 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.

## **29 MAINTENANCE DURING MAINTENANCE PERIOD**

- 29.1** Subject to clause 29.4, during the Maintenance Period, the Consultant must, at the Consultant's cost, maintain the Installation and repair any damage caused to the Installation (excluding damage to the Installation caused by vandalism) in accordance with Annexure H.
- 29.2** Subject to clause 29.4, during the Maintenance Period, the Consultant must ensure that the Installation is maintained in accordance with the requirements of the Manual supplied by the Consultant pursuant to clause 27.
- 29.3** Council may notify the Consultant in writing from time to time during the Maintenance Period of any repair or maintain work required to be undertaken to the Installation. Subject to clause 29.4, the Consultant must at the Consultant's cost, promptly (and in any event within 7 days) undertake such repair work at the Site. Subject to clause 29.4, if Council identifies any urgent repair work required to be undertaken to the Installation, the Consultant must use reasonable endeavours to comply with Council's request for such urgent repair work to be undertaken

promptly at the Consultant's cost.

- 29.4** The Consultant shall be entirely responsible for the care and protection of the Installation and any part of the partially completed Installation prior to the final completion of the Installation in accordance with this Agreement.

### **30 REPAIRS AND RESTORATION AFTER EXPIRY OF MAINTENANCE PERIOD**

- 30.1** If any repair or restoration work is required in respect of the Installation due to damage to the Installation after the expiry of the Maintenance Period, or vandalism to the Installation at any time after the Completion Date (**Repair Work**), Council, or its contractor nominated from time to time may (but is not required to) arrange for the Consultant to perform such Repair Work. The cost of that Repair Work performed after the conclusion of the Maintenance Period will be agreed in writing between the parties.

- 30.2** Nothing in this Agreement prevents Council or any of Council's employees, contractors and agents from performing any Repair Work without consultation with the Consultant or the Artist.

### **31 SUSPENSION**

- 31.1** 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).

- 31.2** 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.

- 31.3** If Council suspends any of the Project under this clause 31, 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.

- 31.4** If Council requires suspension of any of the Project under this clause 31, 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.

### **32 PARTIES' REPRESENTATIVES**

- 32.1** 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.

- 32.2** 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.

- 32.3** The Consultant must communicate directly with Council's representative in relation to any matters within the authority of the Council's representative.
- 32.4** An instruction given to the Consultant's representative is deemed to be given to the Consultant.
- 32.5** 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.
- 32.6** 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.

### **33 FORCE MAJEURE**

- 33.1** 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.
- 33.2** Upon termination under clause 33.1, clause 19.2 will apply.

### **34 COVID-19**

- 34.1** 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;
- 34.2** 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.
- 34.3** 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).

### **35 COORDINATION AROUND PARRAMATTA SQUARE**

- 35.1** The parties acknowledge and agree that the construction of the Parramatta Square public domain area may be occurring in the vicinity of the Site at the same time as construction of this Project.
- 35.2** If requested by Council, the Consultant must coordinate its performance of the Project and access to the Site with the activities of any other contractors performing works at, or in the vicinity of, the Site.
- 35.3** The Consultant must comply with any directions by Council, Council's nominated contractors or the Site Manager in respect of the Consultant's access to the Site, co-ordination of the Project and performance of any works at the Site.
- 35.4** The parties must liaise with one another in good faith in respect of such coordination activities.

**ANNEXURE A**  
**REFERENCE SCHEDULE**

Item	Name	Description	
Item 1	Date of Agreement		
Item 2	Consultant's Name:  Consultant's ABN:  Consultant's Address:  Consultant's Representative:		
Item 3	Council's Representative		
Item 4	Artist		
Item 5	Promotion Obligations		
Item 6	Installation	The design, creation, fabrication, delivery and installation of the artwork and works described in the Specification.	
Item 7	Site	The area identified in the plan at Annexure D.	
Item 8	Site Manager	Name: City of Parramatta Council Address: 126 Church St, Parramatta NSW 2150 Contact: Suzanne Buljan Telephone: (02) 9806 5351	
Item 9	Consultant's Fee	Subject to clause 10 of the Agreement, the Consultant's Fee shall be paid in stages upon the Consultant's achievement of the deliverables described in Annexure G to Council's satisfaction.	
Item 10	Key Personnel	Key Personnel	Key Personnel Work Item
Item 11	Approved Sub-consultants	The Artist  Add additional here.	
Item 12	Insurance	The Consultant must hold and maintain the following insurances: <ul style="list-style-type: none"><li>Public Liability: \$20 million</li><li>Professional Indemnity Insurance: \$10 million</li><li>Contract works insurance in respect of the Installation for the value of the Installation under this Agreement</li><li>Workers Compensation as required by law</li><li>Motor vehicle insurance (third party property and CTP)</li></ul>	
Item 13	Notices	City of Parramatta Council:	



		<p>Postal Address: City of Parramatta Council 126 Church Street Parramatta, NSW 2150</p> <p>Attention: Suzanne Buljan, Senior Officer – Cultural Projects and Public Art</p> <p>Email Address: sbuljan@cityofparramatta.nsw.gov.au</p> <p><b>Consultant:</b> Postal Address: Attention: Email Address:</p>
Item 14	Program	A copy of the Program as at the date of this Agreement is included at Annexure C.
Item 15	Maintenance Period	12 months
Item 16	Project Stages	<p>The Project shall comprise the following stages of work.</p> <ol style="list-style-type: none"> <li>1 Stage 1 - Design Development</li> <li>2 Stage 2 - Detailed Design</li> <li>3 Stage 3 – Fabrication</li> <li>4 Stage 4 – Installation</li> <li>5 Stage 5 – Practical Completion</li> <li>6 Stage 5a – 12 Months Defects Liability</li> <li>7 Stage 5b – Maintenance Regime</li> </ol> <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  
SPECIFICATIONS**

- Insert Specification from EOI.
- Any indicative images/drawings of the proposed Installation are subject to further design development and refinement in accordance with the Contract.

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**ANNEXURE C  
PROGRAM**

PROJECT STAGE	ITEM	DELIVERABLES		CONSULTANT COMPLETION DATE	CLIENT APPROVAL DATE	NOTES
<b>A</b>	<b>Contract Signing</b>	<ul style="list-style-type: none"> <li>Executed Contract</li> </ul>				<i>Council requires three weeks to execute the contract after signed and initialled contract returned.</i>
<b>01</b>	<b>Design Development</b>	<ul style="list-style-type: none"> <li>Consultation – City of Parramatta</li> <li>Technical Design Report</li> </ul>				<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>
<b>HOLD POINT– Council Signoff – 3 weeks</b>						
<b>02</b>	<b>Detailed Design</b>	<ul style="list-style-type: none"> <li>Consultation – City of Parramatta</li> <li>Detailed Design Report</li> <li>Engineering Design Certification (Form 15)</li> </ul>				<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>
<b>HOLD POINT– Council Signoff – 3 weeks</b>						

03	Fabrication	<ul style="list-style-type: none"> <li>Fabrication Report</li> <li>100% Completion</li> </ul>				<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>
<b>HOLD POINT – Council Signoff – 3 weeks</b>						
04a	Installation	<ul style="list-style-type: none"> <li>Transportation to site</li> <li>Site preparation</li> <li>Installation of artwork</li> <li>Traffic controls</li> <li>Removal of ground plane</li> <li>Reinstatement of ground plane</li> <li>Testing and commissioning</li> </ul>				<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>
<b>HOLD POINT – Council Signoff – 2 weeks</b>						
04b	Practical Completion	<ul style="list-style-type: none"> <li>Engineering Certification (Form 16)</li> <li>O &amp; M Manual</li> <li>Completion Certificate</li> </ul>				<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>
05	12 Months Defects Liability	<ul style="list-style-type: none"> <li>RFIs</li> <li>Warranty</li> <li>Remediation</li> </ul>				
06	Maintenance Regime	<ul style="list-style-type: none"> <li>During the Maintenance Period, the Consultant maintains the Installation</li> <li>Annual engineering inspection and condition report</li> <li>Twice yearly cleaning - including plant equipment hire &amp; temporary fencing</li> <li>Annual electrical tag and test</li> <li>Annual deep clean - including plant equipment hire &amp; temporary fencing</li> <li>Inclusive of travel, accommodation, and project management</li> </ul>				<i>Satisfactory completion of each instance of maintenance or inspection required.</i>

**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



**ANNEXURE E  
SCHEDULE OF RATES**

Schedule of Rates	
Role	Rate

- 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**

<b>Items of the Installation to be subject to a warranty as per clause 3.8</b>	<b>Warranty period applying to that item of the Works</b>
	Manufacturer Warranty or 24 months after the Completion Date for raw materials
	Manufacturer Warranty or 24 months after the Completion Date for raw materials
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- 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**

PROJECT STAGE	ITEM	DELIVERABLES	COST	CONSULTANT COMPLETION DATE	CLIENT APPROVAL DATE	NOTES
A	Contract Signing UAP Fee	Executed Contract				Upon contract execution
	Contract Signing Artist Fee Payment 1 (30%)	Executed Contract				Upon contract execution Appears as a line item in Contract Execution invoice
01	Design Development	As per program				Paid upon satisfactory completion of stage.
02	Detailed Design	As per program				Paid upon satisfactory completion of stage.
02a	Artist Fee – Payment 2 (30%)	As per program				Appears as a line item in Stage 02 invoice.
03	Fabrication	As per program				Paid upon satisfactory completion of stage.
03a	Artist Fee – Payment 3 (40%)	As per program				Appears as a line item in Stage 03 invoice.
04	Installation	As per program				Paid upon satisfactory completion of stage.
05	Practical Completion	As per program				Paid upon satisfactory completion of stage.
05a	12 Months Defects Liability	As per program				Paid upon satisfactory completion of each instance of maintenance or inspection.
06	Maintenance Regime	As per program				Paid upon satisfactory completion of each instance of maintenance or inspection. Inclusive of all costs.
	<b>TOTALS (ex GST)</b>		<b>\$400,000</b>			

**ANNEXURE H**  
**MAINTENANCE SCHEDULE & CHECKLIST**

ITEM	PREVENTATIVE MAINTENANCE	MAINTENANCE FREQUENCY + DURATION			COMPLETED ✓	DATE 00/00/0000	DOCUMENTATION <i>Insert Image</i>	NOTES <i>Insert Report Notes</i>
		Annually	Twice Per Year	Only if Required				
<b>Lighting System (as required)</b>	Operational Check		●					
	Software	●						
	Hardware	●						
	Globes			●				
<b>Material 01</b>	General Clean		●					
	Removal of Applied Materials		●	●				
	Touchups							
<b>Material 02</b>	General cleaning		●	●				
	Removal of Applied Materials	●						
<b>Material 03</b>	General Clean		●	●				
	Removal of Applied Materials	●						
	Touch Ups	●						
<b>Material 04</b>	General Clean		●	●				
	Removal of Applied Materials	●						
	Touch Ups	●						
<b>Annual Engineering Inspection + Condition Report</b>	Checklist Completion	●						
	Condition Report	●						
<b>Annual Tag + Test</b>	Checklist Completion							
	Condition Report							

Refer Clause 27 of Contract

#### **ASSUMPTIONS**

- Consultant/Artist to undertake works
- Consultant/Artist to provide full O&M manual for artwork at delivery stage
- Twice yearly full cleaning - including plant hire & temporary fencing
- Material/s specific cleaning included
- Fee is inclusive of travel, accommodation, and project management
- Annual engineering inspection and condition report
- Includes traffic management
- Includes permits and clearances
- All works to be done in one mobilisation with no stand down
- Exclusion zone will be bollards and barrier mesh

#### **EXCLUSIONS**

- No chemicals to be used for cleaning
- No use of pressure cleaners
- No use of abrasive cloths
- No overtime or weekend rates
- No temporary fencing or hoarding

**EXECUTED AS AN AGREEMENT**

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