



## Public Art Commission EOI: Palmerston Square Reserve

*The Town of Bassendean acknowledges the Whadjuk people of the Noongar Nation as the Traditional Custodians of this land. We pay our respects to Elders past and present and acknowledge their continuing culture and the contribution they make to the region.*

Enquiries can be directed to 08 9377 8000 or [procurement@bassendean.wa.gov.au](mailto:procurement@bassendean.wa.gov.au).

### Overview

The Town of Bassendean is seeking expressions of interest from experienced artists, either individually or in teams, to design, fabricate, and install artwork at Palmerston Square Reserve. The artwork should enhance its surroundings and reflect the community or history of the area. Materials should be durable, weather-proof, and should not require excessive maintenance.

This project is one of five funded by developer contributions. Other opportunities for public art commissions in the Town will arise in future years.

### Site Information

Located 8km north-east of the Perth CBD, the Town of Bassendean is a **Home by the Swan** for 16,601 people (ABS Census, 2021). Residents live in the green and leafy riverside suburbs of Bassendean, Ashfield and Eden Hill.

The community values the Town's village-like lifestyle, sense of community, natural reserves and public open spaces, and connections with history and heritage.

**Palmerston Square Reserve** boasts a nature-inspired playground, a shady grove of mature paperbark trees, and native plantings. Nestled behind Old Perth Road in the central Bassendean Precinct, the park provides a leafy sanctuary for surrounding residents, nearby primary school students, and local community. The site at a glance:

- 6,144m<sup>2</sup>
- Nature-inspired playground
- Close to local primary schools (200m to Bassendean Primary School; 240m to St Michaels Primary School; and 320m Casa Mia Montessori School)
- Adjacent to Whitfield Safe Active Street, with drinking fountain and bike repair station
- Grassed areas prone to flooding in winter

## Project Details

### Project Budget

The selected artist will be granted \$33,000 + GST to deliver the artwork. This budget is to include the following scope:

- Artists fees, travel costs, project management, and administration costs
- Construction and safety documentation fees
- Materials and fabrication, including any structural components
- Transportation and installation costs, inclusive of traffic management (if required) and site preparation
- Subcontractor and supplier fees
- Provision of a maintenance schedule

### Project Timeframe

Date	Event
4 December 2025	Artists invited to submit EOI
12 January 2026	<b>EOI Submissions Close 5pm</b>
27 January 2026	Shortlisted artists notified
9 March 2026	Concept design proposals due
28 April 2026	CDP approved by Council
30 April 2026	Contract awarded to artist
28 May 2026	Final design and safety documentation due
6 August 2026	Artwork to be completed

*Dates following the EOI Submissions Close on 12 January 2026 may be subject to change.*

## Phase 1 - Expression of Interest Eligibility & Assessment Criteria

Applicant must be an individual or a team consisting of at least one member who meets a minimum of two of the following criteria:

- Has a tertiary qualification in the visual arts, or other applicable art forms such as multimedia;
- Has sold or been commissioned to produce artwork via reputable art galleries, Government institutions, or developers of significant private gardens or estates;
- Is represented in major public collections;
- Earns more than 50% of their income from arts related activities such as teaching or public art commissions;
- Can demonstrate a significant body of previous completed public art commissions and works; or
- Is an Indigenous Artist.

EOI Assessment Criteria	Weighting
Applicant meets eligibility criteria	Yes/No
Approach: Response to brief and creative approach to the project	40%
Experience: proven ability to deliver similar scale projects within budget and timeframe	20%
Artistic Excellence: quality of previous work demonstrated through visual support material	30%
Does the applicant demonstrate a connection to the Town of Bassendean?	10%

### EOI Submission Requirements

EOI must include:

- **CV** showing relevant artistic experience and outlining how the artist meets the eligibility criteria above.
- Up to 6 **examples of previous works** (10 for teams) with image details, demonstrating artistic excellence and experience in delivering projects within budget and timeframes.
- A one-page **statement** responding to the project brief and themes, creative approach and methodology, timeline, and demonstrating the applicant/s connection to the Town of Bassendean area.
- **Certificate of currency** confirming public liability insurance policy (min \$20 million), product liability (\$20 million) and professional indemnity (\$5 million).

The EOI Response Document and accompanying attachments must be submitted to [procurement@bassendean.wa.gov.au](mailto:procurement@bassendean.wa.gov.au) as a single PDF by 5pm, 12 January 2026.

## Phase 2 - Concept Design Proposal Eligibility & Assessment Criteria

Three eligible EOI submissions will be selected to proceed to the Concept Design Proposal (CDP) stage and paid a fee of \$1,000 + GST each. They must demonstrate that the proposed artwork can be delivered within the allocated budget and timeline.

Concept Design Proposal Assessment Criteria	Weighting
Ability to deliver the project for the allocated budget and timeline	Yes/No
Concept: the artwork is unique, innovative, and shows excellent craftsmanship.	30%
Context: the artwork is responsive to the site and themes reflect the local community, environment, and/or history	30%
Safety: the artwork will be designed, located, constructed, and installed with best practice risk management so that the artwork does not present a hazard to safety.	20%
Longevity: the design, fabrication, and materials ensure that the artwork will be structurally sound, resistant to theft or vandalism, and avoid excessive weathering or maintenance.	20%

### CDP Submission Requirements

CDP must include:

- A **written concept or statement** detailing research undertaken and the relationship between the proposed artwork and the themes.
- **Concept drawings** and/or 3D imagery of the proposed work, with indicative scale.
- Indicative **site plan** showing the proposed artwork placement
- Confirmation of the **timeline** from artwork fabrication to installation, including key milestones (project plan).
- A detailed **budget** for the entire project
- A description of **material and fabrication** methods and any known ongoing maintenance requirements.
- Details of proposed **suppliers and subcontractors**
- An artist/artist team **biography and high-resolution photograph** for the Town to use in publications/announcements relating to the project.
- Acknowledgement that the **artist contract** has been reviewed, with any requested revisions (if applicable).

At the sole discretion of the Town, shortlisted artists may be required to present their submission to the Assessment Panel.

Site Maps & Images









## Expression of Interest (EOI) Response Document

**Project Title:** Public Art Commission EOI: Palmerston Square Reserve

Signature of Authorised Signatory of the Respondent	
Name of Authorised Signatory of the Respondent	
Telephone no	
Email	
Date	

### 1. Applicant Eligibility

Confirm eligibility by addressing at least two criteria:

- Has a tertiary qualification in the visual arts, or other applicable art forms such as multimedia;
  - Has sold or been commissioned to produce artwork via reputable art galleries, Government institutions, or developers of significant private gardens or estates;
  - Is represented in major public collections;
  - Earns more than 50% of their income from arts related activities such as teaching or public art commissions;
  - Can demonstrate a significant body of previous completed public art commissions and works; or
  - Is an Indigenous Artist.
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### 2. CV

Attach a detailed CV highlighting:

- Relevant artistic experience
  - Qualifications
  - Previous commissions and exhibitions
  - Income source (if applicable)
-

### 3. Previous Works

Provide up to **6 examples** (or 10 for teams) of previous works:

- Title
  - Year
  - Location
  - Client
  - Budget
  - Image and brief description
- 

### 4. Statement of Approach (One Page)

Respond to:

- **Project Brief & Themes:** How your concept aligns with the Town of Bassendean's vision
  - **Creative Approach:** Artistic style and methodology
  - **Timeline:** Ability to meet key dates
  - **Connection to Bassendean:** Cultural, historical, or personal link
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### 5. Budget Confirmation

The selected artist will be granted \$33,000 + GST to deliver the artwork, inclusive of:

- Artist fees, travel, admin
  - Construction & safety documentation
  - Materials & fabrication
  - Transport & installation (including traffic management if required)
  - Subcontractor & supplier fees
  - Maintenance schedule provision
- 

### 6. Insurance Certificates

Attach certificates confirming:

- Public Liability: \$20 million
  - Product Liability: \$20 million
  - Professional Indemnity: \$5 million
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## **7. Submission**

By signing this document, you are confirming your acceptance of the terms and conditions of this EOI.

Combine this document and all attachments into **one PDF** and email to:  
**[procurement@bassendean.wa.gov.au](mailto:procurement@bassendean.wa.gov.au)**

Closing Date: **5.00 pm, 12 January 2026**

# COMMISSION AGREEMENT – PUBLIC ARTWORK

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## THIS IS AN AGREEMENT BETWEEN:

Town of Bassendean (ABN: 20 347 405 108)

of 35 Old Perth Road, 08 9377 8000 (**Commissioner**)

## AND

[ARTIST (ABN:)]

of [ADDRESS, TELEPHONE] (**Artist**)

## RECITALS

- A. The Commissioner has prepared a brief for the creation of a public artwork, a copy of which is attached to this agreement as Annexure 1 (**Brief**).
- B. Based on the Brief, the Artist has prepared a preliminary design for the public artwork, a copy of which is attached to this agreement as Annexure 2 (**Concept Design**).
- C. The Commissioner wishes to commission and engage the Artist to produce a more detailed design based on the Brief and Concept Design (**Design**), and to create and install the public artwork.
- D. The Artist has agreed to produce the Design, and to create and install the public artwork on the terms of this agreement.

## THE PARTIES AGREE AS FOLLOWS:

### STAGE 1: DESIGN DEVELOPMENT

#### 1 The Design

##### 1.1 The Commissioner confirms and agrees that:

- 1.1.1 the Concept Design conforms to, and is consistent with, the Brief;
- 1.1.2 the Brief contains all relevant information relating to:
  - i. the intended life and use of the public artwork contemplated by the Brief (**Artwork**); and
  - ii. the proposed site for the Artwork (**Site**) and the environment where the Artwork will be located including any occupational health and safety and disability access considerations.

##### 1.2 The Artist agrees to:

- 1.2.1 develop an original Design;

- 1.2.2 create a detailed record of the Design in the form of a drawing, model or plan which includes clear information about:
  - i. the scale and dimensions of the Artwork;
  - ii. how it is intended to be situated in relation to the Site;
  - iii. the suitability of the materials to be used and their durability given the proposed life, use and location of the Artwork as stated in the Brief; and
  - iv. any other issues identified in the Brief including the intended use of the Artwork, any particular features of the Site, any occupational health and safety and disability access considerations, and any structural engineering requirements.
- 1.2.3 deliver the Design to the Commissioner on or before the date specified in the timeline set out in the Schedule or such other dates as the parties agree in writing (**Timeline**).
- 1.3 Following receipt of the Design and within the time specified in the Timeline, the Commissioner must either:
  - 1.3.1 request changes to the Design in accordance with clause 2 of this agreement;
  - 1.3.2 accept the Design in accordance with clause 3 of this agreement; or
  - 1.3.3 reject the Design in accordance with clause 4 of this agreement.
- 1.4 The Commissioner will notify the Artist of any revisions to the Design as are necessary for the Artwork to comply with any applicable laws, ordinances and/or regulations and other reasons including, structural engineering requirements and any occupational health and safety and disability access considerations at the Site. If agreed upon by both parties, such revisions will become a part of the Brief.
- 1.5 The Commissioner will seek and secure any required permissions for the installation of the Artwork on the Site including, for example, any development approvals or consents from private or traditional owners.

## 2 Changes to the Design

- 2.1 The Commissioner may request a reasonable number of changes up to a maximum of 2 changes to the Design provided that the Commissioner:
  - 2.1.1 requests all such changes in a single written notice to the Artist specifying the changes (**Design Amendment Notice**) delivered to the Artist on or before the date specified in the Timeline;
  - 2.1.2 does not request any change to the Design that is substantially different from the Brief, the Concept Design or the Design as first submitted other than changes to the Design required in order to comply with any applicable laws, ordinances and/or regulations, structural engineering requirements and any occupational health and safety and disability access considerations; and



- 2.1.3 pays the Artist the specified fee in the Schedule (**Design Amendment Fee**) for the production of any further Design produced by the Artist to address the changes in the Design Amendment Notice (**Amended Design**) as set out in clause 16.
- 2.2 Within 21 days of receiving the Amendment Notice, the Artist must either:
  - 2.2.1 prepare an Amended Design and submit it to the Commissioner as well as a quote in respect of any additional costs of any adjustments in the Timeline or costs of creating or installing the Artwork that may be necessary; or
  - 2.2.2 notify the Commissioner that the Artist is not prepared to modify the Design and outline the reasons why.
- 2.3 Within 21 days of the Artist submitting an Amended Design, the Commissioner must either:
  - 2.3.1 accept the Amended Design in accordance with clause 3; or
  - 2.3.2 request further changes to the Amended Design by issuing a further Amendment Notice to the Artist (**Further Design Amendment Notice**) provided that:
    - i. the notice does not request changes that are substantially different from the Brief, the Concept Design, or the Design as first submitted;
    - ii. such changes arise solely from the Amended Design and could not reasonably have been requested in the initial Amendment Notice;
    - iii. such changes do not relate to the artistic merits but exclusively concern structural engineering or occupational health and safety issues or are otherwise required by law; and
    - iv. the Commissioner pays the Artist a further fee for the production of any further Amended Design as set out in clause 16.
- 2.4 Within 21 days of receiving a Further Design Amendment Notice, the Artist must:
  - 2.4.1 prepare a further amended design and submit it to the Commissioner as well as a quote in respect of any additional costs of any adjustments in the Timeline or costs of creating or installing the Artwork that may be necessary (**Further Amended Design**); or
  - 2.4.2 notify the Commissioner that the Artist is not prepared to modify the Amended Design and outline the reasons why.
- 2.5 Within 21 days of the Artist submitting a Further Amended Design, the Commissioner must:
  - 2.5.1 accept the Further Amended Design in accordance with clause 3; or
  - 2.5.2 reject the Further Amended Design in accordance with clause 4.
- 2.6 Within 21 days of the Artist notifying the Commissioner under clause 2.2.1 or clause 2.4.2 that the Artist is not prepared to make changes to the Design or the Amended Design, the Commissioner must:

2.6.1 accept the Design or Amended Design by notifying the Artist in accordance with clause 3; or

2.6.2 reject the Design and/or the Amended Design in accordance with clause 4.

### **3 Acceptance of the Design**

3.1 The Commissioner may accept the Design, the Amended Design or the Further Amended Design by notifying the Artist in writing.

3.2 The Commissioner is deemed to accept the Design, the Amended Design, or the Further Amended Design if the Commissioner does not, within the periods specified in this agreement, either:

3.2.1 expressly accept the Design, the Amended Design or the Further Amended Design in accordance with this clause;

3.2.2 request changes to the Design, the Amended Design or the Further Amended Design in accordance with clause 2; or

3.2.3 reject the Design, the Amended Design or the Further Amended Design in accordance with clause 4.

3.3 By accepting the Design (or any Amended Design or Further Amended Design), the Commissioner agrees that the Design or Amended Design or Further Amended Design is suitable given the intended life of the Artwork and the environment where the Artwork will be located.

3.4 On the acceptance of the Design, as described in clauses 3.1 and 3.2, the Commissioner will pay the Artist the fee for design development specified in the Schedule (**Design Development Fee**).

### **4 Rejection of the Design**

4.1 The Commissioner may reject the Design, the Amended Design or the Further Amended Design by notifying the Artist in writing and the agreement will terminate under clause 31.4.

4.2 Where the Commissioner rejects the Design, the Amended Design, or the Further Amended Design, the Commissioner must pay the Artist the Design Development Fee unless the Design, the Amended Design or the Further Amended Design:

4.2.1 was delivered to the Commissioner more than 21 days after the due date set out in the Timetable; or

4.2.2 did not conform to, or was substantially different from, the Brief and the Concept Design except to the extent such differences were as a result of changes requested in a Design Amendment Notice or Further Design Amendment Notice.

## **STAGE 2: CREATION OF THE ARTWORK**

### **5 The Artwork**

5.1 On or before the date set out in the Timeline, the Artist agrees to:

- 5.1.1 create the Artwork as described in, and in accordance with, the Design, the Amended Design or the Further Amended Design accepted by the Commissioner;
  - 5.1.2 provide the reports listed in the Schedule (**Reports**);
  - 5.1.3 notify the Commissioner when the Artwork is completed and ready for installation; and
  - 5.1.4 provide the Commissioner with reasonable access to view the Artwork during installation and after completion.
- 5.2 If the Artwork is created on the Site or on the premises of the Commissioner or the Commissioner's employees, agents or contractors, the Commissioner will arrange for the Artist and the Artist's employees and agents to have full and free access to those premises at all reasonable times for the purpose of producing the Artwork.
- 5.3 Within 14 days of receiving notification of the Artwork's completion under clause 5.1.3, the Commissioner must view the Artwork and either:
- 5.3.1 request changes to the Artwork in accordance with clause 6;
  - 5.3.2 accept the Artwork in accordance with clause 7; or
  - 5.3.3 reject the Artwork in accordance with clause 8.
- ## 6 Changes to the Artwork
- 6.1 The Commissioner may request a maximum of 2 changes to the Artwork provided that the Commissioner:
- 6.1.1 requests all such changes in a single written notice specifying the changes (**Artwork Amendment Notice**) delivered to the Artist within the time specified in the Timeline;
  - 6.1.2 acknowledges that the Artist has applied aesthetic skill and judgment in the creation of the Artwork and does not seek any changes based solely on artistic merits unless the Artwork is substantially different from the accepted Design, Amended Design or the Further Amended Design other than changes to the Artwork required in order to comply with any applicable laws, ordinances and/or regulations, structural engineering requirements and any occupational health and safety and disability access considerations; and
  - 6.1.3 pays the Artist a fee to undertake the requested changes as set out in clause 16.
- 6.2 Within 21 days of receiving the Artwork Amendment Notice, the Artist must either:
- 6.2.1 amend the Artwork to incorporate the changes requested by the Commissioner, notify the Commissioner that the changes have been completed and provide the Commissioner with reasonable access to view the amended Artwork; or
  - 6.2.2 notify the Commissioner that the Artist is not prepared to modify the Artwork.



6.3 Within 14 days of receiving such notification, the Commissioner must either:

6.3.1 accept the Artwork in accordance with clause 7; or

6.3.2 reject the Artwork in accordance with clause 8.

## **7 Acceptance of the Artwork**

7.1 The Commissioner may accept the Artwork by notifying the Artist in writing within the time specified in clause 6.3.

7.2 The Commissioner is deemed to accept the Artwork within 30 days if the Commissioner does not:

7.2.1 expressly accept the Artwork in writing in accordance with clause 6.3.1 or 7.1;

7.2.2 request changes to the Artwork in accordance with clause 6; or

7.2.3 reject the Artwork in accordance with clause 8.

## **8 Rejection of the Artwork**

8.1 The Commissioner may reject the Artwork by notifying the Artist in writing if all of the following requirements are met:

8.1.1 the Artwork is not produced substantially in accordance with the Design, the Amended Design or Further Amended Design accepted by the Commissioner;

8.1.2 the Commissioner has requested changes to the Artwork under clause 6 in order to bring the Artwork into conformity with the accepted the Design, the Amended Design or the Further Amended Design;

8.1.3 the Commissioner has agreed to vary the Timeline to give the Artist a reasonable time to make those changes; and

8.1.4 the Artist has failed to make the necessary changes within the time specified.

8.2 This agreement will terminate under clause 31.4 if the Commissioner rejects the Work under clause 8.1.

## **STAGE 3: INSTALLATION OF THE WORK**

### **9 The Site**

9.1 A plan of the Site is attached to this agreement as Annexure 3.

9.2 The Commissioner will ensure that the Site is adequately prepared for the creation and installation of the Artwork at the Site in accordance with the Timeline.

9.3 The Commissioner will consult with the Artist if there are any proposed changes to the Site. If the work is site specific and the Artist does not agree to the proposed changes, the Artist has the right to:

9.3.1 be disassociated from the Artwork in accordance with clause 25.4; and

9.3.2 document the work in situ prior to its relocation and removal.

## **10 Delivery and installation**

10.1 Subject to clause 10.2, the Artist will supervise the installation of the Artwork on the Site and be responsible for all costs associated with the installation of the Artwork at the Site.

10.2 If the Artwork is not installed on the Site:

10.2.1 within 14 days of the Commissioner accepting the Artwork, the Artist will arrange for the transport of the Artwork (including proper packaging) to the Site; and

10.2.2 the Artist will pay for all costs, including insurance premiums, involved in the transport of the Artwork to the Site.

## **11 Maintenance manual**

11.1 Within 14 days of the installation of the Artwork on the Site, the Artist will provide the Commissioner with a written manual detailing the proper cleaning, operation and maintenance of the Artwork (**Manual**).

11.2 The Manual will include:

11.2.1 a description of the materials used and any installed services or equipment and their mode of operation;

11.2.2 equipment operating procedures and supplier's names, addresses and telephone numbers;

11.2.3 an inspection, testing and maintenance program detailing the routine required to maintain the Artwork throughout its intended lifespan;

11.2.4 "as installed" drawings for the Artwork and all related equipment and services; and

11.2.5 a list of major sub-contractors with appropriate contact details.

11.3 The Commissioner will ensure that the Artwork is properly maintained and protected from damage in accordance with the Artist's instructions in the Manual.

## **12 Defects liability**

12.1 A defects liability period will extend for a period of 12 months from the date of acceptance of the Artwork by the Commissioner and its installation on the Site.

12.2 The Artist will rectify, without charge to the Commissioner, any latent defects in the Artwork that become apparent during this period.

12.3 This clause will not apply to damage or deterioration which results from fair wear and tear, the inherent characteristics of the materials used to create the Artwork or the Site's environment.

- 12.4 The rights granted under this clause are in addition to any rights that a party may have at law.

## **TIMEFRAMES**

### **13 Project Timeframes**

- 13.1 The Commissioner and the Artist agree to use their best efforts to complete all stages of the process of design, creation and installation of the artwork that are the subject matter of this agreement (the **Public Artwork Project**) in accordance with the Timeline or such other dates as the parties agree in writing.

### **14 Delay**

- 14.1 All stages of the Public Artwork Project must be completed in accordance with the Timeline unless:

14.1.1 the parties agree otherwise in writing; or

14.1.2 there is a delay due to circumstances beyond the reasonable control of a party, including but not limited to:

- i. disasters such as fires, floods, earthquakes or terrorism;
- ii. the non-availability of necessary materials;
- iii. strikes or labour disputes;
- iv. shipping, postal and other transport delays;
- v. epidemics, quarantine restrictions or outbreak of disease
- vi. any travel restrictions or bans (including bans on non-essential travel) issued by the World Health Organisation or any Australian governmental agency; or
- vii. injury or illness of the Artist

**(Force Majeure Event).**

- 14.2 Where a delay occurs as a result of circumstances described in clause 14.1, each party will promptly notify the other party and take all reasonable steps to minimise its losses as a consequence of that delay including entering into discussions in good faith to renegotiate the obligations of the parties.
- 14.3 If a delay under clause 14.1.2 has extended more than 30 days, either party may terminate this agreement by 7 days written notice to the other party.
- 14.4 Where termination occurs under clause 14.3, neither party will have any liability to the other. However, the Artist will refund any monies already paid to it by the Commissioner for the agreement less any costs incurred by the Artist in meeting the obligations of the agreement.



## ARTIST PAYMENTS

### 15 Commission Fees

15.1 The Commissioner agrees to pay the Artist the total fee specified in the Schedule (**Commission Fee**):

15.1.1 in instalments in accordance with the Schedule; and

15.1.2 within 14 days of receiving the Artist's GST compliant invoice in accordance with clause 20.

### 16 Amendment Fees

16.1 Where the Artist produces an Amended Design or Further Amended Design pursuant to clause 2.2 or clause 2.4, the Commissioner must pay the Artist the Design Amendment Fee specified in the Schedule within 14 days of receiving the Artist's invoice.

16.2 Where the Artist amends the Artwork in response to an Artwork Amendment Notice, the Commissioner must pay the Artist the fee specified in the Schedule (**Artwork Amendment Fee**) within 14 days of receiving the Artist's invoice.

### 17 Substantial Variation

17.1 Where an Artwork Amendment Notice or Further Amendment Notice requests changes which:

17.1.1 require the use of alternative materials or methods of construction, or the use of particular contractors or sub-contractors nominated by the Commissioner; and

17.1.2 are not necessary in order to comply with the Brief,

and complying with such changes will result in an increase of more than 5% in the costs incurred by the Artist to create the Artwork, the Artist may request a variation to the Commission Fee by written notice to the Commissioner accompanying the Amended Design (**Notice of Variation**).

17.2 The Notice of Variation must specify the basis for the increased costs and provide reasons to support the Artist's Concept Design or Design as consistent with the Brief.

17.3 Within 21 days of receipt of the Notice of Variation, the Commissioner must either:

17.3.1 agree to vary the Commission Fee as stated in the Notice of Variation or as otherwise agreed with the Artist;

17.3.2 withdraw the Amendment Notice or Further Amendment Notice and accept the previous Design, Amended Design or Further Amended Design; or

17.3.3 reject the Design, the Amended Design or the Further Amended Design in accordance with clause 4.

## **18 Death or incapacity of the Artist**

18.1 In the event of the death or incapacity of the Artist, the Commissioner will pay the Artist or the Artist's estate all monies due at the date of death or incapacity for any completed stage/s of the Public Art Project under this agreement and any reasonable expenses incurred by the Artist in relation to the Artwork as at the date of the Artist's death or incapacity.

18.2 Subject to the payments in clause 18.1, the Commissioner:

18.2.1 will become the owner of the Artwork in the condition in which the Artwork stands at the date of the Artist's death or incapacity; and

18.2.2 may engage, in consultation with the Artist or the Artist's estate, another artist or craftspersons to complete the Artwork in accordance with the Design.

## **19 Interest**

19.1 The Commissioner must pay interest on late payments at the rate of 2% above the advertised rate at which the Commonwealth Bank of Australia charges interest on unsecured personal overdraft accounts:

19.1.1 accruing from (and including) the date any unpaid amount is due and is payable to the Artist until the amount is paid in full;

19.1.2 payable on demand;

19.1.3 accruing daily and capitalised if not paid every seven days; and

19.1.4 calculated on the basis of the actual number of days on which interest has accrued in a 365 day year.

## **20 Goods and Services Tax**

20.1 The parties agree that all amounts payable under this agreement are exclusive of Goods and Services Tax (**GST**).

20.2 If the Artist is liable to pay GST in respect of any good or service supplied under this agreement, the Artist will invoice the Commissioner for the GST amount payable for the good or service and will ensure that the invoice is a GST compliant invoice.

20.3 The Commissioner must pay the amount of GST invoiced at the same time as the amount payable under this agreement.

## **INTELLECTUAL PROPERTY**

### **21 Title and copyright**

21.1 The Artist warrants that the Concept Design, the Design and the Artwork:

21.1.1 are the Artist's original works;

21.1.2 do not to the best of the Artist's knowledge infringe the copyright or moral rights of any third party; and

- 21.1.3 are unique works of the Artist developed exclusively for the Commissioner under this agreement.
- 21.2 Title in the Artwork will only pass to the Commissioner after:
- 21.2.1 the Commissioner has accepted the Artwork;
  - 21.2.2 the Artwork has been installed; and
  - 21.2.3 all payments due to the Artist under this agreement have been made.
- 21.3 The parties agree that the Artist is the owner of copyright in the Concept Design, the Design, any Amended Design and the Artwork and all other materials created by the Artist under, or in relation to, this agreement.
- 21.4 If the Commissioner engages another artist or craftsperson to complete the Artwork under clause 18.2 and the creative contribution of that other artist or craftsperson to the final Artwork is such that they are entitled under the *Copyright Act 1968* (Cth) (**Copyright Act**) to joint ownership in the copyright in the Artwork with the Artist or the Artist's estate, then the Artist or the Artist's estate may demand the removal of any notice displayed with the Artwork, which identifies the Artist with the Artwork.
- 21.5 Subject to clause 21.6, the Artist grants the Commissioner a non-exclusive, royalty-free, worldwide licence of the copyright in the Artwork for as long as the Artwork remains installed on the Site for the exclusive purpose of making and using images of the Artwork for non-commercial purposes including but not limited to:
- 21.5.1 the maintenance, promotion and marketing of the Artwork and the Commissioner's public artwork policies and projects; and
  - 21.5.2 promoting and marketing the business of the Commissioner generally including in the Commissioner's financial and annual reports, multimedia presentations, website, and advertising materials;
  - 21.5.3 archival purposes, and
  - 21.5.4 the Commissioner agrees not to reproduce or use images of the Artwork except for the above purposes.
- 21.6 The Commissioner must make all reasonable efforts to ensure that the Artist is attributed in any publication or communication of images of the Artwork by the Commissioner.

## **22 Attribution**

- 22.1 Subject to clauses 21.4, 24.3 and 25.4, the Commissioner will permanently display a notice in a reasonably prominent position near the installed Artwork, which identifies the Artist and the Artwork as follows:

[TOWN OF BASSENDEAN LOGO]

[TITLE OF THE ARTWORK]

[ARTIST NAME, YEAR OF COMMISSION]

[COMMISSIONED AS PART OF THE TOWN OF BASSENDEAN'S PERCENT FOR ART PROGRAM]

- 22.2 [TO INCLUDE IF RELEVANT] Subject to clauses 21.4, 24.3 and 25.4, the Commissioner will permanently display a notice in a reasonably prominent position near the installed Artwork, which identifies the custodial interest of the \*[NAME]\* Community in the Artwork as follows:

*The images in this artwork embody traditional knowledge of the \*[NAME]\* community. Dealing with any part of the images for any purpose that has not been authorised by the custodians is a serious breach of the customary laws of the \*[NAME]\* community and may also breach the Copyright Act 1968 (Cth). For enquiries about permitted reproduction of these images and cultural consents to use the traditional knowledge embodied in this work, contact \*[ARTIST NAME]\*.*

## **23 Publicity and promotion**

- 23.1 The Artist will provide the Commissioner with any relevant publicity materials as reasonably requested by the Commissioner.
- 23.2 Upon reasonable request by the Commissioner and at the Commissioner's cost for any approved expenses incurred by the Artist and evidenced in the form of a third party issued invoice or third party issued receipt, the Artist will be available for any publicity and media opportunities associated with the promotion of the Artwork.
- 23.3 All promotional material created by the Commissioner, exclusive of social media content, must be approved by the Artist, without unreasonable delay.

## **ALTERATIONS, REPAIRS AND DEACCESSIONING**

### **24 Repairs and restoration**

- 24.1 The Commissioner will give the Artist, by written notice to the Artist, first option to carry out any repairs or restoration to the Artwork. This option will lapse if the Artist does not signify an intention to carry out such repairs or restoration of the Artwork within 14 days after receiving the Commissioner's notice.
- 24.2 The Commissioner will pay the Artist a fee for repairs and restoration Artwork undertaken by the Artist at a rate per hour by mutual agreement.
- 24.3 The Artist reserves the right to demand the removal of any notice displayed with the Artwork, which identifies the Artist with the Artwork if the Artist does not perform the Artwork's repairs or restoration.

### **25 Alteration and deaccessioning of the Artwork**

- 25.1 The Commissioner may destroy, remove or otherwise deaccession the Artwork if:
- 25.1.1 it is damaged or deteriorated beyond reasonable repair or conservation; and
  - 25.1.2 the Commissioner complies with the procedures set out in section 195AT of the Copyright Act.
- 25.2 The Commissioner will not alter or modify the Artwork in any way whatsoever without the Artist's prior written consent provided that where such alterations or modifications are required for the proper maintenance of the Artwork, or by law to comply with occupational health and safety standards, such consent will not unreasonably be withheld.

- 25.3 The Commissioner may relocate the Artwork provided that the Commissioner complies with the procedures set out in section 195AT of the Copyright Act.
- 25.4 If the Commissioner alters, modifies or relocates the Artwork, the Commissioner will, upon written request by the Artist, remove any notice displayed with the Artwork which identifies the Artist with the Artwork.
- 25.5 If the Commissioner intends to sell or otherwise dispose of the Artwork, the Artist or the Artist's estate will be given the first option to be given or to purchase the Artwork.
- 25.6 If the Commissioner sells the Artwork to a third party during the term of the Artist's copyright in respect of the Artwork, the Commissioner will pay the Artist or the Artist's estate a resale royalty:
- 25.6.1 in accordance with the *Resale Royalty Right for Visual Artists Act 2009* (Cth) or the applicable artists resale royalty scheme in effect under Australian law at the time of such sale; or
- 25.6.2 if Australian law does not provide for such a royalty at the time of sale, in an amount of 5% of the sale price exclusive of GST.

## **LIABILITY AND INSURANCE**

### **26 Risk of loss or damage**

- 26.1 If the Artwork is created on the Site, the Artist will bear the risk of loss of, or damage to, the Artwork until installation is complete and will take out and maintain insurance against loss or damage during that period.
- 26.2 If the Artwork is not created on the Site:
- 26.2.1 the Artist will bear the risk of loss of, or damage to, the Artwork until it is delivered to the Commissioner and will take out and maintain insurance against loss or damage during that period, including during transportation of the Artwork to the Site;
- 26.2.2 the Artist will bear the risk of loss of, or damage to, the Artwork during installation at the Site and will take out and maintain insurance against loss or damage during that period.
- 26.3 The Commissioner will bear the risk of loss of, or damage to, the Artwork after installation and will take out and maintain insurance against loss or damage for the period until title to the Artwork passes to the Commissioner under clause 21.2.

### **27 Workers Compensation**

- 27.1 The Artist will be responsible for maintaining worker's compensation insurance in relation to any work or other act associated with the performance of this agreement carried out by the Artist, the Artist's employees or its agents.

### **28 Public Liability**

- 28.1 Prior to the delivery of the Artwork to the Site or to the Commissioner's premises the Artist will be responsible for maintaining public liability insurance cover in

relation to any work or other act associated with the performance of this agreement carried out on the Artist's premises or on the premises of the Artist's employees.

28.2 Where the Artist engages subcontractors, the Artist will ensure that the subcontractors hold public liability insurance and must be able to provide a certificate of currency in accordance with clause 29.1.

28.3 The Commissioner will be responsible for maintaining public liability insurance cover in relation to any work or other act associated with the performance of this agreement carried out on the Commissioner's premises (including the Site) or on the premises of the Commissioner's employees or agents or otherwise in connection with the Artwork following delivery and/or installation.

## **29 Insurance policies**

29.1 During the term of this agreement, the Artist must provide the Commissioner with certificates of currency for all required policies of insurance.

## **30 Indemnity**

30.1 The Commissioner will indemnify the Artist against all losses, liabilities, costs and expenses (including reasonable legal expenses) arising out of or in relation to any injury, death, loss or damage suffered by any third party during the production and installation of the Artwork on the Commissioner's premises (including the Site) or on the premises of the Commissioner's employees or agents, or which arise for any reason following delivery and/or installation of the Artwork. This indemnity does not extend to losses, liabilities, costs and expenses caused by latent defects in the manufacturing, construction or building of the Artwork which posed a serious risk to persons or property.

30.2 The Artist will indemnify the Commissioner against all losses, liabilities, costs and expenses (including reasonable legal expenses) arising out of or in relation to any breach of the Artist's warranty in clause 21.1. Notwithstanding this indemnity, the Commissioner will take reasonable steps to mitigate its loss following a breach of the Artist's warranty in clause 21.1.

30.3 The indemnities in this agreement are continuing obligations and will survive the termination of this agreement.

## **TERMINATION**

### **31 Termination**

31.1 The Artist may terminate this agreement by written notice to the Commissioner if the Commissioner:

31.1.1 is more than 30 days late in making any payment under clauses 15, 16 or 17; or

31.1.2 the Commissioner becomes insolvent, has a liquidator appointed, goes into administration (voluntary or otherwise), announces an intention, or has become subject to, a scheme of arrangement or a personal insolvency agreement; is declared bankrupt, ceases to carry on business or threatens to do so; or



- 31.1.3 is otherwise in breach of the Commissioner's obligations under this agreement and:
- i. the breach is incapable of remedy; or
  - ii. the Commissioner fails to remedy the breach within 30 days of the Artist's written notice of the breach.
- 31.2 Provided that the enforcement of the right to terminate under clause 31.1.2 is subject to the provisions of the *Corporations Act 2001* (Cth) (**Corporations Act**), if the Commissioner is a company to which a managing controller (including a receiver and manager) has been appointed or that the company has either announced an intention, or has become subject to, a voluntary administration, substantial receivership or scheme of arrangement as described in Chapter 5 of the Corporations Act.
- 31.3 If the Artist commits a breach of this agreement, the Commissioner must notify the Artist of the breach in writing. The Artist must remedy the breach within 30 days of the notice (**Notice Period**).
- 31.4 The Commissioner may terminate this agreement immediately by written notice to the Artist if:
- 31.4.1 the Artist's breach of this agreement is incapable of remedy; or
  - 31.4.2 the Artist fails to remedy the breach within the Notice Period.
- 31.5 This agreement is automatically terminated:
- 31.5.1 following rejection of the Design under clause 4; or
  - 31.5.2 following rejection of the Artwork under clause 8.
- 31.6 In the event of termination as the result of delay under clause 14.3 or termination under clauses 31.1, 31.4 or 31.5 the Artist will be entitled to receive and retain payment of:
- 31.6.1 all instalments of the Commission Fee due in the period up to the date of termination; and
  - 31.6.2 if the Artwork has not been completed, the amount of any reasonable expenses incurred by the Artist in relation to the Artwork as at the date of termination which are not covered by instalments of the Commission Fee already due to the Artist.
- 31.7 In the event of termination as the result of delay under clause 14.3 or termination under clauses 31.1, 31.4 or 31.5:
- 31.7.1 any rights of copyright licensed to, or conferred on the Commissioner under clause 21 will cease at the date and time of delivery of the notice of termination; and
  - 31.7.2 the Artist will retain title to, and copyright in, the Concept Design, the Design and the Artwork. Artist will have the sole right to complete, exhibit, sell or otherwise deal with the Concept Design, the Design and the Artwork,

PROVIDED THAT where the Artwork is substantially completed, and subject to the payments in clauses 31.6.1 and 31.6.2, the Commissioner may decide to accept the Artwork in the condition in which the Artwork stands at the date of termination, and the Commissioner will then:

- i. become the owner of the Artwork; and
- ii. engage other artists or craftpersons to complete the Artwork in accordance with the Design; and
- iii. retain the rights of copyright licensed to, or conferred on the Commissioner under clause 21.

## **DISPUTES**

### **32 Disputes**

- 32.1 If a dispute or disagreement (**Dispute**) arises between the Parties in connection with this agreement:
- 32.1.1 one Party must notify the other Party in writing about the Dispute (**Notice of Dispute**); and
  - 32.1.2 no party may start any litigation or arbitration in relation to the Dispute until the parties have complied with this clause.
- 32.2 The parties should meet within 14 days after receipt of the Notice of Dispute and hold good faith discussions to attempt to resolve the Dispute.
- 32.3 If the Dispute is not resolved within 28 days after receipt of the Notice of Dispute, the Parties agree to submit the Dispute to mediation according to the Arts Law Centre Mediation guidelines current at that time (Guidelines). These Guidelines are part of this agreement.
- 32.4 If the Parties are not able to agree to a mediator, they must request the Arts Law Centre appoint a mediator.
- 32.5 The Parties must continue to perform their respective obligations under this agreement despite the existence of a Dispute.
- 32.6 Nothing in this clause will impact on either party's rights to terminate under clause 31 of this agreement.

## **GENERAL**

### **33 Confidentiality**

- 33.1 The Parties agree that the Concept Design, the Design, and any Amended Design is confidential to the Parties, unless otherwise agreed in writing, and the Parties must:
- 33.1.1 not disclose or make available to a third party the Concept Design, the Design or any Amended Design, or any work derived or adapted from those works save for any communications required to carry out the fabrication and installation or any local council approval of the Artwork; and

33.1.2 use reasonable endeavours to ensure that subcontractors, employees and other agents similarly observe the obligations of confidentiality made in this clause.

#### **34 General provisions**

- 34.1 The parties acknowledge that the Artist is an independent contractor and that nothing in this agreement creates any relationship of partnership or employment between the parties.
- 34.2 A notice required to be given under this agreement may be delivered by hand, or sent by pre-paid post or email to the usual business address or email address used by the recipient of the notice. Notices are taken to have been served when delivered by hand within 2 days of having been sent by pre-paid post, or if sent by email, when the email enters the recipient's mail server, whichever occurs first.
- 34.3 Subject to clause 21, neither party may assign, subcontract, novate or otherwise divest this agreement or any of the rights or obligations under this agreement without the other party's prior written consent. This consent must not be unreasonably withheld.
- 34.4 Subject to clause 34.6, this agreement is the entire agreement between the parties about its subject matter. Any previous understanding, agreement, representation or warranty relating to this subject matter is replaced by this agreement and has no further effect.
- 34.5 Nothing in this agreement transfers or excludes any applicable cultural rights in favour of Australian Indigenous people that may be implemented under Australian law.
- 34.6 This agreement may only be modified by a written amendment signed by the parties.
- 34.7 Invalidity of any clause of this agreement will not affect the validity on any other clause except to the extent made necessary by the invalidity.
- 34.8 The agreement shall be interpreted as follows:
- 34.8.1 References to a party includes that party's executors, administrators, successors and permitted assignees.
- 34.8.2 Any reference to day or days in this agreement is a reference to calendar days.
- 34.8.3 This agreement is governed by the law in force in [STATE OR TERRITORY OF RESIDENCE OF THE ARTIST]. The Parties submit to the jurisdiction of the courts of that State and any court competent to hear appeals from those courts.

**EXECUTED AS AN AGREEMENT**

**Signed by ★[NAME OF INDIVIDUAL – THE ARTIST]★:**

Signature:

Name (PRINT):

Date:

**Signed for and on behalf of the Town of Bassendean in the presence of:**

Signature:

Name (PRINT):

Signature of Witness:

Name of Witness (PRINT):

Date:

### **ANNEXURE 1: THE BRIEF**

[ATTACH A COPY OF THE BRIEF]

### **ANNEXURE 2: THE CONCEPT DESIGN**

[ATTACH A COPY OF THE CONCEPT DESIGN]

### **ANNEXURE 3: SITE**

[ATTACH A COPY OF THE SITE PLAN]

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## SCHEDULE

**The Site:** Palmerston Square Reserve, 31 – 35 Hamilton Street and 36 – 40 Whitfield Street, Bassendean WA

**Commission Fee:** \$33,000 (excluding any Design Amendment Fees, Artwork Amendment Fees and additional fees payable under clause 9)

**Design Amendment Fee:** \$250.00

**Artwork Amendment Fee:** \$500.00

**The Reports:**

(for example, attach Engineer's Reports as Annexure 4, 5, etc)

**Timeline:**

Project Timeline	Due date for Completion	Commission Fee
Execution of Agreement		\$5,500 of the total Commission Fee payable upon execution
Meeting between parties and project manager	Within 7 days of execution of agreement.	
Stage 1: Delivery of Design (clause 1)	28 May 2026 or such other time as is agreed in writing.	
Changes to the Design (clause 2)	To be requested within 14 days of the delivery of the Design.	If applicable, Design Amendment Fee, payable upon issue of the Design Amendment Notice or Further Design Amendment Notice as the case may be.
Acceptance/Rejection of Design (clauses 3 & 4)	Within 21 days of the delivery of the Design, Amended Design or Further Amended Design.	
Meeting between parties to discuss and agree on fabrication, installation and engineering requirements	Within 7 days of acceptance of Design.	



Stage 2: Creation of the Artwork (clause 5)	Stage 2 – 11 June 2026 or such other time as is agreed in writing.	\$11,000 of the total Commission Fee, payable within 10 days of receiving notification of the Artwork's completion
Changes to the Artwork (clause 6)	To be requested within 14 days of the Artist's notification of the Artwork's completion under clause 5.1.3	If applicable, Artwork Amendment Fee payable upon issue of each Artwork Amendment Notice.
Acceptance/Rejection of the Artwork (clauses 7 & 8)	Within 21 days of the Artist's notification of the Artwork's completion under clause 5.1.3 or clause 6.2 - whichever is later	
Stage 3: Delivery and Installation of Artwork and delivery of Manual (clauses 10 & 11)	Stage 3 – 6 August 2026 or such other time as is agreed in writing.	\$16,500 of the total Commission Fee, payable within five 5 days of delivery of the Manual
TOTAL:		\$33,000

**The Artist's Agents/Subcontractors:**

Name:

Scope of authority:

**The Commissioner's Agents/Subcontractors:**

Name:

Scope of authority: