

Art on walls agreement

Template - guide only

Date:

Project name:

Schedule one - Specific Conditions

Artist

Name:

Address:

Phone:

Property owner

Name:

Organisation:

Address:

Phone:

Project Manager

Name:

Organisation:

Address:

Phone:

Mural site

Address/location:

Artist fees and payment

Total: \$

The Council will pay the Artist Fee by two payments being:

\$_____ (eg project administration, design development and materials).

\$_____ Artist Fee upon completion of the mural and when Council's Representative provides written confirmation that the artwork has been completed in accordance with this Agreement.

Painting commencement and completion date

Start date:

Finish date:

Agreement completion date (that is the date this Agreement is terminated in accordance with its terms)

Length of agreement (usually 5 years):

Agreed working hours

Hours:

Insurances to be obtained by the artist	
Public Liability Insurance amount:	
Duration:	
Council Representative (and address for notices)	
Name:	
Phone:	
Email:	
Council contribution	
Eg The Council will cover all costs associated with mural development and will oversee health and safety at the site.	
Executed as an agreement	
Artist	Signature of authorised person:
	Name of authorised person:
Wellington City Council	Signature of authorised officer:
	Name of authorised officer:
Background	
A. The Council agree to commission an artist to design and paint a mural on: Location:	
B. The parties have agreed that the Artist shall carry out the Artworks (including the design and installation of the mural artwork) at the Location: on the terms and conditions set out in this Agreement.	

Schedule 2 - General Conditions

1. Payment of the agreement price

- 1.1 The Artist Fee will not be varied except as agreed in writing by the Council.
- 1.2 Subject to clauses 1.3 and 1.4, the Council shall pay the Artist the Artist Fee in accordance with Schedule 1.
- 1.3 The Artist shall submit a valid tax invoice and include any information required under this Agreement or by the Council's Representative (acting reasonably) for any payment claim under this Agreement.
- 1.4 The Council shall pay any valid invoice by the twentieth of the month following the month that the invoice is dated. Payment by the Council within this time frame is subject to the Artist complying with the Council's payment processes.
- 1.5 The Council shall not be liable for any corporate, personal, withholding taxes or other taxes and levies in respect of the Artist. The Artist at all times indemnifies the Council for any claim upon the Council by the Inland Revenue Department for any such corporate, personal, withholding taxes or other taxes or levies which should have been paid in respect of the Artist.

2. Design of the artwork

- 2.1 The Artist warrants that:
 - (a) the design of the Artworks is as set out in Schedule 4 (**Design, Methodology and Maintenance**)
 - (b) the Design does not infringe the intellectual property rights of any person or third party.
 - (c) Subject to clause 2.2, the Artist shall not modify the Design in any respect without first obtaining the Council's approval in writing (which approval may or may not be provided by the Council at its absolute discretion).
- 2.2 The Artist may make minor variations to the Design without obtaining the prior consent of the Council provided that such variations do not affect the overall colour scheme, composition and scale of the Design, as determined by the Council acting reasonably.

3. Performance of the Artwork

- 3.1 The Artist shall:
 - (a) carry out the Artworks in a professional manner and with the degree of skill, care and diligence expected of an experienced artist;
 - (b) commence the Artworks as soon as practicable after the Commencement Date and complete the Artworks by the Completion Date;
 - (c) comply with all instructions and directions of Council's Representative;
 - (d) carry out the Artworks only during the Agreed Working Hours;
 - (e) carry out the Artworks in a way that does not cause unreasonable disturbance or interference with the operation of the park, to the property owner or to any other persons or property; and
 - (f) within 5 Working Days of the Completion Date, remove all equipment and debris relating to the Art Works, make good any damage as directed by Council's Representative and clean the Site to the Council Representative's reasonable requirements.

4. Materials

- (a) The artist will procure all materials, and plant and equipment necessary to complete the Artwork, drawing on the fee as is set out in Schedule one.

5. Care of the Site, Artwork and Materials

- 5.1 The Artist shall:
 - (a) be responsible for the management of the Site, and the care of the Artworks and materials or plant which are in its care or possession until the Completion Date;
 - (b) keep the Site and the Artworks in an orderly state and in such a condition so as to avoid danger to persons and/or damage to property, and shall remove all debris and surplus materials promptly from the Site;
 - (c) make good, at its own cost any loss or damage to the Artworks, materials, plant (or to Council-supplied items, if any) to the extent that it is responsible for those Artworks, materials and plant; and
 - (d) be responsible for loss or damage to the Artworks, Skatepark (including any utilities as per clause 9) or Site arising out of execution of the Artist's obligations under the Agreement.

6. Subcontracting

- 6.1 The Artist shall not subcontract any part of the Artworks without the prior written approval of the Council's Representative.
- 6.2 Where the Council has approved the use of a subcontractor, the Artist shall be responsible for all the work undertaken by any subcontractor and the payment of the subcontractor's fees.
- 6.3 The Artist shall not be relieved of any of its obligations under this Agreement by entering into any subcontract for performance of any part of this Agreement.

7. Health and Safety

7.1 Each party to this Agreement must comply with its obligations as set out in the Risk Management Plan.

8. Intellectual Property and Copyright

8.1 **Existing Intellectual Property:** All Intellectual Property owned by either party and existing at the Commencement Date will remain the exclusive property of that party during the term of this Agreement and thereafter.

8.2 **Ownership of New Intellectual Property:** Unless otherwise agreed in writing between the parties, all Intellectual Property that arises or is created by the Artist in the course of carrying out the Services will be the Artist's exclusive property, and without limitation, the Artist may register its ownership of the Intellectual Property in New Zealand and elsewhere.

8.3 **Licence:** The Artist grants Wellington City Council a perpetual, royalty free licence to use any Intellectual Property created under this Agreement for any non-commercial purposes, including the right to produce and use unaltered reproductions of the Artwork as provided by the Artist that do not impair the Artist's integrity of the Artwork or other rights at law that the Artist might have as holder of the copyright in the Artwork provided that:

- (a) Council credits the Artist (as agreed with the Artist) where the Artwork is the main subject of the photograph;
- (b) Council is not required to credit the Artist where the Artwork is part of a scene and not the main subject of the photograph; and
- (c) the photograph, or any reconstruction of the photograph, is not used or authorised to be used by Council for any pecuniary advantage (provided that this does not prevent such photograph forming an incidental part of a publication produced by the Council).

Any alteration to the Artwork in a reproduction must have the prior written consent of the Artist. If Council wishes to make reproductions of the Artwork for commercial purposes including, but not limited to merchandising, this shall be subject to a separate agreement between the parties that addresses the terms of the licence granted by the Artist for this purpose and the royalty the Artist shall receive.

8.4 **Copyright:** Subject to the above the Artist shall be deemed to have asserted its right under section 96 of the Copyright Act 1994 to be identified as the author of the Artwork.

8.5 **No infringement on existing rights:** The Artist warrants the Services provided to Council by the Artist do not infringe the Intellectual Property rights of any person.

8.6 **Unique Artwork:** The Artist agrees that the Artwork will be unique to Wellington City Council and will not be reproduced for any other third party, provided that nothing in this Agreement shall in any way restrict the Artist from using general ideas, concepts, techniques and know-how (but excluding any Council confidential information) for the benefit of other parties during or after termination of this Agreement.

8.7 **Definition:** For the purposes of this Agreement "Intellectual Property" means any rights arising by virtue of any law or custom relating to the protection of industrial or intellectual property rights or the protection of confidential information and, without limitation, includes: inventions, discoveries and novel designs, whether or not registered or registrable as patents or designs, including developments or improvements of equipment or products, technology, processes, methods or techniques; copyright (including future copyright) throughout the world in all literary work/s, artistic work/s, computer software, and any other work/s or subject matter in which copyright may subsist now or in the future.

8.8 **Survival:** The rights, obligations and warranty contained in this clause shall survive expiry or termination of this Agreement.

9. Laws, Regulations and Standards

9.1 The Artist shall comply with all applicable legislation, regulations, industry standards and codes of practice relating to the Art Works.

10. Insurance and indemnity

10.1 The Artist shall provide insurance cover as specified in Schedule 1 (*Special Conditions*).

10.2 The Artist shall provide to the Council's Representative certificates evidencing that the required insurance cover is in place prior to the Artist commencing the Art Works, and from time to time on request by the Council's Representative.

11. Variations

11.1 Subject to clause 2.2, the Artworks may only be varied in accordance with the written agreement of the Council.

11.2 The Artist may apply to the Council's Representative for an extension of time to the Completion Date which may be granted by the Council in its sole discretion.

12. Completion of Artworks

12.1 When the Artworks have reached the stage where the Artist believes the Artworks are complete, the Artist shall notify the Council's Representative.

12.2 The Council's Representative shall inspect the Artworks and provide written confirmation that the Artworks have been completed in accordance with this Agreement, or give the Artist written notice of the work to be varied or completed.

12.3 On the satisfactory completion of any work required under clause 12.2, the Council's Representative shall provide written confirmation that the Artworks have been completed in accordance with this Agreement.

13. Effect of Certificates
13.1 No certificate or confirmation issued by the Council constitutes approval of any Artworks or releases the Artist from any obligation under the Agreement. The Artist shall remain liable for the fulfillment of any obligation of the Artist under the Agreement or at law which remains unperformed or not properly performed.
14. Suspension
14.1 The Council's Representative may suspend the Artworks or part of the Artworks at any time.
14.2 During the suspension the Artist shall properly secure and protect the Artworks against damage and leave the Site in a safe and tidy condition.
14.3 Unless the suspension is the result of any default or any act, omission or negligence of the Artist, the Council shall reimburse the Artist for all reasonable direct costs (excluding any indirect or consequential loss, or loss of profit, however arising, whether under contract, in tort or otherwise) incurred by the Artist as a consequence of the suspension.
15. Termination by either party
15.1 Either party may terminate this Agreement by immediate notice if the other party materially breaches the Agreement.
15.2 The parties agree that a material breach of this Agreement includes but is not limited to the Artist failing to perform the Artworks by the Completion Date or to the standard required by this Agreement, or abandonment of the Artworks by the Artist.
15.3 Termination shall not prejudice or affect the accrued rights or claims and liabilities of the parties.
16. Termination by the Council for convenience
16.1 The Council may immediately terminate this Agreement at any time by providing notice in writing to the Artist. Termination shall be effective on the date stated in the notice.
16.2 The Council shall reimburse the Artist for the direct costs incurred by the Artist for all Artworks undertaken in accordance with this Agreement up to the date of the termination notice. The Artist shall not be entitled to any other payment (including any indirect or consequential loss, or loss of profit, however arising, whether under contract, in tort or otherwise).
17. Dispute Resolution
17.1 The parties shall attempt to settle any dispute which arises between them by way of good faith discussions.
17.2 If an agreement cannot be reached within 20 Working Days of any dispute being notified by one party to the other party, then the parties may by agreement refer the dispute to mediation by a mediator having the skills required (including relevant expertise and experience of the subject matter of the dispute) to bring the parties to a resolution (a Mediator).
17.3 The Mediator will be appointed by agreement of the parties or, if the parties are unable to agree upon a Mediator within five Working Days of notification of the reference to mediation, the Mediator will be appointed by the president of the Wellington Branch of the New Zealand Law Society.
17.4 Each party shall bear their own costs relating to the resolution of any dispute.
18. Privity of contract
18.1 The obligations of the Artist and any of its subcontractors under the Agreement shall for the purposes of Part 2, Subpart 1 of the Agreements and Commercial Law Act 2017 (Privity) be deemed to be for the benefit of the Building Owner (including, its successors and assigns) and shall be enforceable by the Building Owner against the Artist or any of its subcontractors but not so as to impose any greater liability on the Artist or its subcontractors towards the Building Owner than the Artist owes or owed to the Council.
19. General
19.1 The Agreement is governed by New Zealand law, and the New Zealand courts have exclusive jurisdiction in respect of this Agreement.
19.2 The Artist shall not assign the Agreement without the Council's prior written approval. A change in the management or control of the Artist or the sale of the major part of the Artist's business or assets shall be deemed to be an assignment for the purposes of this clause.
19.3 The Council may set-off any amounts owing to the Artist under this Agreement against any amounts owing to the Council by the Artist under this Agreement.
19.4 Any notice to be given under the Agreement must be in writing and must be delivered or sent by post or e-mail to that party's Address for Notices set out in the Specific Conditions of this Agreement.
20. Interpretation
20.1 A reference to any legislation includes a modification of that legislation or legislation enacted in substitution for that legislation and regulation, order in council and other instrument from time to time issued under that legislation.
20.2 Schedules to this Agreement are binding on the Artist and form part of this Agreement.

21. Definitions

21.1 Unless inconsistent with the context, the following words in this Agreement have the following meanings:

- (a) **Agreement** means this Art on Walls agreement and includes the Agreement and all Schedules provided that any terms of trade submitted by the Artist at any time shall not form part of this Agreement or any other contract for the Art Works.
- (b) **Commencement Date** means the date this Agreement commences as specified in Schedule 1 (*Specific Conditions*).
- (c) **Artworks** means the works described in the Brief (Schedule 3) and Design, Methodology and Maintenance (Schedule 4) and includes the design and Intellectual Property in such works and includes any temporary Artworks and includes any variations agreed by the Council.
- (d) **Council's Representative** means the person specified in Schedule 1 (*Specific Conditions*) or such other person as may be notified to the Council in writing from time to time.
- (e) **Completion Date** means the date the Art Works are due for completion as specified in Schedule 1 (*Specific Conditions*) as may be amended by the Council
- (f) **Agreement Completion Date** means the date this Agreement is terminated in accordance with its terms.
- (g) **Design & Methodology** means the agreed design of the Art Works and the agreed methodology that will be used by the Artist to create the Art Works and is documented in Schedule 4;
- (h) **GST** means the goods and services tax under the Goods and Art Works Tax Act 1985.
- (i) **Intellectual Property** means all intellectual property and proprietary rights, including patents, trademarks, service marks, copyright, design rights, formulae, methods (including business methods), characteristics, equipment designs, technology, inventions (whether patentable or not), discoveries, know-how, experience, trade secrets and confidential information (and whether registered or unregistered).
- (j) **Site** means the area made available to the Artist for the carrying out of the Artworks specified in Schedule 1 (*Specific Conditions*).
- (k) **Working Hours** is defined in Schedule 1 (*Specific Conditions*).

Terms in Schedule 1 have the meanings defined in that schedule

Schedule 4 - Design, Methodology and Maintenance

Design

Description of methodology (for creating mural)

Plan to maintain the artwork

Eg Maintenance plan for the period of this agreement (10 years):

Murals are temporary public artworks, subject to their environment and are expected to weather over the period of their agreed lifespan.

The Council will ensure the mural is cared for during the life of this agreement, that is for ten years.

If the artwork is tagged this should be reported via Council's Fixit App or to Council's contact centre and contractors will take steps to remove it.

Plan to manage/decommission the artwork after the period of this Agreement:

After the period of this agreement (ten years), if the mural:

- is still appreciated by the local community and by Council/property owner, and has retained its relevance and condition, the agreement will be extended for another fixed period - timeframe to be determined by the Council/property owner and the Artist.
- is faded, peeling, scratched or damaged in any way including being prone to graffiti and/or is no longer relevant or liked by the community, Council/property owner will paint the mural out or consider commissioning a new mural.

Note that the artist should be informed about the outcome of their work after the period of the agreement - that is if extended or decommissioned (refreshed/removed).

Appendices

Attach any other relevant project information here, for example, a Health and Safety (Risk Management Plan).