

City of Geraldton Greenough  
Geraldton Foreshore Redevelopment & CBD  
Revitalisation Project  
Durlacher Precinct Public Artwork

**Commission Agreement**

This Agreement is made this            day of            2007

**between**

The City of Geraldton Greenough .....(The City)

**and**

Dr. Nigel Helyer .....(The Artist)

**of**

Po Box 195, Balmain NSW 2041

**Whereas:**

- a) The Artist has submitted a design proposal for an artwork.
- b) The City is now desirous that the Artist proceed to agree to:
  - i. Complete the development of design for that artwork; and
  - ii. Then at a date to be mutually agreed in 2008/09
    - Create the work of art that is the subject for the design to be developed ("the Artwork")
    - Install and / or supervise the installation of the artwork
- c) Design Documentation and Design Development are as defined in the "Public Art Practical Guidelines" – Published by the Ministry for Culture and the Arts, 1997.

**By which we agree as follows:**

**1. COMMISSION**

- a) The Artist shall complete the development of the design, present documentation of this ("the Design Documentation") and fabricate the Artwork for the **Durlacher Street, Foreshore Entry Public Art** in strict accordance with the attached description and specific location of the artwork ("Schedule A")

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## Attachment: CEO081- Artist Agreement

The Artist agrees to the Director Technical Services appointed by the City as the City's Representative to exercise the duties, discretions and powers vested in the City under the Agreement.

Accordingly, the Artist permits the City's Representative to view the design and the Artwork based on the Design Documentation as required by the City during the Term of this agreement ("the Agreement") in accordance with Clause 4 of this Agreement. The Artist shall consult with the City Representatives regarding all design, technical and coordination issues in accordance with Clause 1 (b).

- b)** The Artwork created by the Artist must in all respects comply with,
  - i. Any requirements set out and described in the Project Brief ("Annexure A") attached hereto,
  - ii. Description of the Artwork ("Schedule A")
  - iii. Any requirements in the Design Documentation submitted at the conclusion of Design Development
  - iv. Any direction of the City regarding the safety of the Artwork or safety issues, which arise carrying out the commission set out in this agreement, including without limitation the design, materials, fabrication and installation of the Artwork.
  - v. Any other requirements mutually agreed to by both parties in writing.
- c)** The Artwork shall be created by the Artist in a proper and artisan like manner and be one of skill, quality and craftsmanship.

### **2. PERFORMANCE**

- a)** The Artist shall complete, deliver and install or supervise the installation of, as the case may be, the Artwork on or before a date mutually agreed between the parties during 2008/09 (the Completion Date) in accordance with the program set out in Schedule B (the "Works Program").
- b)** Upon the Artist notifying the City in writing of any delays being experienced by him / her in the creation, completion, delivery or installation of the Artwork, the completion date and Work Program referred to in Subclause 2(a) may be varied, as the parties shall mutually agree.

### **3. FEE**

- a)** In consideration of retaining the design submitted to the City in April 2007, the City agrees to pay **\$10,000 +GST** to the Artist.

- b) In consideration for the services in creating and completing the Artwork the City agrees to subclause 3( c ) to pay the Artist the balance of fees for the work of **\$80,000 + GST** in accordance with the Payment Schedule set out in Schedule C (the "Fee").

The Artist agrees to submit to the City a cost-breakdown of the Artwork created from the design on submission to the City for Design Documentation at the completion of Design Development.

Payment of the Fee will be made by the City within thirty days of receipt of invoices from the Artist in accordance with Schedule C, unless other payment arrangements are agreed upon by both parties.

Invoices are to be marked **Cathedral Avenue Foreshore Public Artwork Durlacher Street** and sent to **City of Geraldton Greenough, Chief Executive Officer, PO Box 101, GERALDTON WA 6531**

- c) The Fee shall include the Artist's professional fees, material costs, out-of-pocket expenses, travel and accommodation expenses, as the case may be, delivery in accordance with Clause 5 and installation costs in accordance with Clause 6 and Schedule C and all building construction industry requirements for on-site work. Artists will need to take account of industrial site, safety and City of Geraldton Greenough requirements.
- d) The City may in its entire discretion determine not to pay the fee or any portion thereof to the Artist if the Artwork has not been undertaken and completed in accordance with Clause 1 and 2 of this Agreement and Schedule C.
- e) Should there be a delay as outlined in Clause 8, any recompense to the Artist shall be in addition to that stated in Clause 3 (a)
- f) The Artist shall retain ownership of and copyright in the Artwork until the initial payment set out in Clause 3 (a) has been made.

#### 4. **ACCESS**

- a) When the Artwork is created on the Artist's premises or on the premises of the Artist's servants, agents or contractors the City has given the Artist reasonable notice of his / her desire to inspect the work.
- b) When the Artwork is created on the Site the City shall arrange for the Artist and his / her authorised servants or agents to have access at all reasonable times as determined by the City to that part of the Site where the Artwork is being created. In this instance, Occupation Health and Safety and insurance.

**5. DELIVERY**

When the Artwork is created on the Artist's premises or on the premises of the Artist's servants, agents or contractors the Artist shall arrange for and meet the cost of the delivery of the Artwork to the "Site" where the Artwork is to be installed, erected or placed on or before the Completion Date (in accordance with the specifications in the Design Documentation).

**6. INSTALLATION**

The Artist shall at the direction of the City supervise the installation, erection or placement of the Artwork at the Location on or before the Completion Date. Costs associated with the installation will be agreed between the Artist and the City prior to the project commencing.

**7. INSURANCE**

a) When the Artwork is created on the Artist's premises or on the premises of the Artist's servants, agents or contractors all risks of loss or damage to the Artwork from the date of the Agreement until the date the Artwork is completed and installed in accordance with the approved Design Documentation, shall be solely that of the Artist.

b) When the artwork is created on the Site the risk of loss or damage to the Artwork shall be solely that of the City.

**8. DELAY**

In the event that the City may from time to time in the City's full discretion give notice to the Artist that a delay has occurred in the completion of the Project, that the dates set out in Schedule B shall be varied as set out in that notice. Any identified costs incurred by the Artist for the Project resulting from the above shall be recompensed by the City on the submission of a detailed statement by the Artist.

**9. COPYRIGHT**

The City and the Artist will be joint proprietors of equal shares of the copyright in the Design Documentation and the Artwork.

The Design Documentation and the Artwork may be reproduced for non commercial purposes by the City for: eg. Annual Reports, information brochures about the place.

In the event the City wishes to reproduce the works in such a way that income would be generated, royalties will need to be negotiated and paid to the Artist. Such royalties will be paid according to standard rates for similar reproduction activities.

All reproductions of the Artwork for non-commercial or other purposes are to properly attribute the role of the Artist.

The City shall obtain the Artist's approval of the commercial reproduction process and the quality of reproduction of the Artwork before commencement of commercial production runs.

The Artist agrees that he / she will not reproduce the Design Documentation or the Artwork in a similar form or at a similar scale without first obtaining the consent of the City in writing. The Artist shall have the right to reproduce the Design Documentation or Artwork in books or other publications associated with the Artwork.

**10. TITLE**

Legal title and ownership of the Artwork shall pass from the Artist to the City upon payment for the artwork being paid by the City to the Artist.

**11. AUTHORSHIP**

A notice, sign or plaque stating the Artist's name, and title of the Artwork, shall be provided by the City at the City's cost and shall be permanently and publicly displayed and identified with the Artwork. The location and form of the sign is to be agreed upon with the Artist.

**12. ALTERATION AND MAINTENANCE**

- a) In the event of the completed and installed Artwork being damaged, altered, or modified in any way by either the City or any other person not being the Artist or any servant, agent or contractor of the artist, the Artist has the right to demand either:
  - i. That the Artwork shall no longer be represented to be the Artwork of the Artist
  - or
  - ii. That the City at City's cost, take all necessary action to return the Artwork to its state existing prior to the damage, alteration or modification. The City agrees to promptly carry out any such demand. In no event shall the City be required to expend more than the Fee to rectify any damage or other modification.
- b) The Artist shall provide the City with instructions and advice concerning the proper cleaning and maintenance of the Artwork upon installation of the Artwork.
- c) The City shall be responsible at the City's cost for the periodic cleaning, maintenance and protection of the Artwork following its installation. The Artwork shall at all times be kept in a reasonable condition or state of repair by the City.
- d) The City shall undertake any repairs to the Artwork that may be necessary following the period of Warranty set out in Clause 14 and, to the extent that is practicable, the artist shall be given the opportunity to perform the repairs for a standard fee.

**13. RELOCATION, REMOVAL OR SALE**

- a) The City may in the City's discretion and provided that City has given the Artist 28 days notice in writing of the City's intention to do so, remove the Artwork from the location for the purposes of either relocating (permanently or temporarily), cleaning, repairing, storing, selling or otherwise disposing of the Artwork. If any relocation of the Artwork is necessary the Artist will be consulted by the City as to the transport and relocation of the Artwork.
- b) If any alteration to the site or relocation of the Artwork is made without the express written approval of the Artist, the Artist may, at the expense of the owner remove or have removed any notice, signature or emblem identifying the Artist with the Artwork.
- c) In the event of notice of disposal being given the City shall give the Artist the opportunity to purchase the Artwork at a current market price.

**14. WARRANTY AND REPAIRS**

The Artist warrants:

- a) That he / she will create the Artwork using high quality materials and adequately skilled labour and guarantees the materials and labour used in creating the Artwork for 12 months from the completion date.
- b) That the Artist will be the sole author of the Artwork.
- c) That the Artwork will not breach copyright, or other intellectual property rights, privacy, common law or contractual agreement of any person or entity in complying with the terms of this Agreement.

**15. TERMINATION AND DEFAULT**

- a) By the City

The City may terminate this Agreement at any time and for whatever reason upon giving written notice (stating the reason) to the Artist. Upon such termination the Fee paid or payable to the Artist shall be adjusted either by additional payment or refund by either party according to the amount of artistic work done by the Artist in pursuance of this Agreement up to the date of receiving such notice.

In the event that the Artist breaches any term or condition of this Agreement the City shall give written notice of the breach to the Artist who shall have a reasonable time within which to remedy the breach. If the breach is not remedied within such reasonable time the City may terminate the Agreement by giving the Artist written notice of the termination and may recover any Fee already paid to the Artist

b) By the Artist

The Artist may terminate the Agreement at any time for whatever reason upon giving written notice (stating the reason) to the City. If the Artist terminates this Agreement for any reason other than breach by the City of any condition of this Agreement the Artist shall refund any Fee paid to him / her under this Agreement by the City.

The Artist may terminate this Agreement if the City is more than thirty days late in making payment of any instalment. The Artist shall be entitled to receive and retain payment for all work done up to the date of sending such notice. The Artist shall also be paid a proportion of the final instalment which would have been due had the Artwork been completed, based on the stage of completion of the Artwork which has been reached at the time of the termination.

c) In the event of this Agreement being terminated pursuant to the terms hereof the Artist shall retain ownership and copyright in the Artwork. The Artist shall also have the sole right to complete, exhibit, and sell the Artwork and all preliminary designs of the work.

d) This Agreement will terminate automatically on the death or incapacity of the Artist; in which case the Artist or Artist's estate shall retain all payments made and owed to the Artist and the City shall have the right to keep copies of the Design Documentation and to keep the work in progress, for the sole purpose of completing the Artwork. The Artwork will be completed by an artist acceptable to both the original Artist and the Artist's estate and to the City. If the City does not wish to have the Artwork completed, all copies of the Design Documentation, and the Artwork in progress will become property of the Artist or the Artists estate.

The City shall give notice of a substitute artist to the Trustee of the Artist's estate and this nominee shall be deemed acceptable to the Trustee in the event that the Trustee does not notify the City within fourteen days of such notice.

**16. NON-ASSIGNABILITY**

Neither party hereto have the right to assign this Agreement to a third party without prior written consent of the other party.

**17. PUBLICITY**

The Artist shall, wherever possible, direct all media enquiries relating to the Artwork to the City.

**18. DISPUTES**

Should any dispute arise concerning any matter referred to in this Agreement, the dispute shall be referred to the arbitration or two arbitrators to be determined in accordance with the Commercial Arbitration Act 1985, one to be appointed by each party. In the event of the arbitrators disagreeing, the dispute will be referred to an umpire selected by the arbitrators. No further action or suit will be brought by either party until an award has been obtained by the arbitrators or umpire.

**19. MISCELLANEOUS**

All Annexures attached hereto shall be deemed to form part of the Agreement. In the event of any contradiction discrepancy or ambiguity between anything contained in this Agreement and anything contained in Annexure A provisions of this Agreement shall prevail.

**20. RELEVANT LAW**

This Agreement shall be construed as being the completed Agreement between the parties hereto and shall be construed in accordance with the laws of the State of Western Australia.

**21. NOTICE**

In any circumstances where pursuant to the terms of this Agreement notice in writing is required to be given it shall be sufficient for the same to be given by notice in writing signed by and behalf of the party giving such notice and delivered personally or sent through the post by prepaid mail addressed to the City at their address (in respect of notice given to the City) or addressed to the Artist at his / her address (in respect of notice given to the Artist) and such notice shall be deemed to have been given when delivered or if sent through the post then at the time when the same would normally have been delivered in the ordinary course of the post.



IN WITNESS WHEREOF THE PARTIES hereunto set their hand and / or seals the day and year first herein before written.

SIGNED by

*G.F. Hoemah*

For and on behalf of the Chief Executive Officer of the City of Geraldton  
Greenough

for the CEO of City

In the presence of

(Witness)

SIGNED by

(Artist)

*Nigel Lyster 07/12/2007*

In the presence of

(Witness)

*[Signature]* 07/12/2007

SCHEDULE A

**Description of the Artwork**

The sculpture:

1. It is proposed that "Zephyr" shall consist of two [2] vertical wind vane type structures, each supporting a sail like pair of aerofoils with a passive sound emitting Aeolian device embedded in the interior air passage. The foil section will additionally act as a sound resonator to passively amplify the relatively quiet harmonic sounds that these device produce. 'Zephyr' will address concepts of a balance and equilibrium found in both natural systems (the cycle of the weather and the ocean) as well as those of human technologies (see schematics) in addition the strung arrays of the Aeolian harps will be kept under constant tension by a balance device and thus require no additional tuning or maintenance.

The structure recalls the form of the square rigged sailing ships and physically regenerate (albeit in a more tuned manner) the sonic ecology of the sailing era, with the murmur of a breeze in the rigging. Two Aeolian sculpture units, identical in structure but tuned to different harmonics, this will ensure a rich level of sonic and visual complexity.

2. Materials:

Landscaping – sandstone on concrete footing set into grass or other landscape materials as determined in consultation with City Landscape architects. Foundation Cage.

Sculptures – Marine grade Stainless Steel, Steel (epoxy coated), Sealed bearings, Aluminum (epoxy coated) with option for epoxy encased closed cell high density polyurethane foam components.

3. Location:

The Zephyr structures are to be located on the Foreshore reserve, near Durlacher Street with indicative locations shown in the attached plans.

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**SCHEDULE B**

<u>Stage</u>	<u>Work program</u>	<u>Timing</u>
Site review.....	February	
2010.....		
Detailed design development.....		
Source local team .....		1 Month
Source local fabricator & installation resources.....		
Fabrication Commencing March 2010		3 Months
Transport to site, commencing June		
2010.....		
Install.....		1 Month
Tuning and testing.....		
Documentation.....		

Note the start date to be notified by the City to the artist by providing 2 months notice.

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