

Artforce Brisbane Public Art Program

Participant Agreement

This Agreement is between

Artfully [ABN 29 010 499 018] whose registered address is 15 York Street Morningside QLD 4170 (the Manager)

and

[Insert full name] of [insert address] (the Participant)

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Notes:

- A. This Participant Agreement is an important document that needs to be read and complied with. If the Participant is under the age of eighteen years a parent or guardian must read this Agreement and sign on the Participant's behalf.

1. MANAGER

- a. Artforce is managed by the Manager, for and on behalf of Brisbane City Council (**Council**).

2. MUTUAL BENEFIT

- a. The Manager will provide the Participant:
- i. legal and safe access to paint a valuable and important piece of public infrastructure;
 - ii. freedom of expression through the creation & implementation of the Artwork (within the specified design criteria);
 - iii. high quality paint and safety equipment; and
 - iv. Participant credit and promotion of the Artwork.

- b. The Participant agrees that while no financial reward is obtained for painting the Artwork on a TSB/EPT, the opportunity to exhibit the Artwork on a large, public canvas is of significant value.

3. ELIGIBILITY

The Participant:

- a. must reside within the Brisbane City Council area;
- b. not be an executive officer or employee of either the Manager or Council;
- c. have painted no more than a maximum of two TSBs in the four years prior to the execution of this Participant Agreement.
- d. have painted no more than one EPT in the four years prior to the execution of this Participant Agreement.

4. PARTICIPATION REQUIREMENTS

To paint a TSB/EPT the Participant agrees to:

- a. accept and comply with the terms specified in this Participant Agreement;
- b. be supervised by a parent or guardian at all times if they are under 18 years of age;
- c. ensure each person working with the Participant complies with the terms of this Participant Agreement;
- d. NOT be under the influence of, or have present onsite, drugs or alcohol nor act in an offensive or disorderly manner to passers-by or traffic;
- e. follow all directions related to painting a TSB/EPT and safety (including stopping work if required) from the Manager and any Road Safety Traffic Wardens;
- f. take the "Authority to Paint Notice" to the TSB/EPT and have it available when painting. This notice will be provided to Participants in the Equipment Pack;
- g. paint the TSB/EPT only during the approved painting period as specified by the Manager one month prior to the date painting is due to begin. If the Participant cannot complete the Artwork within the approved painting period extensions can be granted upon the consent of the Manager.
- h. paint the specified TSB/EPT allocated by the Manager only; and
- i. paint the Artwork that has been approved by the Manager only.

5. PAINTING

When painting a TSB/EPT, the Participant agrees to:

- a. comply with the Manager's instructions in relation to safety including those specified in clause 6 and 7 of this Participant Agreement;
- b. wear the supplied safety vest immediately on arriving at the TSB/EPT and for the duration of the painting period, and set-up the painting site in accordance with the TSB/EPT site diagram supplied in the Equipment Pack.
- c. ONLY use the paint supplied in the Equipment Pack to paint the Artwork. No additional paint/s, metallic paints or coatings are to be used on the TSB/EPT;
- d. NOT mix colours in the containers of paint provided in the Equipment Pack;

- e. NOT adhere or glue materials to the TSB/EPT;
- f. NOT impede, encroach upon or interfere with, alter, modify, remove, tamper with, deface or paint over keyholes, light sensors (where present), TSB/EPT identification plates, emergency contact phone numbers related to signal operations, hinges or any of the regulatory or other official notices. All items must remain clearly visible and unpainted;
- g. dispose of paint and cleaning materials in an environmentally friendly manner. In particular no paint or cleaning materials are to be discharged or disposed of into gutters or drains;
- h. keep and maintain at all times, a clean and tidy work area;
- i. sign the Artwork once only on the TSB/EPT within the size of 30cms wide and 10cms high and as per the approved Artwork design;
- j. provide digital images of the completed TSB/EPT Artwork and return the Equipment Pack to the Manager within 7 days of completing the Artwork; and
- k. be responsible for all expenses other than the Equipment Pack associated with painting, for example, parking or taxi fares.

6. SAFETY & COMPLIANCE

- a. The Participant must immediately make way for any emergency road works related to road safety and/or maintenance of the TSB/EPT. In the event of an emergency on or around the TSB/EPT site, the Participant is required to remove all painting equipment as soon as safely possible and at all times comply with all instructions relating to safety and maintenance given by authorised workers.
- b. The Participant acknowledges that compliance with all laws and safety and environmental requirements is essential and failure to comply will exclude the Participant from being entitled to make any claim against either of the Manager or Council for any damage, fines, compensation, loss or liability (including any claims made against the Participant by any person) in respect of property or personal injury (including death) suffered or sustained by the Participant or caused by the Participant's acts or omissions (whether negligent or otherwise) to any other person.
- c. The Participant (and those accompanying the Participant on site at the TSB/EPT) acknowledge that they are responsible for their own personal safety and will save, hold harmless and discharge the Manager and Council of any responsibility or related claims in respect of personal injury or personal loss whatsoever.
- d. It is recommended that the Participant adhere to sun safety requirements by wearing a hat, suitable clothing, sunglasses and sunscreen during appropriate times of the day.
- e. The Participant must comply with all applicable legislation, regulations and local laws, for example parking regulations while on site.

7. SAFETY & COMPLIANCE - EPT ONLY

When the Participant is painting an EPT, the Participant must adhere to all obligations in clause 6 and the following EPT specific safety requirements:

- a. The Participant must adhere to the Energex Pad-Mount Transformer - Site Safety Assessment Checklist (Attachment 1) (the **Site Safety Checklist**) whilst carrying out the Artwork at the specified EPT. Note that failure to comply with the Site Safety Checklist will exclude the Participant from the Manager's Public Liability Insurance cover. In such an exclusion, the Participant will be responsible for all public liability.

- b. The Participant will comply with all applicable legislation and regulations (including, but not limited to the Electricity Act 1994, Electrical Safety Act 2002, Electrical Safety Regulation 2003, the Work Health and Safety Act 2002, Queensland Transport guidelines for working on roads) and local laws (e.g. on-street parking).

8. ARTWORK LONGEVITY & PAINTING PERMISSION

The Participant acknowledges that:

- a. the nature of the Program is that the Artworks painted on to the TSB/EPTs are temporary;
- b. permission to paint the specified TSB/EPT with an Artwork approved by the Manager has been granted by Council;
- c. the Manager takes great effort to communicate with Council to ensure the longevity of the Artworks however cannot guarantee a specific lifetime of an Artwork;
- d. the completed Artwork may at any time and without notice be relocated, removed or destroyed as may be required by the Manager;
- e. the Artwork is in the public realm and the Manager cannot guarantee that the Artwork won't be damaged or vandalised;
- f. without limiting the effect of clause 8(c) the Artwork may be repaired or painted over if:
 - i. an unapproved Artwork is painted on the TSB/EPT.
 - ii. the Manager deem that the Artwork needs refreshing. This generally occurs if Artworks are looking faded, have been vandalised beyond reasonable repair, or new opportunities are being provided as part of a revolving and ongoing public art Program.

9. LICENCE

- a. The Participant retains all copyright and intellectual property rights in the Artwork.
- b. The Participant grants to the Manager and Council the irrevocable right to a perpetual, non-exclusive, royalty free, worldwide licence to reproduce the Artwork in any media, including online, for official non-commercial purposes associated with the Program or Council, including the right to sub-licence.
- c. The Participant warrants that the Artwork:
 - i. is an original design created by the Participant alone; and
 - ii. does not infringe and is not likely to infringe any Intellectual Property Rights (including copyrights, registered trademarks, application trademarks, common law trademarks and moral rights) of any person nor involves any unauthorised use of character or personality or any other third party right or interest.
- d. the Participant indemnifies and keeps indemnified the Manager and Council in respect of any loss, damage, costs, liability, claims, actions or demands arising out of a breach of clause 9(d).

10. ARTWORK RESTRICTIONS

The Artwork should not counteract the community aims and benefits of the Program and cannot include:

- a. images of offensive material;
- b. images that resemble illegal graffiti pieces or tags;

- c. obscene imagery;
- d. images that contain nudity;
- e. religious iconography, political figures or celebrities; or
- f. represent any images deemed inappropriate by the Manager or Council.

11. PRIVACY

The Participant authorises the Manager and Council to collect, store, and provide their personal information, including their name, contact details and Participants statement to:

- a. Council in relation to the management of the Program; or
- b. the media if required for promotional purposes.

12. MEDIA

If approached by the media while painting a TSB/EPT, the Manager encourages the Participant to share their experience and where reasonably possible ask that the Participant:

- a. acknowledge that the Program is an initiative of Council
- b. acknowledge that the Program is managed by the Manager; and
- c. request the media contact the Manager for further Program information.

13. TERMINATION

Either party may terminate this Participant Agreement if the other party is in breach of this Participant Agreement and fails to remedy that breach within 14 calendar days of receiving written notice of that breach from the other party.

14. DISPUTES

- a. If a dispute or disagreement (**Dispute**) arises between the parties in connection with this Participant Agreement:
 - i. one party must the other party in writing about the Dispute (**Notice of Dispute**); and
 - ii. neither party may start any litigation or arbitration in relation to the Dispute until the parties have complied with this clause 14.
- b. The parties must meet within 14 calendar days after receipt of the Notice of Dispute and hold good faith discussions to attempt to resolve the Dispute.
- c. Any Dispute in relation to the Artwork design, the carrying out of the Artwork, any breaches of the conditions or entry or judgement of the Awards must be in writing and be sent to the Manager. The Dispute will be jointly dealt with by Council and the Manager
- d. If a Dispute cannot be settled by negotiation between the parties 24 calendar days of the date of the Dispute Notice, the Dispute will be submitted to mediation in accordance with the Mediation Rules of the Resolution Institute. Mediation will be conducted in Brisbane and the cost of the mediator will be borne equally by the parties. Both parties will in good faith explore the option of mediation. If the appointment of the mediator cannot be agreed by the parties, the mediator will be appointed by the Chair of the Queensland Chapter of the Resolution Institute.
- e. The parties must continue to perform their respective obligations under this Participant Agreement despite the existence of a Dispute.

- f. Nothing in clause 14 will impact on either party's rights to terminate under clause 13 of this Participant Agreement.

15. GENERAL PROVISIONS

- a. The parties acknowledge that they are independent contractors and that nothing in this agreement creates any relationship of partnership or employment between the parties.
- b. A notice required to be given under this Participant Agreement may be delivered by hand or sent by pre-paid post or email to the address of the party indicated in this agreement. Notices are taken to have been served when received, or within 2 business days of having been sent, whichever occurs first.
- c. This Participant 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 Participant Agreement and has no further effect.
- d. This Participant Agreement may only be modified by a written amendment signed by the parties.
- e. This Participant Agreement is governed by the law in force in Queensland. The parties submit to the jurisdiction of the courts of Queensland and any court competent to hear appeals from those courts.

16. DEFINITIONS

Participant Agreement means this agreement including all of its attachments.

Artwork means a visual artwork created by the Participant and approved by the Manager.

EPT refers to a Energex Pad-mount Transformers managed by Council on behalf of the asset owner, Energex. EPTs are large metal boxes mounted on the ground to service underground distribution networks, are located across the city and form part of the electricity network.

Equipment Pack refers to the equipment supplied to paint a TSB or EPT including:

- paint - warm and cool primary colours, undercoat, black and white;
- 3 x safety cones (TSBs) and 4 x safety cones (EPTs);
- 4 x drop sheets (TSBs) and 6 x drop sheets (EPTs);
- 2 x rags;
- disposable mixing palettes;
- key hole and identification plate protectors; and
- a document wallet, containing painting instructions, site setup diagram, photo tips and safety information including paint safety data sheets.

Program is the Artforce Brisbane Public Art Program initiative managed by the Manager on behalf of Council.

TSB refers to a Traffic Signal Box. TSBs are Council owned and operated assets located at road intersections adjacent to traffic.

ATTACHMENT 1: Energex Pad Mount Transformer - Site Safety Assessment Checklist

A copy of this checklist must be kept on-site during painting of an EPT.

Be aware of your personal safety (and those with you) whilst painting the EPT. EPTs connect to high voltage electricity cables that can pose a significant health risk if the EPT is damaged.

The Participant must comply with the technical requirements for artwork on Energex network assets as set out below.

1. Before setting up the site

- a. Confirm address and site identification for the EPT provided by the Manager – Note, some addresses may have more than one asset so checking the site identification is essential.
- b. Complete a visual check of the site. **Do not commence work and report to Energex immediately** if any of the following are present and then contact the Manager within 24 hours to confirm you could not paint the EPT:
 - i. Energex works occurring at the site;
 - ii. potential 'live' parts;
 - iii. rusting metal panels on EPT sites; or
 - iv. any visual or perceived physical, mechanical or electrical abnormality including, but not limited to:
 1. rust holes;
 2. physical damage;
 3. unlocked doors;
 4. evidence of transformer oil leakage; or
 5. electrical shocks or "tingles".

2. During the site set-up

- a. Safety cones are to be positioned around the painting area and kept there at all times as shown on the site setup diagram in the Equipment Pack.
- b. The Participant must set out the EPT painting site or adapt the set-up of their site as closely as possible to the site setup diagram.

3. During painting

- a. **Cease work and report to Energex immediately** if any of the following are noticed while painting the EPT and then contact the Manager within 24 hours to confirm you could not complete painting the EPT:
 - i. potential 'live' parts;
 - ii. rusting metal panels on EPT sites; or
 - iii. any visual or perceived physical, mechanical or electrical abnormality including, but not limited to:
 1. rust holes;
 2. physical damage;

3. unlocked doors;
4. evidence of transformer oil leakage; or
5. electrical shocks or “tingles”

b. **Cease work immediately if lightning or thunder is noticed.**

c. Participants must immediately make way for any emergency road works related to road safety or electrical works related to safety and/or the maintenance of the EPT. In the incidence of an emergency on or around the EPT site, the Participant is required to remove all painting equipment as soon as safely possible and at all times cooperate with the instructions given by authorised workers.

d. Maximum painted height shall not exceed 2.1 metres from ground level.

4. On completion of painting

a. The Participant must tidy the site and remove all materials

b. The Participant must dispose of paint and cleaning materials in an environmentally friendly manner. In particular, no paint or cleaning materials are to be discharged or disposed of into gutters or drains.

5. General

a. The Participant will only undertake work on the specific EPT allocated to the Participant and will not touch/paint any surrounding equipment.

b. No equipment on the network asset is to be removed or manipulated.

c. The Participant will be conscious of, and not do any act or omit to do any act that endangers (or potentially endangers) hinders or interferes with the health and safety of pedestrians walking past or traffic driving past

d. The Participant and all those accompanying the Participant must wear a safety vest at all times whilst at the EPT.

e. The Participant must not be under the influence of, or have onsite, drugs or alcohol.

f. A Participant under 18 years of age must be supervised by a parent or guardian (or an adult authorised in writing by the parent or guardian who signed the Participant’s Agreement) at all times.

g. The Participant must keep a clean and tidy work area at all times.

h. The minimum requirements for safe working outlined above are in addition to the requirements of the *Electricity Act 1994*, *Electrical Safety Regulations*, the *Workplace Health and Safety Act 1995*, the *Traffic Act 1949* and Queensland Transport guidelines for working on roads.

Energex emergency contact details:

Phone: 131 962

Contractor contact details:

Phone: 0428 095 939

Execution

The Manager:

Signed for and on behalf of Artfully ABN 29 010 499 018:

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)
Elizabeth Jackson)
-----)
Name of Authorised Representative) Signature of Authorised Representative
)
)
in the presence of:)
)
)
-----)
Name of Witness) Signature of Witness
)
)
) Date: / /2021

The Participant:

Signed by [insert Participants full name]

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)
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Name of Participant) Signature of Participant
)
)
in the presence of:)
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)
-----)
Name of Witness) Signature of Witness
)
)
) Date: / /2021

OR, in the case the Participant is under the age of 18

Signed by [insert parent/guardian] as the parent or legal guardian of [insert Participant Name]

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Name of parent/guardian) Signature of parent/guardian
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in the presence of:)
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Name of Witness) Signature of Witness
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) Date: / /2020