



12.4 **ARTIST ENGAGEMENT SERVICES CONTRACT VARIATION**

EXECUTIVE MEMBER: **BRIAN TEE, GENERAL MANAGER, CITY GROWTH AND DEVELOPMENT**

PREPARED BY: **JESS HALL, COORDINATOR EVENTS**

1. PURPOSE

- 1.1 To seek approval from Council to adjustment the value of the Artist Engagement Services Contract (000732) increasing the limit of the contract from \$990,000 (Inc. GST) to \$1,138,500 (Inc. GST) over the three-year term ending on 31 May 2024.

2. EXECUTIVE SUMMARY

- 2.1 In certain circumstances, contractors must be paid superannuation when they are deemed to be employees for superannuation purposes. The industry most impacted by these rules are sole trader artists and performers. Council is not set up to manage these payments.
- 2.2 In May 2021 the Chief Executive Officer awarded Auspicious Arts (AA) the three-year 000732 Artist Engagement Services Contract to manage sole trader payments - to pay performer fees, super entitlements, other applicable on costs such as workcover and also provide public liability insurance.
- 2.3 The contract (000732) commenced on 01 June 2021 and is scheduled to run for a three-year period. The contract was awarded for a total value of \$990,000 (Inc. GST).
- 2.4 Council has multiple teams that deliver programs requiring the engagement of creative professionals registered as sole traders. In addition to projects profiled in the Creative and Prosperous City (CPC) Strategy such as the St Kilda Festival, the St Kilda Film Festival and Summer Sessions, the South Melbourne Market events, Graffiti mitigation program and Library Service also regularly require the assistance of Auspicious Arts to manage multiple projects and payments in an efficient and cost-effective manner.
- 2.5 Council, supported by State funding has been delivering more services (festivals, activations and other creative initiatives) to aid the recovery of the creative industry from the impacts of the COVID-19 pandemic. This has increased the expenditure on the contract beyond the original forecast over the three-year period. In addition, paying superannuation on every dollar earned became mandatory from 1 July 2022. Prior to this date, Council was not legally required to pay superannuation if the amount being paid was under \$450. This has increased the estimated expenditure on the contract.
- 2.6 As at February 2023, expenditure over the first 20 months of the three-year term is \$939,650 (Inc. GST) leaving \$50,350 (Inc. GST) for the remaining 16 months of the contract. The monthly spend for artist engagement activities is approximately \$45,000 (Inc. GST).
- 2.7 Council's Procurement Policy allows for increases in the value of contracts up to 15% without undermining the original intent of the contract. This equates to an increase of \$148,500 to the limit of this contract.
- 2.8 It is therefore proposed that Council adjusts the upper limit of the Artist Engagement Services Contract (000732) of the contract from the current limit of \$990,000 (Inc. GST) to \$1,138,500 (Inc. GST) over the three-year term ending on 31 May 2024, to provide additional capacity to deliver artist engagement works.



- 2.9 This report does not seek any budget increase. This report seeks an increase on the permissible upper limit of the spend against the Artist Engagement Services Contract.
- 2.10 Inclusive to the total value of the contract is the 5% commission Auspicious Arts charge on top of the total artist fee. This equates to approximately \$50k paid to Auspicious under the current \$990k contract, with the remaining paid to the sole traders.

3. RECOMMENDATION

That Council:

- 3.1 Approves a variation to increase the threshold value of the Artist Engagement Services Contract 000732 from the currently limit of \$990,000 (Inc. GST) to \$1,138,500 (Inc. GST).
- 3.2 Notes that the increase to the limit of the contract has no budget implications.
- 3.3 Notes that the current contract term finishes in May 2024 and that a competitive market procurement process will commence in 2023 to ensure continuity of service delivery.

4. KEY POINTS/ISSUES

- 4.1 A public tender for Artist Engagement Services was advertised in the Age newspaper 20 February 2021 and closed on 12 March 2021. The Chief Executive Officer awarded contract 000732 Artist Engagement Services under financial delegation on 31 May 2021 for a period of three years.
- 4.2 Council has several teams that deliver on the Creative and Prosperous City Strategy and requires an auspice organisation or a booking agency to manage aspects of design and delivery of creative projects and programs (primarily sole traders). Council's programs include:
- 4.2.1 Grants, including Cultural Development Fund (3 streams of Key Orgs, Festivals and Events and Projects) and Love My Place.
- 4.2.2 Multi art form programming, including live music, public art, performance, access arts
- 4.2.3 Street and precinct activation programs
- 4.2.4 Events and activities at South Melbourne Market
- 4.2.5 Graffiti mitigation - murals
- 4.2.6 Events and activities at various branches of Port Phillip's Library Service
- 4.2.7 Special event projects
- 4.2.8 Community creative engagement
- 4.3 Since the establishment of the contract, an increased number of Council run festivals, activations and creative initiatives were delivered, in accordance with Council's Procurement Policy, through the panel. This has contributed to a higher than anticipated spend against the panel.



- 4.4 To address the higher than estimated spend, a 15% increase on the adjusted contract limit is sought. Council's Procurement Policy allows for an up to 15% increases on the value of a contract without re-approaching the market.
- 4.5 It is therefore proposed that Council adjusts the upper limit of the Artist Engagement Services Contract (000732) increasing the limit of the contract from the current limit of \$990,000 (Inc. GST) to \$1,138,500 (Inc. GST) over the three-year term ending on 31 May 2024.
- 4.6 Making this adjustment to the contract will enable Council to continue to provide artist engagement services.

5. CONSULTATION AND STAKEHOLDERS

- 5.1 Internal departments have been consulted on the factors that have led to the above forecast spend against the Artist Engagement Services Contract.
- 5.2 Improved communication processes between the contract manager and users of the contract will seek to ensure better spend visibility and accountability going forward.

6. LEGAL AND RISK IMPLICATIONS

- 6.1 The proposed adjustments are in-line with Council's Procurement Policy.
- 6.2 If the contract limit is not adjusted, it is likely that Council's artist engagement requirements will exceed the current limit of the contract before the expiry of the contract interrupting the ability for Council to service creative projects. (ie Auspicious Arts will be blocked from further use and alternative means of engaging artists will need to be explored).

7. FINANCIAL IMPACT

- 7.1 The additional funds required can be accommodated within existing budget provisions

8. ENVIRONMENTAL IMPACT

- 8.1 The terms of the contract in relation to environmental performance remain the same.

9. COMMUNITY IMPACT

- 9.1 Services will be impacted if the increase to the contract amount is not approved. An alternative payment option would need to be investigated, approved and administered to ensure Council continues to be compliant with the Superannuation Act.

10. ALIGNMENT TO COUNCIL PLAN AND COUNCIL POLICY

- 10.1 The services delivered under this contract delivers on the Council Plan 2021-31:

Vibrant: with a flourishing economy, where our community and local business thrive, and we maintain and enhance our reputation as one of Melbourne's cultural and creative hubs.

11. IMPLEMENTATION STRATEGY

11.1 TIMELINE

- 11.1.1 Following endorsement, Council officers will implement an amendment to the contract sum in One Council.

11.2 COMMUNICATION

MEETING OF THE PORT PHILLIP CITY COUNCIL
15 MARCH 2023



11.2.1 Internal stakeholders will be advised of this contract extension and reminded to follow the processes set up to increase Council wide visibility and accountability of spend on this contract.

12. OFFICER DIRECT OR INDIRECT INTEREST

12.1 No officers involved in the preparation of this report have any material or general interest in the matter.

ATTACHMENTS **Nil**