

Expression of Interest (EOI) – Sculpture Concept Development

Frankston City Council

Contract Name: Artist Brief – Oliver’s Hill Offshore Sculpture/s

Contract No: EOI 11026

Closing Date & Time: Thursday 8 June 2023 3:00pm

Electronic Quote Box: Electronic (Email) Submissions only to:

ContractsandProcurement@frankston.vic.gov.au

Council Contact Officer: Rebecca Gendron

Contact Email Address: rebecca.gendron@frankston.vic.gov.au

Privacy Statement: Council is collecting this information for the purposes of assessing and awarding a Contract for the works and services. The information will not be disclosed except as required by law and Council Policy and will be retained by Council in accordance with the provisions of the *Public Records Act 1973 (Vic)*.

Council reports presented at Closed Council meetings may include respondent details. You may apply to Council by contacting the Privacy Officer for information about this matter.

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Expression of Interest (EOI) – Sculpture Concept Development

Frankston City Council

Contract Name: Artist Brief – Oliver’s Hill Offshore Sculpture

Contract No: EOI 11026

Part A – Expression of Interest Details & Artist Brief

Part B – Conditions of EOI

Part C – Returnable Schedule

Annexure A – Artists Commissioning Contract

Warning:

Aboriginal and Torres Strait Islander people should be aware that this paper contains images and names of deceased persons.

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Part A – Expression of Interest Details & Artist Brief

1. Background and Context

Frankston City Council is seeking to commission two original sculptures at two sites – offshore at the base of Oliver’s Hill, Frankston foreshore and near the entrance of Sweetwater Creek and Liddesdale Ave, Frankston South.

In consultation with Bunurong Land Council Aboriginal Corporation (BLCAC), the sculptures will depict the story of Bait Banger and his wife Eliza.

Bait Banger was an influential Bunurong man at the time of European colonialization. Although he was known as a clan head for the Bunurong clan, the Kurung-Jang-Balluk, north of Werribee, he lived out the later years of his life on the Mornington Peninsula. Bait Banger was recorded as fishing near Frankston by Europeans. Bait Banger was tall in stature for the 19th century but would be considered only slightly above average in today’s terms (approximately 6 foot).

Whilst fishing on the Mornington Peninsula, Bait Banger would have used a long thin spear. His fishing spear would have been constructed from two pieces of sharpened bone from the leg of a kangaroo, these were then inserted into the stalk of the grass-tree and bound with resin from the grass tree and animal sinews.

Bait Banger would not have been alone, he was often known as being inseparable from his wife, Eliza. It is likely that she would have been collecting shellfish nearby or procuring the abundant terrestrial resources, such as mushrooms and plants that occur along what is now known as Sweetwater Creek.

The sculptures are to depict Bait Banger fishing at the base of Oliver’s Hill on an offshore rock and Eliza collecting plants at Sweetwater Creek.



Figure 1: Portrait of Bait Banger (late 1840s – early 1850s) provided by Bunurong Land Council Aboriginal Corporation (BLCAC)

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This expression of interest seeks to establish a successful shortlist of possible artists and their ability to undertake a **Design and Construct** submission.

The Project is estimated to be awarded in mid-2023, after shortlisting of artists with project development to commence from late 2023 with final delivery by 30 June 2024.

- Shortlisting of submissions will be undertaken by a panel. The panel members consist of representatives from the Frankston Arts Advisory Committee, Bunurong Land Council Aboriginal Corporation (BLCAC) and relevant Council Officers. Artists will be contracted under a standard FCC Artists Commissioning Contract (sample attached as Annexure A).

2. Scope of Contract

Council is seeking submissions of concepts for two sculptures from suitably experienced and qualified Aboriginal and Torres Strait Islander artists currently based in Australia with preference given to Victorian based artists.

The Submissions must take into consideration the following and meet the Specifications (3):

The work shall take its inspiration from the story of Bait Bangar and his wife Eliza, be culturally appropriate and interpret Frankston's First Nations history. Please note that intellectual property pertaining to the story remains the legal property of the BLCAC.

The sculptures shall aspire to be both a major statement by the artist and a celebration of:

- Frankston's First Nation's perspectives;
- A spirit of optimism, which is both bold and uplifting; and
- A significant cultural statement within the history of Australian sculpture.

The artist's key responsibilities will include (but are not limited to):

- Meetings and engagement with Council staff, relevant community members, project stakeholders and contractors throughout the process;
- Design, development, research and materials;
- Creating small maquettes, in addition to life-sized sculptures;
- Designing and coordinating the production of the sculpture's base (if required);
- Site meetings for preparation and installation of the artwork; and
- Other tasks as required.

3. Specifications

- I. The proposed concept and design must conform to Parks Victoria and the Department of Environment, Land, Water and Planning requirements around frangibility, environmental/marine impacts, visual impact and common-sense public sculpture requirements including an appreciation of its location and its public setting;
- II. The work must adhere to the protocols of dealing with specific cultural knowledge and maintain the integrity of the cultural information you have been given permission to use;

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- III. Considerations such as suitable materials, safety and risk will need to inform the design and installation of the work due to its location on the beach and Sweetwater Creek;
 - IV. The work will be installed outdoors and must be built with archivally sound materials with a reasonable maintenance-free life in excess of 20 years and to be maintainable in perpetuity;
 - V. Consideration should be given as to how these sculptures could be lit for evening viewing (although not mandatory);
 - VI. The work must conform to normal engineering standards and specifications, and an engineer's report will be required validating the construction methodology and materials, prior to Construction for the selected artwork commission; and
 - VII. Public liability insurance will need to note DEECA and Council as interested parties and there maybe additional terms provided by Property subject to advice from DEECA.
- VIII. The application must include:**
- IX. brief description of the proposed work;
 - a. sketches and visual documentation adequate to convey the qualities of the proposed work, this may also include computer generated images;
 - b. description of proposed construction method and materials;
 - c. a current artist's CV; and
 - d. images of three recent works by the artist;
 (All care will be exercised but no responsibility is assumed for submitted material – please clearly mark all items with your name.)
 - X. From the initial applications received, a shortlist (maximum of 3 (three)) artists will be selected;
 - XI. Each shortlisted artist will be:
 - a. contracted under a standard Shortlist Artist Agreement (sample attached as **Annexure A**)
 - b. required to provide further concept development; and
 - c. provide preliminary detail relating to construction details and materials;
 - XII. Upon receipt of the concept development from the shortlisted artists, each shortlisted artist will be provided a fee of \$2,000 (GST exclusive); and
 - XIII. The full budget for both the commissioned sculptures, including, artist fees, materials, delivery of sculpture to site, and installation, is anticipated to be a maximum **of \$100,000**. Artists are to take this into consideration when responding to this EOI.

4. Evaluation Criteria

Council will take into account the following criteria in evaluating your EOI listed in descending order of importance:

- ***High level of artist merit – please outline how you will interpret this important Bunurong First Nations story utilising your artistic practice, experience and knowledge ensuring cultural protocols are met - 30%;***
- ***Capability and Capacity including assessment of proposed artwork and its response to the Brief, relevant experience and the ability to produce work with a high degree of technical expertise, including reading and producing technical drawings - 25%;***

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- ***Environmental and OH&S requirements including durability of the design, materials and finishes in relation to weather, vandalism, safety and public liability - 20%;***
- ***Local relatability and expression - 15%; and***
- ***Cost to Council (of the proposed artwork) - 10%.***

It is important that you ensure that your EOI addresses the above criteria, in order for Council to properly assess your EOI.

Council reserves the right to reschedule, postpone or cancel the project, or full implementation at any stage of the outlined process.

5. Specified Timeframe

Task	Targeted Completion Date
Close of EOI	Thursday 8 June
Notification of the shortlist	July – August 2023
Final concept submissions due	August-September 2023
Confirmation of successful Artist	September 2023
Design Development close	November 2023
Construction documentation	January 2024
Construction completion	March - May 2024

6. Submission Deadline

To receive consideration, responses to this Expression of Interest must be received no later than **Thursday 8 June 2023**, via electronic quote box as detailed on the cover sheet to this EOI.

No late EOIs will be considered.

7. Contract attached at Annexure A

- The work must be an original work by the artist;
- Shortlisted artists will assign limited copyright licence to Frankston City Council; and
- The work will remain unique statement of and by the artist, subject to permission by Frankston City Council.

The contract contains the term and conditions under which the shortlisted artists will be engaged.

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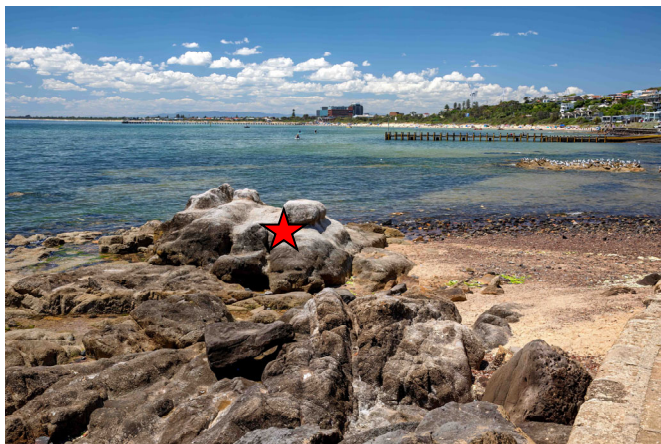
Should you be successfully shortlisted you will be required to sign the attached agreement before proceeding with concept development.

8. Artist Brief

The content of this **Part A** constitutes the Artist Brief.

Images: Proposed locations of sculptures

OLIVER'S HILL



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SWEETWATER CREEK RESERVE (EXACT LOCATION TO BE DETERMINED)



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Part B – Conditions of EOI

1. Conditions of EOI

1.1 EOI

- a) Council invites you to submit an EOI for a sculptural concept on the terms of these EOI Conditions;
- b) All applications will be acknowledged and considered by a panel whose decision is final and no correspondence will be entered into; and
- c) EOI Conditions means these EOI Conditions.

1.2 What if I have questions about the EOI Process?

- a) Submitters should seek any necessary clarification about this process or proposed services/works from Council's designated Council Contact Officer whose name and contact details (email contact only), appear on the front cover of this EOI;
- a. No statement made by a member of Council's staff may be construed as modifying this EOI unless confirmed in writing by Council;
- b) Any advice, in whatever form, given by Council to a submitter for the purpose of clarifying the meaning of, or containing information relevant to the EOI, will also be given to all other submitters in writing unless doing so would reveal commercial-in-confidence information or intellectual property of a submitter or sensitive information relating to a submitter; and
- c) The Council Contact Officer will not respond to any verbal request for clarification regarding the EOI.

1.3 Probity

- a) Council is committed to fairness in all its dealings with submitters. It is possible that people involved in contracting processes may become aware of, or have information indicating corrupt, fraudulent or unfair activity in relation to quoting or contract processes. In these circumstances, please contact Council's Protective Disclosure Coordinator on (Telephone 9293 7150 and ask to speak to the Protective Disclosure Coordinator); and
- b) Alternatively any such matters can be reported to the Independent Broad-based Anti-corruption Commission (IBAC). IBAC is an independent body responsible for investigations into corruption, improper conduct and detrimental action of Government employees and officials. Reports can be made to IBAC confidentially by phone 1300 735 135 or online www.ibac.vic.gov.au.

1.4 Can I discuss the EOI with a Councillor?

- a) You must not discuss the EOI with any Councillor or any Council staff member other than the Council Contact Officer; and

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- b) If you approach a Councillor or Council staff (other than the Council Contact Officer) about the EOI, Council has the right to disqualify you from taking any further part in this EOI process.

1.5 Can I disclose or discuss my EOI with other submitters?

- a) Under no circumstances should you disclose the contents of your EOI with any other party that is submitting an EOI; and
- b) If you disclose or discuss your EOI with any other Submitter, your EOI may be disqualified at Council's discretion.

1.6 What additional information may Council request that I provide?

- a) Council may require that you submit additional information concerning your EOI, which may include further financial information, or information to verify the contents of your EOI; and
- b) If you do not submit such additional information within the time required Council may refuse to consider your EOI.

1.7 What if I am late in lodging the EOI?

Any EOI that is not received by the Closing Date & Time may be considered at the discretion of Council. Council reserves the right to reject any late submission.

1.8 What are Council's rights in considering EOI?

Council may:

- a) refuse to consider any non-conforming or incomplete EOIs;
- b) negotiate with any Submitter including with a preferred Submitter on an exclusive basis;
- c) accept an EOI which does not conform with the terms of the Conditions of EOI;
- d) consider an EOI which was not submitted in accordance with these Conditions of EOI;
- e) terminate the EOI at any time without making an award; or do anything else that Council determines in its absolute discretion; and
- f) invite submitters to attend a presentation session at Council to present their concept.

1.9 What happens if Council accepts my EOI?

If your EOI is accepted by Council, you will be notified in writing.

1.10 Am I entitled to a refund of any costs I incur?

- a) Council will not refund any costs incurred by you in making an EOI; and

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- b) Even if Council terminates the EOI, Council will not be responsible for any costs that you have incurred.

1.11 Confidentiality in EOI

An EOI submitted by you must clearly and expressly identify any confidential information. Confidential information will be treated as confidential by Council.

All those in receipt of this EOI agree in the reading of this material to maintain confidentiality of all information contained herein.

1.12 Use of confidential information

- a) By submitting an EOI you acknowledge and agree and are deemed to acknowledge and agree that any confidential information may be disclosed by Council to third parties for any one or more of the following purposes:
 - I. as required by law;
 - II. to comply with the requirements of any authority;
 - III. to obtain advice from advisers and consultants in connection with the evaluation of the EOI, the Contract or the Services; and
- b) to the extent otherwise expressly stated in this RFT.

1.13 Conflict of Interest

- a) You must immediately advise Council in writing of any actual or potential conflict of interest which may arise:
 - I. by you and Council;
 - II. with any subcontractors proposed by you or Council; or
 - III. between you and any other person; and
- b) Council may decline to consider an EOI submitted by you which it considers may have a conflict of interest in relation to the Services.

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Part C – Returnable Schedule

The submitter must complete the following information and provide any additional information to support their ability to supply the services required.

1.1 Business details

Full company name	
Registered business address	
ABN	
ACN	
Contact person	
Contact telephone	
Contact email	

1.2 High level of artist merit (30%) – please outline how you will interpret this important story of a Bunurong First Nations story utilising your artistic practice, experience and knowledge ensuring cultural protocols are met.

*Add Rows if necessary

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1.3 Capability and Capacity including assessment of proposed artwork and its alignment to the Brief, relevant experience and the ability to produce work with a high degree of technical expertise, including reading and producing technical drawings (25%)

*Add Rows if necessary

1.4 Environmental and OH&S requirements including durability of the design (in a marine environment), materials and finishes in relation to weather, vandalism, safety and public liability (20%)

*Add Rows if necessary

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1.5 Local relatability and expression including community engagement proposed (15%)

*Add Rows if necessary

1.6 Cost to Council – of the proposed artwork (10%)

The submitter should include an estimated cost **(of the proposed artwork) with a** breakdown of costs i.e. Artist Fees, Documentation, Materials, Construction, Transport, Installation

*Add Rows if necessary

GST	
Total	

1.7 Performance on Similar Projects & Referees

The Submitter shall submit details describing their previous relevant experience. Please provide details and a reference for two recent artworks completed that demonstrate relevant experience. Referees should be advised that a member of the evaluation team may contact them with regard to this EOI.

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List of projects demonstrating previous experience, please include any links to websites, images:

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Project 1 & Referee Details	
Contract Name:	
Location:	
Description of Work Performed:	
Client's Name:	
Total Contract Value	\$
Contract Start Date:	
Contract Finish Date	
<u>Contact Details of Client's Representative:</u>	
Name:	
Position:	
Address:	
Phone Number:	
Email address:	

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Project 2 & Referee Details	
Contract Name:	
Location:	
Description of Work Performed:	
Client's Name:	
Total Contract Value	\$
Contract Start Date:	
Contract Finish Date	
<u>Contact Details of Client's Representative:</u>	
Name:	
Position:	
Address:	
Phone Number:	
Email address:	

* Add tables as necessary

1.8 Value Add

Please advise any Value Added Work(s)/Service(s) the Submitting Party would like to offer:

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1.9 Insurance Details

If you are the artist eventually selected from the successful shortlist to have your work commissioned, do you agree to take out Public Liability Insurance? If so, please state the maximum amount you would seek for your Public Liability cover?

Public Liability & Products Insurance

Yes ☐

No ☐

Amount

\$

1.10 Conflict of Interest

If the Submitter has a conflict of interest (or any potential for a conflict of interest) concerning this EOI, details of that conflict or potential conflict are as follows:

1.11 Additional Information

Please attach or enter any additional information the Submitter considers is required to enable evaluation against the evaluation criteria.

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1.12 Concept specifications

Title of work	
Medium	
Size (height x width x depth)	
Approximate weight	
Any special requirements for the work	

1.13 Application checklist

Please return this form with:

- ☐ A current artist's CV
- ☐ Images of three recent works (each labelled with title, date, medium, dimensions in cms)
- ☐ A proposal about the work which you wish to submit
- ☐ An image of the proposed work
- ☐ Preliminary construction details and materials
- ☐ A completed application form
- ☐ A list of items sent

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2.0. Declaration

Having examined the EOI Conditions and the Specifications, together with any schedules and all other documents and information relating to this EOI for the delivery of an artwork concept and submitting the EOI Response Form, we offer the enclosed artwork concept in accordance with the terms and conditions of the Contract documents for the price stated in the EOI.

Signed by or on behalf of the Submitter

Signature:

Name:

Title:

Date:

END OF EOI FORM

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Annexure A Contract

Standard Frankston City Council Shortlisted Artist Agreement attached.

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ARTIST AGREEMENT



THIS AGREEMENT is made on the day of 2023 between:

Frankston City Council

of 30 Davey Street, Frankston, Victoria, 3199

ABN

("the Council")

and

[Insert Name]

of [Insert Address]

("the Artist")

RECITALS

- A. The Council has prepared a brief for the creation of a public artwork (**Artwork**).
- B. Based on the Brief, the Artist has prepared a preliminary design for the Artwork.
- C. The Council wishes to commission the Artist to produce a more detailed design based on the Brief and Preliminary Design.
- D. The Artist has agreed to produce a more detailed design based on the Brief and Preliminary Design on the terms of this agreement.

THE PARTIES AGREE AS FOLLOWS:

TIMEFRAMES

1 Project Timeframes

- 1.1 The Council and the Artist agree to use their best efforts to complete all stages of the process of design of the Artwork that are the subject matter of this agreement (the **Public Artwork Project**) in accordance with the timeline set out in the Schedule or such other dates as the parties agree in writing (**Timeline**).

2 Delay

- 2.1 If there is a delay due to circumstances beyond the control of the parties, including but not limited to non-availability of necessary materials, shipping delays, labour strikes or natural disasters, each party agrees to take all reasonable steps to minimize its losses as a consequence of that delay.

DESIGN DEVELOPMENT

3 The Design

3.1 The Council confirms and agrees that the:

- a. Preliminary Design conforms to, and is consistent with, the Brief;
- b. Brief contains all relevant information relating to the intended lifespan and use of the public artwork contemplated by the Brief (**Artwork**), and
- c. Proposed site where the Artwork will be located is attached to this agreement as Annexure 1 (**Sites**).

3.2 The Artist agrees to:

3.2.1 develop an original design for the Artwork based on the Brief and the Preliminary Design (Design);

3.2.2 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 lifespan, use and location of the Artwork;

and addresses 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;

3.2.3 deliver the Design to the Council on or before the date specified in the Timeline, and

3.2.4 Following receipt of the Design and within the time specified in the Timeline, the Council must either:

- i request changes to the Design in accordance with clause 4 of this agreement;
- ii accept the Design in accordance with clause 5 of this agreement; or
- iii reject the Design in accordance with clause 6 of this agreement.

4 Changes to the Design

4.1 The Council may request a reasonable number of changes to the Design provided that the Council:

4.1.1 requests all such changes in a single written notice to the Artist specifying the changes (**Amendment Notice**) delivered to the Artist on or before the date specified in the Timeline;

- 4.1.2 does not request any change to the Design that is substantially different from the Brief or the Preliminary Design other than changes to the Design required in order to comply with structural engineering requirements specified in the Brief; and
- 4.1.3 pays the Artist a fee for the production of any further design produced by the Artist to address the changes in the Amendment Notice (**Amended Design**) as set out in clause 8.
- 4.2 Within thirty (30) business days of receiving the Amendment Notice, the Artist must either:
 - 4.2.1 prepare an Amended Design and submit it to the Council; or
 - 4.2.2 notify the Council that the Artist is not prepared to modify the Design and outline the reasons why.
- 4.3 Within thirty (30) business days of the Artist submitting an Amended Design, the Council must either:
 - 4.3.1 accept the Amended Design in accordance with clause 5; or
 - 4.3.2 request further changes to the Amended Design by issuing a further Amendment Notice to the Artist (**Further Amendment Notice**) provided that:
 - i the notice does not request changes that are substantially different from the Brief or the Preliminary Design;
 - 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 engineering or occupational health and safety issues or are otherwise required by law, and
 - iv the Council pays the Artist a further fee for the production of any further Amended Design as set out in clause 8.
- 4.4 Within thirty (30) business days of receiving a Further Amendment Notice, the Artist must:
 - 4.4.1 prepare a further amended design and submit it to the Council (**Further Amended Design**); or
 - 4.4.2 notify the Council that the Artist is not prepared to modify the Amended Design and outline the reasons why.
- 4.5 Within thirty (30) business days of the Artist submitting a Further Amended Design, the Council must:
 - 4.5.1 accept the Further Amended Design in accordance with clause 5; or
 - 4.5.2 reject the Further Amended Design in accordance with clause 6.
- 4.6 Within thirty (30) business days of the Artist notifying the Council under clause 4.2.22 or clause 4.4.22 that the Artist is not prepared to make changes to the Design or the Amended Design, the Council must:

- 4.6.1 accept the Design or Amended Design by notifying the Artist in accordance with clause 5; or
- 4.6.2 reject the Design and/or the Amended Design in accordance with clause 6.

5 Acceptance of the Design

- 5.1 The Council may accept the Design, the Amended Design or the Further Amended Design by notifying the Artist in writing.
- 5.2 The Council is deemed to accept the Design, the Amended Design, or the Further Amended Design if the Council does not, within the periods specified in this agreement, either:
 - 5.2.1 expressly accept the Design, the Amended Design or the Further Amended Design in accordance with this clause;
 - 5.2.2 request changes to the Design, the Amended Design or the Further Amended Design in accordance with clause 4; or
 - 5.2.3 reject the Design, the Amended Design and/or the Further Amended Design in accordance with clause 6.
- 5.3 By accepting the Design (or any amended design), the Council agrees that the Design or Amended Design or Further Amended Design is suitable given the intended lifespan of the Artwork and the environment where the Artwork will be located.

6 Rejection of the Design

- 6.1 The Council may reject the Design, the Amended Design or the Further Amended Design by notifying the Artist in writing; and
- 6.2 Where the Council rejects the Design, the Amended Design, or the Further Amended Design the Council must pay the Artist the fee for design development specified in the Schedule (**Design Development Fee**) unless the Design the Amended Design or the Further Amended Design:
 - 6.2.1 was delivered to the Council more than thirty (30) business days after the due date; or
 - 6.2.2 did not conform to, or was substantially different from, the Preliminary Design and the Brief except to the extent such differences were as a result of changes requested in an Amendment Notice or Further Amendment Notice.

ARTIST PAYMENTS

7 Commission Fees

- 7.1 The Council agrees to pay the Artist the total fee specified in the Schedule (**Design Fee**):
 - 7.1.1 upon acceptance of the Design, and
 - 7.1.2 within twenty (20) business days after receiving the Artist's invoice or the design deadline whichever is later.

8 Amendment Fees

8.1 Where the Artist produces an Amended Design or Further Amended Design pursuant to clause 4.2 or clause 4.4, the Council must pay the Artist the fee specified in the Schedule (**Design Amendment Fee**):

8.1.1 upon acceptance of the Design, and

8.1.2 within twenty (20) business days of receiving the Artist's invoice or the design deadline whichever is later.

8.2 Where the Artist amends the Artwork in response to an Artwork Amendment Notice, the Council must pay the Artist the fee specified in the Schedule (**Artwork Amendment Fee**):

8.2.1 upon acceptance of the Design

9 Death or incapacity of the Artist

9.1 In the event of the death or incapacity of the Artist, the Council will pay the Artist or the Artist's estate all Design Fee/s due at the date of death or incapacity.

10 Interest

10.1 10.1 The Council must pay interest on late payments at the rate for the time being fixed by section 2 of the Penalty Interest Rates Act 1983:

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

10.1.2 payable on demand;

10.1.3 accruing daily, and

10.1.4 calculated on the basis of the actual number of calendar days on which interest has accrued and a three hundred and sixty-five (365) day year.

11 Goods and Services Tax

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

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

11.3 The party who receives the GST compliant invoice must pay the amount of GST invoiced at the same time as the amount payable under this agreement.

INTELLECTUAL PROPERTY

12 Title and copyright

- 12.1 The Artist warrants that the Design and the Artwork:
 - 12.1.1 are the Artist's original works;
 - 12.1.2 do not to the best of the Artist's knowledge infringe the copyright or moral rights of any third party, and
 - 12.1.3 are unique works of the Artist developed exclusively for the commission under this agreement.
- 12.2 The parties agree that the Council, subject to payment of the Artist's fees, is the owner of copyright in the Preliminary Design, the Design, any amended design under, or in relation to, this agreement;
- 12.3 Subject to clause 12.5, the Artist assigns the copyright in the Artwork to the Council;
- 12.4 The Council must make all reasonable efforts to ensure that the Artist is attributed in any publication or communication of images of the Artwork by the Council, or
- 12.5 The Council grants to the Artist a non-exclusive royalty free worldwide perpetual licence of the copyright in the Artwork for the purpose of using the images of the Artwork for non-commercial purposes including but not limited to:
 - 12.5.1 the general promotion and marketing of the Artist and their work;
 - 12.5.2 archival purposes, and
 - 12.5.3 and the Artist agrees not to reproduce or use images of the Artwork except for the above purposes.

13 MARKETING, PUBLICITY & DOCUMENTATION

The ARTIST agrees:

- 13.1 The Council shall be responsible for all publicity and advertising in relation to the Artwork and its commission. The extent and nature of such publicity and advertising will be at the sole discretion of Council, and
- 13.2 That no further fee is payable by Council to the Artist in the event of any of the activities listed above.

LIABILITY AND INSURANCE

14 Workers Compensation

- 14.1 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.

15 Public Liability

- 15.1 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, and
- 15.2 The Council 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 Council's premises (including the Site).

16 Insurance policies

- 16.1 During the term of this agreement, the Artist must provide the Council within ten (10) business days of such request with certificates of currency for all required policies of insurance and copies of the receipts evidencing payment of the current premiums;
- 16.2 All premiums necessary to maintain current insurance coverage are to be paid by the Artist at least seven (7) days before the renewal of such premiums fall due;
- 16.3 The Council may do all things necessary to effect and/or maintain such insurance coverage if the Artist fails to maintain insurance as required under this agreement. This clause is not intended to create any obligation on the Council to do so, unless otherwise required by this agreement;
- 16.4 Any moneys expended by the Council for that purpose are repayable by the Artist upon demand, or, may be deducted by the Council from any moneys payable to the Artist, and
- 16.5 The maintenance of insurance as required under this agreement shall not in any way limit the responsibilities and obligations of the Artist.

17 Indemnity

- 17.1 The Artist will indemnify the Council against all losses, liabilities, costs and expenses (including reasonable legal expenses as between solicitor and client) arising out of or in relation to any breach of the Artist's warranty in clause 12.1.

TERMINATION

18 Termination

- 18.1 The Artist may terminate this agreement immediately by written notice to the Council if the Council:
 - 18.1.1 is more than 20 business days late in making any payment under clauses 7, 8, or
 - 18.1.2 is in breach of clauses 5.2, 7 or 10 and has failed to remedy the breach within 20 business days of receiving written notice of the breach.
- 18.2 If a delay under clause 2 has extended more than 6 weeks, either party may terminate this agreement by providing 10 business days written notice to the other party;
- 18.3 This agreement is automatically terminated:

- 18.3.1 if the Council becomes insolvent, is declared bankrupt, has a liquidator appointed or goes into administration, voluntary or otherwise;
- 18.3.2 following rejection of the Design under clause 6; or
- 18.4 In the event of termination under clause 18.1 or 18.3.1, the Artist will be entitled to receive and retain payment of all instalments of the Commission Fee due in the period up to the date of termination;
- 18.5 In the event of termination under clause, 18.1 or 18.3.1, any rights of copyright licensed to, or conferred on the Council under clause 12 will cease immediately, and
- 18.6 If this agreement is terminated at any stage prior to acceptance of the Design, the Artist will:
 - 18.6.1 retain title to, and copyright in, the Preliminary Design, the Design and the Artwork, and
 - 18.6.2 have sole right to complete, exhibit and sell the Preliminary Design, the Design and the Artwork.

19 Disputes

- 19.1 If a dispute or disagreement arises between the Parties in connection with this Agreement (Dispute), neither Party may start any litigation or arbitration in relation to the Dispute until it has complied with this clause;
- 19.2 If a Party believes a Dispute has arisen, it must notify the other Party in writing about the Dispute. The Parties should meet within 21 calendar days after receipt of the notice of dispute and hold good faith discussions to attempt to resolve the Dispute;
- 19.3 If the Dispute is not resolved within 14 calendar days after meeting to attempt to resolve the Dispute, the Parties agree to submit the Dispute to mediation. The parties shall appoint and confer in the presence of an independent mediator to:
 - 19.3.1 identify the subject matter of the dispute;
 - 19.3.2 identify the provisions of this Agreement relevant to the dispute;
 - 19.3.3 discuss each party's position in relation to the dispute;
 - 19.3.4 listen to any comments made by the mediator; and
 - 19.3.5 resolve the dispute by mutual agreement.
- 19.4 The Parties shall mutually agree upon the appointment of the mediator and in the absence of such agreement, the President for the time being of the Law Institute of Victoria shall appoint a mediator to hear the dispute. The mediation will be conducted by the mediator at the time and place agreed between the parties or otherwise nominated by the mediator. The mediation will be conducted in a manner determined by the mediator. The parties agree to attempt to resolve the dispute in good faith. The parties shall bear the costs of the mediation equally;

- 19.5 If the Parties are unable to resolve the Dispute within 14 calendar days of commencing mediation or such later time as may be agreed during the mediation, either Party may refer the matter to arbitration or commence litigation;
- 19.6 The Parties must continue to perform their respective obligations under this Agreement despite the existence of a Dispute, and
- 19.7 Nothing in this clause 19 will impact on either party's rights to terminate under clause 18 of this agreement.

20 General provisions

- 20.1 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;
- 20.2 A notice required to be given under this agreement may be delivered by hand, emailed, sent by pre-paid post or fax to the address of the party indicated at the top of this agreement. Notices are taken to have been served when received, or within two (2) calendar days of having been sent, whichever occurs first;
- 20.3 The Council may assign, subcontract, novate or otherwise divest this agreement or any of the rights or obligations under this agreement upon providing written notice to the Artist. The Artist may not assign, subcontract, novate or otherwise divest this agreement or any of the rights or obligations under this agreement without the Council's prior written consent. This consent must not be unreasonably withheld;
- 20.4 Subject to clause 20.6, 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;
- 20.5 Nothing in this agreement transfers or excludes any applicable cultural rights in favour of Australian Indigenous people that may be implemented under Australian law;
- 20.6 This agreement may only be modified by a written amendment signed by the parties;
- 20.7 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;
- 20.8 This agreement is governed by the law in force in Victoria. The parties submit to the jurisdiction of the courts of Victoria and any court competent to hear appeals from those courts;
- 20.9 A person signing this agreement on behalf of a party to the agreement warrants, by that signing, that they have all the necessary authority from that party to sign this agreement of their behalf;
- 20.10 The following rules of interpretation apply to this agreement unless the context requires otherwise:
- 20.10.1 headings are for convenience only and do not affect interpretation;
- 20.10.2 the singular includes the plural and conversely;

20.10.3 a reference to an agreement or document is to that agreement or document as amended in accordance with clause 20.6.

Signing Page

Executed as an Agreement

Signed by the Artist:

Signature:

Name (PRINT):

Date:

Signed by the Council:

SIGNED by the below officer(s) on behalf of **Frankston City Council** pursuant to the authority granted to the officer in the Instrument of Sub-delegation by the Chief Executive Officer.

Name (PRINT):

Date:

ANNEXURE 1: SITES

1) Offshore Olivers Hill (Exact location to be determined)



2) Sweetwater Creek Reserve (Exact location to be determined)



SCHEDULE

The Sites: Olivers Hill and Sweetwater Creek Reserve

Design Development Fee: \$3000.00 (excluding any Design Amendment Fees)

Design Amendment Fee: \$1000.00

Timeline: Design Development Due November 2023

Project Timeline	Due date for Completion	Design Development Fee
Delivery of Design (clause 3.2)	November 2023	\$3000.00 payable within twenty (20) business days of due date or receipt of artists invoice, whichever is later
Changes to the Design (clause 4)	Within thirty (30) business days of receiving the Amendment Notice	\$1000.00 If applicable, Design Amendment Fee, payable upon issue of the delivery of the amended design
TOTAL:		\$4000.00

The Artist's Agents/Subcontractors:

Name:

Scope of authority:

[insert further names if necessary]

The Council's Agents/Subcontractors:

Name:

Scope of authority: