



MEMORANDUM OF UNDERSTANDING (NON-BINDING)

City of Ballarat

-and-

Ballarat Botanical Gardens Foundation Limited



MEMORANDUM OF UNDERSTANDING (“MOU”)

DATED THIS DAY OF 2020

PARTIES:

1. **City of Ballarat**
 of Sturt Street Ballarat
 (“The City”)

2. **Ballarat Botanical Gardens Foundation Limited**
 of 1 Ascot Street South, Ballarat Victoria
 (“The Foundation”)

BACKGROUND

- A. The Ballarat Botanical Gardens (the garden) are situated within the municipal district of the City of Ballarat.

- B. The City is responsible for the preservation, management, and upkeep of the gardens.

- C. The Foundation is a not for profit foundation established for the purpose of enabling donors to make financial contributions to The Foundation and then applied towards the development of the gardens.

- D. Among its purposes, The Foundation aims to maintain effective relationships with key stakeholders to the gardens and, in particular, The City.

- E. The City and The Foundation are committed to working collaboratively to achieve The Foundation’s purposes so as to ensure viable and sustainable support to the gardens.

- F. This MOU sets out the relationship between the parties as well as the respective rights and responsibilities of each party.



- G. This MOU is not intended to be legally binding but is intended to document the expectations of each party.
- H. Each party respectively is expected to act in good faith in accordance with this MOU and in pursuit of their common goals.

1. PURPOSE

- 1.1 The parties intend to work collaboratively in ensuring that The Foundation can achieve its purpose of sourcing and providing resources to sustain and develop a world class gardens; to ensure that revenue is secured to invest in the protection and development of the gardens for the benefit of the whole community.
- 1.2 In achieving their joint purposes to ensure they effectively manage the relationship between The City and The Foundation.

2. NON-BINDING MOU

- 2.1 The parties acknowledge that the terms of this MOU are not intended to be legally binding; that they are not exhaustive and that nothing in the MOU will be construed as creating any legal relationship between the parties.
- 2.2 The MOU does not create any rights, obligations or duties for any party, but is a statement of intent by the parties and intended to encourage mutual cooperation.
- 2.3 Nothing in this MOU effects any other agreements which may exist between the parties at the date of this MOU or at any subsequent date.

3. CHANGES TO MOU

This MOU may be amended at any time by agreement between the parties made in writing and signed by the parties.



4. GENERAL OBLIGATIONS

- 4.1 Notwithstanding the non-binding nature of this MOU, the parties agree to act in good faith and will use their best endeavours to achieve the overriding purposes and to give effect to the terms of this MOU.
- 4.2 Each party agrees to cooperate in the spirit of mutual understanding and goodwill in order to develop the parties relationship with one another in order to pursue the purposes.

5. CONFIDENTIALITY

- 5.1 The parties acknowledge and agree that in connection with this MOU, they may have access to information that is confidential and/or commercially valuable to one or both of the parties (“Confidential Information”).
- 5.2 The parties acknowledge and agree that they may be both the receiving party in relation to Confidential Information or be a party disclosing Confidential Information.
- 5.3 In relation to Confidential Information, the parties agree to keep such Confidential Information confidential and only use the Confidential Information for the purposes of working in good faith in accordance with this MOU.
- 5.4 The parties agree not to release any Confidential Information to any other party without the prior written approval of the other party.

6. SPECIFIC RIGHTS AND OBLIGATIONS

6.1 Funds Transfer

From time to time The City may be the recipient of gifts and donations intended for The Foundation and The City agrees to advise The Foundation of the receipt of any such funds and to facilitate the transfer of such funds to The Foundation.

6.2 Specific Projects



From time to time the parties may agree on specific projects that they wish to support in the gardens. The parties will develop and collaborate with respect to the identification, support and implementation of such projects.

6.3 From time to time either party may express interest in pursuing a particular project. Without binding either party to adopt such project, the parties otherwise agree to collaborate in reviewing the proposed project and determining their respective interest in support and development for it.

6.4 To further the collaboration of the parties, the parties agree to meet periodically by their appointed representatives at such times and dates as may be agreed.

6.5 Reporting

The Foundation will provide an annual report to The City of its activities and such report will include its audited financial statements.

DATED THIS 29 DAY OF 5 2020

SIGNED SEALED AND DELIVERED

for and on behalf of **City of Ballarat**

in the presence of:

P. Murguand
.....
Witness signature
Peter Murguand
.....
Witness name

[Signature]
.....
Signature
MAYOR CITY OF BALLARAT

SIGNED SEALED AND DELIVERED

for and on behalf of **Ballarat Botanical Gardens**

Foundation Limited in the presence of:

R. J. Selkirk
.....
Witness signature
ROBERT SELKIRK
.....
Witness name

[Signature]
.....
Signature
BBGF CHAIR