



City of  
**Greater Geraldton**  
a vibrant future



## MEMORANDUM OF UNDERSTANDING

<b>Title:</b>	<i>Memorandum of Understanding</i>		
<b>Date Issued:</b>	<i>14 November 2016</i>	<b>Review Date:</b>	<i>24 May 2018</i>
<b>Formulated by:</b>	<i>Ross McKim</i>	<b>Responsibility:</b>	<i>Infrastructure Services</i>

This document represents an agreement between:

**City of Greater Geraldton**

and

**Friends of Geraldton Gardens Inc.**

### DESCRIPTION OF THE COLLABORATING ORGANISATIONS

#### City of Greater Geraldton (CGG):

The City of Greater Geraldton is a Local Government Authority with management responsibilities for the parks and reserves within its City boundaries.

#### Friends of Geraldton Gardens Inc (FroGGs):

FroGGs is an incorporated community group based in Geraldton.

### OBJECTIVES AND SCOPE OF THE COLLABORATION

The purpose of this Memorandum of Understanding (MoU) is to satisfy a Council resolution (July 2016), to facilitate the FroGGs planning, designing, constructing and maintaining Stage 1 of the Maitland Park Botanical Gardens Master Plan as presented to Council. This MoU outlines the terms and undertaking between CGG and FroGGs to complete Stage 1 of the development. This MoU outlines the roles and responsibilities of each organization in relation to the planning, design construction, operation and maintenance of Stage 1 only.

FroGGs, at their cost, will need to undertake this development in accordance with City and State legislative requirements, particularly safety requirements, risk management and holding the appropriate insurances.

At the City's July 2016 ordinary meeting, Council resolved the following

**COUNCIL DECISION MOVED CR ELLIS SECONDED CR REYMOND That Council by Simple Majority pursuant to Section 5.2 of the Local Government Act RESOLVES to:**

1. *ENDORSE the Stage 1 development of Maitland Park as detailed in the Friends of the Geraldton Gardens proposed Master Plan, subject to the following conditions:*
  - a. *that the Friends of Geraldton Gardens fully fund all capital and ongoing maintenance costs associated with the Stage 1 development, including the City's project oversight costs during construction;*
  - b. *that City approve all plant species to be planted in Stage 1, prior to their planting;*
  - c. *that access to the City's Storage situated within the present toilet block be granted, subject to there being no operational need of the City, as determined by the Chief Executive Officer;*
  - d. *that the Council delegates authority to the Chief Executive Officer to draft and sign a Memorandum of Understanding with the Friends of Geraldton Gardens to ensure project details such as insurances, detailed design approval, risk assessments, safety plans, utility access and costs, traffic plans, exit plans are at a standard that is satisfactory to the City;*
2. *LIST the development of further stages of the Maitland Park Master Plan for consideration in a future capital works program; and*
3. *UNDERTAKE further consultation with the Friends of Geraldton Gardens in relation to traffic management, drainage, and other impacts associated with the development of further stages of Maitland Park.*

## **NATURE OF THE COLLABORATION**

### Planning and Design phases:

FroGGs will be required to conduct an Occupational Health and Safety (OHS) risk identification workshop with stakeholders before completion of the design to ensure that the construction, servicing and maintenance and any other requirements are considered.

A Project Health, Safety and Environmental Management Plan (HSMP) shall be subsequently developed by FroGGs to ensure relevant and appropriately scaled safety management specifications are in place.

The HSEMP and its sub-documents will cover all operational hazards identification including, but not limited to:

- Movement of people, equipment and vehicles
- Management of access/egress
- Utilities and services
- Safety inductions
- Emergency response plans
- Protective clothing and equipment (PPE)

Prior to commencement of construction CGG will be given the opportunity to review the HSMP. The construction stage may not commence without approval of the HSMP by CGG.



Detailed design of the project shall be undertaken by a suitably qualified person or organisation. FroGGs will be responsible to engage with the person or organisation and project manage the design process. The detailed design will address such issues as irrigation, drainage, pedestrian traffic, CCTV, crime prevention through environmental design (CPTED), environmental sustainability, and water conservation.

The detailed design will include a layout of stage 1 detailing the set out of the Garden Room (stage 1) including path widths, garden edging details, irrigation details and drainage details. Material details will also be provided. All designs are to be to the relevant Australian Standards and City design standards. The detailed design as well as all plant species to be planted shall be subject to approval from CGG prior to construction proceeding.

#### Construction phase:

A risk registration workshop shall be held prior to any construction activity with the relevant contractors. All construction work shall be undertaken by suitably qualified contractors and sub-contractors who must maintain not less than \$20 million public liability insurance and who shall warrant their work for a period of not less than twelve months. They also need to hold the necessary licences (plant licences, building licences, electrical licences etc). Volunteers are able to undertake minor works that do not require licencing.

FroGGs will be responsible for managing and keeping safe any additional community groups they involve on the site in construction and operational phases.

FroGGs will be responsible for project managing the construction phase. CGG will provide project oversight. The City will provide a suitably qualified officer as a contact for FroGGs who will also oversee the project.

#### Operational / Maintenance phase:

Ongoing maintenance of the constructed gardens and any infrastructure installed by FroGGs will be the responsibility of FroGGs. FroGGs shall submit a maintenance plan to CGG every six months outlining planned maintenance to the gardens and any associated facilities.

CGG will continue to maintain the remainder of Maitland Park outside of the stage one Garden Room. CGG will not maintain any parts of stage 1.

Any safety events, (accidents, near misses), damages or vandalism shall be reported to CGG immediately. CGG will then appoint an officer to investigate further to determine if any mitigation actions are required.

The HSMP shall be periodically reviewed and kept up to date during the operation of the project.

## **WATER USE**

There is one low yield bore in Maitland Park with high salinity. This bore will not be available to FroGGs.

Scheme water flows into the park near the toilet block and kiosk. FroGGs will be required to install a sub-meter and the necessary water pipe (according to standards) to transport the water to their development.

All installation and maintenance of the irrigation connected after the sub-meter will be the responsibility of FroGGs.

## **SITE INDUCTION**

During the construction phase of this project, all paid and unpaid workers and visitors are to be inducted onto the site.

## **DISABILITY ACCESS**

All phases of this development are to consider and provide for disability access in accordance with legislative requirements and Australian Standards.

## **TERMS OF THE AGREEMENT**

This MoU will be in place for the entire planning, design, construction and operation/maintenance phases of Stage 1 of the project.

## **ORGANISATION, COORDINATION AND MANAGEMENT OF THE AGREEMENT**

### **City of Greater Geraldton:**

#### **Project Contact:**

- Ms Wendy Payne
- E-mail: [wendyp@cgg.wa.gov.au](mailto:wendyp@cgg.wa.gov.au)

#### **Project Sponsor:**

- Mr Ross McKim – CGG Director Infrastructure Services
- E-mail: [Rossm@cgg.wa.gov.au](mailto:Rossm@cgg.wa.gov.au) Telephone: (08) 9956 6633

### **Friends of Geraldton Gardens Inc.**

- Mr Stan Maley – FroGGs Secretary
- E-mail: [stan8@wn.com.au](mailto:stan8@wn.com.au) Telephone: 0428 230 029

All correspondence related to this project is to come through the City's general enquiries systems marked attention to Wendy Payne. Ms Payne will then coordinate any information requirements within the City. After hours, the City can be contacted through its afterhours number.

FroGGs will need to provide the City with a brief report every six months from the date of signing this agreement detailing progress and issues. The report is to provide sufficient information to satisfy the City's requirements.

The City will store these reports and all information associated with this project within its record management system.

## **RESOURCES AND FACILITIES**

### **Kiosk:**

Use of the kiosk will be made available to FroGGs by CGG. A lease agreement for the use of the facilities will be set up between CGG and FroGGs. The agreement will cover all issues related to maintenance, intended use, sharing of facilities and cost. All regulatory requirements shall be adhered to by FroGGs when utilising the kiosk and toilet block.

### **Health and Safety:**

Worksafe WA templates are available free of charge on the Department of Commerce website.



## **FINANCIAL ARRANGEMENTS**

### Funding:

It has been resolved at an ordinary meeting of Council on 26 July 2016 that FroGGs will fully fund all capital and ongoing maintenance costs associated with Stage 1 of the development. This will include the cost for CGG to provide project oversight during construction, water costs, electricity costs and any other costs associated with the project.

## **ABORIGINAL HERITAGE**

FroGGs are to ensure that the development of stage 1 does not interfere with or damage any Aboriginal significant sites such as song lines. FroGGs are to include management of this issue in their planning phase and are to provide evidence that this issue has been adequately dealt with (must comply with the Aboriginal Heritage Act 1972 and Aboriginal Heritage Regulations 1974).

## **PROJECT PRESENTATION AND HOUSE KEEPING**

The location of Stage 1 is adjacent to Cathedral Avenue, which is a major transport corridor into Geraldton. As such, it is expected that the area be well presented at all times (tidy housekeeping).

## **DAMAGE / REMOVAL OF EXISTING TREES SHRUBS / PARK FURNITURE**

No existing trees, shrubs, or park furniture is to be removed or damaged by FroGGs without the prior written consent of the City. This includes the existing stands of trees near the proposed stage one garden room.

## **NON COMPLIANCE**

If the City observes any non-compliances with this MoU, with safety and environmental or operational requirements, the City will either advise FroGGs verbally and in writing if the non-conformance is minor. If a major non-conformance is observed or a serious safety issue occurs, the City reserves the right to direct FroGGs to cease work until the matter is rectified.

## **PROJECT CONCLUSION**

It is possible that at some time in the future, FroGGs are unable to sustain the project.

If CGG identifies that FroGGs is no longer maintaining the site, it reserves the right to remove or modify the development (subject to Council decision). The City will determine that FroGGs are no longer able to maintain the site if their membership reduces to a point that they can no longer maintain the gardens or are no longer submitting project updates or are no longer maintaining the required insurances.

## **MAITLAND PARK EVENTS**

Maitland Park is used by various community groups for special events. Some are facilitated by the City. Some are independent of the City. FroGGs are to work cooperatively with the events that include the regular markets held in the park, Harmony Day, Carols by Candle Light etc.

## **INTELLECTUAL PROPERTY**

All project designs, plans and documentation are to be provided to the City and become the property of the City. These are to be provided to the City at no cost to the City.

## **DISPUTE SETTLEMENT**

Should any dispute arise concerning any matter referred to in this Agreement or arising out of it, a resolution shall be sought by discussion between the FroGGs and the City. If agreement is not reached the dispute shall be referred to two arbitrators, one appointed by each party. If the arbitrators are unable to agree the dispute will then be referred to an umpire selected by the arbitrators. No further action or suit will be brought by either party until the award has first been made by the arbitrator or the arbitrators' umpire.

## **MEMORANDUM REVIEW**

This document can be reviewed and amended if both parties are in agreement.

## **LIMITS OF RESPONSIBILITY AND LIABILITY**

The City of Greater Geraldton will not be liable for any loss or damage (including consequential loss or damage), however caused, which may arise under this MoU.

### Insurance:

FroGGs will be required to provide evidence of insurance covering the following as a minimum:

- Public Liability to at least \$10,000,000, naming the City.
- Personal protection (volunteers and workers)

FroGGs will be liable for all claims arising from their installations (gardens, structures, pathways etc).

Construction of this project cannot commence until FroGGs provides CGG with sufficient documentation to verify that these insurance requirements are in place.

## **SECURITY, CONFIDENTIALITY AND PRIVACY**

The MoU Partner agrees to comply with the Information Privacy Principles set out in section 14 of the *Privacy Act 1988* in respect of personal information received, created or held by the MoU Partner in connection with this MoU, as if the MoU Partner were an agency as defined in the *Privacy Act 1988*.

The MOU Partner agrees to comply with the provisions of the Freedom of Information Act and advise and acquire the authorisation of the City of Greater Geraldton to release and or disclose information under this MoU.

This clause shall survive the termination or expiry of this MoU.

## **SCHEDULES AND/OR APPENDICES AND/OR RELEVANT DOCUMENTS**

Kiosk Lease Agreement

Council Decision – 26 July 2016





City of  
**Greater Geraldton**  
a vibrant future



**AUTHORISED SIGNATORIES**

**CITY OF GREATER GERALDTON**

SIGNED: \_\_\_\_\_

Date 13 / 7 / 18

NAME: \_\_\_\_\_

David Emery

POSITION: \_\_\_\_\_

Acting Director Infrastructure Services

**FRIENDS OF GERALDTON GARDENS**

SIGNED: \_\_\_\_\_

Date 22 / 6 / 2018

NAME: \_\_\_\_\_

STANLEY M MALEY

POSITION: \_\_\_\_\_

FOUNDER AND ACTING SECRETARY

**CITY OF GREATER GERALDTON**

SIGNED: \_\_\_\_\_

Date 23 / 7 / 2018

NAME: \_\_\_\_\_

ROSS ROBERT MCKIM

POSITION: \_\_\_\_\_

CHIEF EXECUTIVE OFFICER

SIGNED: \_\_\_\_\_

Date 23 / 7 / 2018

NAME: \_\_\_\_\_

STAN VAN STYV

POSITION: \_\_\_\_\_

MAYOR