

8 March 2005

**MEMORANDUM OF UNDERSTANDING 2004/08 BETWEEN
CITY OF MELBOURNE AND RECONCILIATION VICTORIA
INCORPORATED**

Division Assets & Services

Presenter Colleen Lazenby, Manager Community Support

Purpose

To seek endorsement of a proposed new Memorandum of Understanding (MOU) between the City of Melbourne and Reconciliation Victoria Incorporated (Attachment 1) for a term of four years. The MOU sets out the terms of a reconciliation partnership which would allow Council to identify and celebrate the unique and enduring place of Indigenous people in Victorian society and culture.

Time Frame

The Memorandum of Understanding between the City of Melbourne and Reconciliation Victoria would be for a term of four years from the date of signing to June 2008.

Finance

The four year Funding Agreement (Attachment 2) is made in response to a request for funding from Reconciliation Victoria, and would be for the sum of \$20,000 (subject to CPI increase) for each financial year of the agreement.

Legal

The recommendation contained in the report is within the functions and powers of the Council under the *Local Government Act 1989* ("the Act"). Legal advice has been provided in relation to the Memorandum of Understanding.

Sustainability

The Memorandum of Understanding between the City of Melbourne and Reconciliation Victoria would assist in facilitating the City of Melbourne's role in reconciliation within the local government sector. The collaboration between the parties would contribute to increasing the national reputation of Council's role in service provision within the municipality and as leaders in capital city management.

The *City of Melbourne Act 2001* includes the objective of ensuring a proper balance within its community between economic, social, environmental and cultural considerations, within the context of the City of Melbourne's unique capital city responsibilities. The Agreement would assist the Council to address Indigenous cultural considerations in the municipality.

The City of Melbourne and Reconciliation Victoria recognise the need to work in concert to develop better designed, targeted and locally customised solutions (including those related to service delivery) for Aboriginal and Torres Strait Islander peoples in the City of Melbourne.

The Agreement has been developed with a view towards annual planning for cultural activities during Reconciliation Week. The proposal would encourage greater participation in cultural activities and stakeholders' participation in Council's decision making processes as it promotes advocacy by and on behalf of the Indigenous community. The collaboration between the parties is in accordance with a Council strategy to '*implement strategies to deliver excellence in customer service, good governance, participation and consultation*'.

The Agreement will help facilitate the acknowledgement of Indigenous cultural heritage through its recognition that Aboriginal people are the original custodians of the land on which the City was established and:

- have a unique status as the descendants of Australia's first people;
- have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria; and
- continue to make a unique and irreplaceable contribution to the identity and well-being of Melbourne.

Recommendation

That the Community and Culture Committee recommend that Council:

- approve the execution by the Lord Mayor of the Memorandum of Understanding between the City of Melbourne and Reconciliation Victoria (attachment 1) for a term of four years;
- by instrument of delegation sealed by the Council under Section 98(1) of the *Local Government 1989* ("the Act") delegate to the Chief Executive, or the persons from time to time acting in that position, the authority to negotiate and enter into a four year agreement with Reconciliation Victoria Inc. to provide funding of \$20,000 per financial year indexed in accordance with CPI for the term of the agreement generally in accordance with attachment 2 to the Management Report;
- under Section 98(3) of the Act, authorise the instrument of delegation to the Chief Executive, or the persons from time to time acting in that position, to empower him or her to delegate any power, duty or function delegated to him or her under the paragraph above, to a member of Council staff; and
- resolve that the instrument of delegation referred to in the second dot point of the Management Report will cease and be of no further effect upon the execution of the agreement.

Attachments:

1. [Memorandum of Understanding between the City of Melbourne and Reconciliation Victoria Inc](#)
2. [Melbourne City Council and Reconciliation Victoria Inc Funding Agreement](#)

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Background

2. On 6 May 2003 the Environment, Community and Cultural Development (ECCD) Committee approved the execution by the Lord Mayor of the Memorandum of Understanding between the City of Melbourne and Reconciliation Victoria to progress a number of activities.
3. On 30 May 2003 the Lord Mayor signed a Memorandum of Understanding with Reconciliation Victoria for a period of twelve months.

Issues

Memorandum of Understanding

4. Reconciliation Victoria is the state representative of Reconciliation Australia. Its main purpose is to encourage active appreciation of and participation in the advancement of Reconciliation between all Victorians. The forging of relationships and partnerships is a key role identified for Local Government Associations in advancing reconciliation objectives.
5. The development of the Memorandum of Understanding is part of the City of Melbourne's commitment to reconciliation with Aboriginal and Torres Strait Islander communities.
6. The new partnership Agreement for 2004 to 2008 (Attachment 1) will emphasise opportunities for mutual benefit, underpinned by Council's experience of 2003/2004.
7. Both parties are committed through the Agreement to providing leadership, education and customised programs to ensure:
 - 7.1. respect for the diversity of cultures, and the rights of all living in the City of Melbourne;
 - 7.2. increased understanding of Indigenous rights and heritage; and

- 7.3. recognition of the unique status of Indigenous peoples within the City of Melbourne.
8. Reconciliation Victoria's role includes advising the City of Melbourne of the range of opportunities, issues, and concerns regarding reconciliation within the community, and ensuring that the City of Melbourne's actions are aligned with the broader reconciliation movement.
9. The Agreement will assist in facilitating the City of Melbourne's role in the local government sector in this area and commits the Council to advocating for the inclusion of the reconciliation theme in the Commonwealth Games agenda.
10. The Agreement has been developed with a view towards planning for Reconciliation Week (May 27 to June 3 2005), which will include joint City of Melbourne and Reconciliation Victoria events, as well as those of other groups. It is anticipated that the finalisation of the Agreement will enable the opportunity for promotion of its objectives during Reconciliation Week.

Funding Agreement

11. On 23 December 2004 the Co-Chairs of Reconciliation Victoria requested funding for an extended period to continue working in partnership with Council to achieve the following outcomes:
 - 11.1. organise activities to be held during Reconciliation Week 2005 of a similar type to those developed by Council in previous years;
 - 11.2. explore the opportunity for flying the Aboriginal flag permanently;
 - 11.3. explore the possibility of a collaborative arts-based project on the theme and nature of "reconciliation";
 - 11.4. work together towards the revision of the City of Melbourne's Statement of Commitment;
 - 11.5. explore opportunities for the development of a cultural centre on a site of significance;
 - 11.6. explore the possibility of including the reconciliation theme in the Commonwealth Games agenda; and
 - 11.7. increase the promotion of reconciliation within the local government sector.
12. The Council, in the performance of its functions, proposes to contribute funds to assist Reconciliation Victoria to employ a project officer to assist in the fulfilment of Reconciliation Victoria's role in the collaboration between the parties as outlined in the Memorandum of Understanding.
13. The four-year duration of the proposed Funding Agreement reflects the importance of the proposed partnership in furthering Council's ongoing commitment to the advancement of reconciliation between all Victorians. It would also enable longer term strategic planning between the parties.

Relation to Council Policy

14. The four-year duration of the proposed Funding Agreement is in accordance with the first of the *Melbourne Principles of Sustainable Cities* which emphasises 'long-term planning for intergenerational social, economic and political equity'.

15. The Memorandum of Understanding between the City of Melbourne and Reconciliation Victoria would assist the Council towards its objective (as defined in the *City of Melbourne Act 2001*) of ensuring a proper balance within its community between economic, social, environmental and cultural considerations, within the context of the City of Melbourne's unique capital city responsibilities.
16. The proposed collaboration between the parties is in accordance with Council's Strategic Objective to be a well managed and leading corporation; to 'implement strategies to deliver excellence in customer service, good governance, participation and consultation'.
17. The collaboration between the parties would also contribute to this objective by increasing the national reputation Council's role in service provision to Indigenous communities within the municipality and as leaders in capital city management.
18. The City of Melbourne's Statement of Commitment to Indigenous Australians states that:

"The Council recognises the valuable contribution to Victoria made by Koorie people and will work towards a future of mutual respect and harmony"; and that

"Advocacy on behalf of indigenous members of our community to ensure the principles and commitments of this statement are upheld."

Consultation

19. Discussions between Reconciliation Victoria and Senior Council officers have formed the basis of this Agreement which follows from the 2003/2004 Agreement. The draft Agreement as attached is deemed acceptable to both parties.

Government Relations

20. Council will seek to engage the Office of the Commonwealth Games Co-Ordination (Department for Victorian Communities) to assist in the implementation of the relevant section of the Agreement as required for delivery of the Games in 2006.

Recommendation

21. That the Community and Culture Committee recommend to Council:
 - 21.1. approve the execution by the Lord Mayor of the Memorandum of Understanding between the City of Melbourne and Reconciliation Victoria (attachment 1) for a term of four years;
 - 21.2. by instrument of delegation sealed by the Council under Section 98(1) of the *Local Government 1989* ("the Act") delegate to the Chief Executive, or the persons from time to time acting in that position, the authority to negotiate and enter into a four year agreement with Reconciliation Victoria Inc. to provide funding of \$20,000 per financial year indexed in accordance with CPI for the term of the agreement generally in accordance with attachment 2 to the Management Report;
 - 21.3. under Section 98(3) of the Act, authorise the instrument of delegation to the Chief Executive, or the persons from time to time acting in that position, to empower him or her to delegate any power, duty or function delegated to him or her under the paragraph above, to a member of Council staff; and

- 21.4. resolve that the instrument of delegation referred to in the second dot point of the Management Report will cease and be of no further effect upon the execution of the agreement.



Memorandum of Understanding between The City of Melbourne and Reconciliation Victoria Inc.

Parties

The parties to this memorandum of understanding ("Agreement") are the City of Melbourne and Reconciliation Victoria Incorporated.

Objective/Purpose

The parties recognise the need to work in concert, with mutual respect, to develop better designed, targeted and locally customised solutions for Aboriginal and Torres Strait Islander peoples in the City of Melbourne.

The parties are committed to providing leadership, education and targeted programs to ensure:

- **Respect** for the diversity of cultures, and the rights of all living in the City of Melbourne;
- Increased understanding of Indigenous **rights** and heritage; and
- **Recognition** of the unique status of Indigenous peoples within the City of Melbourne.

Statement of Recognition

The parties are committed to the following principles (derived from the recent amendment to the State *Constitution Act (Vic) 1975*):

- The City of Melbourne acknowledges that the settlement of Melbourne occurred without proper consultation, recognition or involvement of the Aboriginal people of the area;
- The City of Melbourne recognises that the Aboriginal people of the Melbourne area are the original custodians of the land on which the City was established and:
 - (a) have a unique status as the descendants of Australia's first people; and
 - (b) have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria; and
 - (c) continue to make a unique and irreplaceable contribution to the identity and well-being of Melbourne.

The Agreement

This Agreement identifies how the parties will work together to achieve the outcomes detailed in the request for funding, with a focus on working towards better results for Aboriginal and Torres Strait Islander peoples in the City of Melbourne and in accordance with the terms of the funding agreement.

Shared Principles

In achieving the objective the parties are committed to the following principle s:

- Equity;
- Diversity;
- Inclusion;
- Empowerment; and
- Respect and recognition of shared histories.

Roles and responsibilities

Reconciliation Victoria agrees to:

- Work in partnership with the City of Melbourne;
- Present the City of Melbourne with a diverse range of perspectives on reconciliation;
- Provide the City of Melbourne with an expert perspective on reconciliation;
- Provide the opportunity to ensure that the City of Melbourne’s actions are aligned with the broader reconciliation movement;
- Advise of and share with the City of Melbourne the range of opportunities, issues, and concerns regarding reconciliation within the community; and
- Support the City of Melbourne’s reconciliation activities.

City of Melbourne agrees to:

- Develop a leadership role in the local government sector;
- Identify and pursue opportunities to present on reconciliation;
- Commit to promoting awareness of reconciliation within Council;
- Develop a co-ordinated response across a range of Council areas to pursue the reconciliation agenda;
- Aim to increase reconciliation initiatives within Council planning and documentation;
- Advocate for the inclusion of the reconciliation theme in the Commonwealth Games agenda;
- Support the objectives of Reconciliation Victoria and those of the partnership through their reconciliation activities;
- Advise of relevant internal policy issues and their implications for Reconciliation Victoria; and
- Assist with the implementation of the outlined outcomes.

Protocols for Working Together

- The parties agree to form a Steering Group and a Working Group to ensure the following functions are carried out:

Terms of Reference

Purpose of the **Steering Group**: to oversee the implementation and monitoring of this Agreement. This body will meet quarterly for the duration of the Agreement.

- Membership: the Steering Group will include a representative of the executive management team of Community Services, the Co-Chairs of Reconciliation Victoria, and an Officer from each of the Parties.
- Quorum of the Steering Group is considered to exist if one of the Chairs of Reconciliation Victoria, the management representative of the City of Melbourne, and an officer from either of the Parties are in attendance.

Purpose of the **Working Group**: to implement the outcomes outlined in the request for funding in accordance with the terms of the funding agreement, measure progress, work towards achieving improvements and report on the success of activities in a transparent manner. This body is to meet six-weekly for the duration of the Agreement.

- The Working Group will provide an annual report regarding progress towards achieving the Agreement's priorities to the City of Melbourne and Reconciliation Victoria.
- Membership: the Working Group will be composed of Officers of each of the Parties.
- The parties may agree to jointly establish other working arrangements as required to assist in the implementation and monitoring of this Agreement.
- Additional resources will be negotiated on an as needs basis by each organisation to implement the joint initiatives.

Dispute Resolution

In the event of any dispute or difference arising between the Council and Reconciliation Victoria in respect to the Agreement, it is agreed that an Executive representative from Council will meet with a Co-Chair/s of Reconciliation Victoria in order to seek mutual resolution and agreement in relation to the dispute.

Signed by:

Lord Mayor John So
City of Melbourne

Signed by:

Prof. Eleanor Bourke/ Bernie Millane
Reconciliation Victoria

MELBOURNE CITY COUNCIL

and

RECONCILIATION VICTORIA INC.

2004 – 2008

Funding Agreement

THIS AGREEMENT made the day of 2005

BETWEEN

MELBOURNE CITY COUNCIL a body corporate established under the Local Government Act 1989 and the City of Melbourne Act 2001 of Town Hall, Swanson Street, Melbourne ('the Council');

and

RECONCILIATION VICTORIA INC. of Ross House Flinders Lane, Melbourne ('Reconciliation Vic.').

INTRODUCTION

- A. The City of Melbourne Act 2001 includes the objective of ensuring a proper balance within its community between economic, social, environmental and cultural considerations within the context of the City of Melbourne's unique capital city responsibilities. The Council has functions under the Local Government Act 1989 to provide equitable and appropriate services for the community and to ensure that those services are managed efficiently and effectively. The Council has the power under the Act to do all things necessary or convenient to be done for or in connection with the performance of its functions.
- B. The main purpose of Reconciliation Vic. is to encourage active appreciation of and participation in the advancement of Reconciliation between all Victorians.
- C. This Agreement constitutes the entire agreement between the parties as to its subject matter; and in relation to that subject matter supersedes any prior understanding or agreement between the parties and any prior condition, warranty, indemnity or representation imposed given or made by a party.
- D. This Agreement is made in response to the 'Request for Funding' from Reconciliation Vic. (Annexure A) and in anticipation of the finalisation of the Memorandum of Understanding ('MOU'), a draft of which is annexed (Annexure B).
- D. The Council, in the performance of its functions, wishes to contribute funds to assist Reconciliation Vic. to employ a project officer to assist in the fulfilment of Reconciliation Vic.'s role in the collaboration between the Parties as outlined in the MOU.
- E. The Parties wish to enter into an Agreement setting out the terms on which the Council will provide funds to Reconciliation Vic.
- F. The MOU clearly defines the respective roles and responsibilities of the Council and Reconciliation Vic. in the management, development and direction of the collaboration between the parties.
- G. The 'Request for Funding' outlines the intended outcomes of the collaboration between the Parties.
- H. The Parties will participate in an evaluation of the project's outputs and outcomes as a part of this Agreement.

THE AGREEMENT

Defined Terms

In this Agreement, unless the context indicates otherwise:

“Memorandum of Understanding (‘MOU’)” means the Memorandum of Understanding between The City of Melbourne and Reconciliation Victoria Inc.

“Financial year” means the period of twelve months ending on 30 June, 2005.

“Grant funds” means an operational grant as specified in clauses 2 to 4 of this part of the Agreement.

“Operating requirements” means the requirements specified in the ‘Request for Funding’.

“Service Incident” refers to an event, or a series of events, which contribute to injury, disease, property damage, environment harm or a complaint or comment from the community or other person.

“Terms of the Agreement” means the period from the date of signing of this agreement until June 30, 2008.

Contribution of Funds

1. The Council will contribute funds to Reconciliation Vic. to employ a project officer to assist in the fulfilment of Reconciliation Vic.’s role in the collaboration between the Parties in accordance with the annexed documents entitled ‘Request for Funding’ (Annexure A) and ‘Memorandum of Understanding’ (Annexure B).
2. The four year Funding Agreement with Reconciliation Vic. will be for the sum of \$20,000 (GST exclusive) for each financial year with indexation subject to resource availability, in accordance with the CPI adjustment each financial year for the years 2004 – 2008.
3. The Council agrees to pay the grant funds in advance in two equal instalments on a six monthly basis during the terms of the agreement.
4. The Council will review the manner in which Reconciliation Vic. has employed the funds within three months prior to the expiration of this Agreement. This review will take place by 30 March 2008.
5. The Council has no obligation to make payments to Reconciliation Vic.:
 - i. after the expiry or early termination of this Agreement: or
 - ii. if the Council does not appropriate funds.

The Use of the Funds

6. Reconciliation Vic. must use the grant money to employ a project officer to assist in the fulfilment of Reconciliation Vic.’s role in the collaboration between the Parties in accordance with the ‘Request for Funding’ (Annexure A) and ‘Memorandum of Understanding’ (Annexure B).
7. Council has responsibility for the administration of the collaboration. However, all obligations and responsibilities arising out of this Agreement are shared between Council and Reconciliation Vic. In particular:

- (a) Reconciliation Vic. will auspice the collaboration in the manner proposed in the Request for Funding;
- (b) Reconciliation Vic. will not abrogate its responsibility to auspice the project to any other party and will remain solely responsible for the application of the funds as set out in the Request for Funding;
- (c) Reconciliation Vic. will at all times during the collaboration comply with Council policies relating to Indigenous people and with the intention of this Agreement as referred to in the Request for Funds.

Continuity of Reconciliation Vic.'s Objectives and Legal Status

- 8. Reconciliation Vic. represents and acknowledges its statement of Purpose as specified in clause B, a copy of which has been made available to Council.
- 9. Reconciliation Vic. will not amend its statement of Purpose without prior consent of Council.

Financial Reporting and Management

- 10. Reconciliation Vic. must use the funds in a financially responsible manner and must balance income and expenditure over a financial year.
- 11. Whenever requested by the Council, Reconciliation Vic. must provide to the Council a financial statement in a form specified by the Council.

Accountability Statements

- 12. Within 90 days after the end of each financial year Reconciliation Vic. must provide to the Council:
 - 13.1 A statement, in the format requested by the Council, of income and expenditure relating to the programs for the financial year and a balance sheet of assets and liabilities.
 - 13.2 A statement, in the format requested by the Council, signed by two senior office bearers of Reconciliation Vic. which states that:
 - the information provided is a true and correct record for the financial year;
 - all funds received in respect of the project have been used for the purpose for which they were received; and
 - all requirements of this Agreement have been observed.
 - 13.3 Reconciliation Vic. must provide the Council with a written report of the project deliverables in accordance with the reporting requirements, set out in the 'Request for Funding'.
- 13. The nominated representatives of the Steering Group are to meet quarterly and at other times considered necessary to review and respond to issues relating to the auspice of the project and the use of the grant funds.

Timing of Contributions

14. If Council has not approved the proposed annual budget by 1 July, the first instalment for that year shall be the same amount paid by the Council in the previous instalment. Further instalments shall include any adjustment to ensure the two instalments together equal the full amount to be paid by Council for that financial year.

Review Process

14. A review of this Agreement may be requested at any time by either party upon written notification of such request to the other party.
15. The Working Group will provide an annual report regarding progress towards achieving the priorities of the collaboration between the parties to the Steering Group and Council.

Access and Equity

16. Reconciliation Vic. must ensure that the project's activities are inclusive of diverse cultures, language and faith groups and in doing so is sensitive to the values, norms and needs of those communities.

Service Incidents

17. Incident reports are to be supplied according to critical and non critical issues. The critical incidents are to be responded to, resolved (if possible) and reported to Council within 24 hours.
18. Incident reporting relevant to Occupational Health and Safety requirements is to occur on a monthly basis in accordance with Clause 22.
19. Non critical incidents are to be responded to and resolved to the satisfaction of all involved. All issues are to be written into the service report for discussion at the quarterly review meeting, held with the Council's representative.
20. Incidents reported to Council regarding the quality of the project will be documented and forwarded to Reconciliation Vic.

Occupational Health & Safety

21. The Council must comply with the Occupational Health and Safety Act 1985 and is therefore obligated to provide and maintain, so far as is practicable, a working environment for its employees and members of the public that is safe and without risk to health. As a condition of this Agreement, Council requires that any service that is engaged to perform a service on its behalf will at all times comply with the Occupational Health and Safety Act 1985 and Provisional Improvement Notices and Prohibition Notices issued under that Act; the Dangerous Goods Act 1985; and other relevant legislation, regulations, local laws, and by-laws, codes of practice, Australian Standards, and any policies and procedures of the Council applicable to the performance of the Services. Reconciliation Vic. must provide and maintain a working environment, systems, procedures and practices necessary for the health and safety of all persons including service employees, the Council's employees and members of the public who may be affected by the service. To meet the requirements of the Agreement Council requires Reconciliation Vic. to develop and implement an OH&S Plan.
22. Reconciliation Vic. is to inform itself of all Occupational Health and Safety policies, procedures or measures implemented or adopted by the Council and/or the occupiers of any premises at or within which the service will perform works under this Agreement.

Reconciliation Vic. is to comply with all such policies, procedures or measures, and in the event of any inconsistency, will comply with such procedures or measures as they produce the highest level of health and safety. Council's Guidelines, as set out in Managing Contractor's Health and Safety Risks require the Reconciliation Vic. to:

- 22.1. review the potential hazards associated with the service, assessing potential sources of risk of injury and illness to any person. In doing this task a Service Risk Assessment is completed. A copy of the Service Risk Assessment together with an OH&S Plan is to be completed in collaboration with Council;
 - 22.2. regularly review the Plan detailing the health and safety system and procedures;
23. In the event that an audit identifies safety system/plan non-conformance, a Non Conformance Report will be issued requesting service rectification.
24. If a non-conformance reaches a critical stage of breaching legislative requirements, Council will be obliged to negotiate closure or part closure of the service, until the non-conformance is totally rectified.

Equal Opportunity and Anti-Discrimination Standards

25. Reconciliation Vic. is required to support and maintain its own policies in relation to anti-discrimination and sexual harassment, and to ensure all staff are fully aware, educated and trained in relation the services policies and legal obligations.
26. Reconciliation Vic. is required to demonstrate a commitment to Council's policies and legislative requirements and to comply with the following standards that include but are not limited to the following:
- 26.1. acknowledge that it is unlawful to discriminate against or sexually harass any person in contravention of State and Federal legislation;
 - 26.2. submit to and be bound by Council Procedures for handling Service Incidents in relation to any complaints;
 - 26.3. notify Council of any complaints or circumstances which may give rise to complaints in breach of the legal requirements or policies;
 - 26.4. maintain and enforce its own policies in relation to anti-discrimination and sexual harassment, and ensure that staff are fully aware, educated and trained in relation to the legislation and Council's requirements;
 - 26.5. provide reports and such information as Council may reasonably require in relation to any incident, or which may give rise to an incident, particularly in relation to anti-discrimination law. Reconciliation Vic. will be bound by the outcomes of any complaint determined through the Council's Procedures for handling Service Incidents; and
 - 26.6. adherence to Privacy Legislation and relevant principles.
27. On a quarterly basis Reconciliation Vic. will provide Council with a summary of the number and type of non critical incidents that have occurred. Critical incidents are to be reported within 24 hours.

Reconciliation Vic. is not the Council's Agent

28. The parties expressly agree that this Agreement is an Agreement under which the Council provides funding in support of the activities of Reconciliation Vic. in the auspice of the collaboration. Nothing contained in this Agreement shall constitute or be deemed to constitute the relationship of partners, joint venturers or principal and agent between the parties.
29. The Melbourne City Council is in no way responsible for the financial viability of Reconciliation Vic. including but not limited to circumstances where Reconciliation Vic. has its funds from other sources withdrawn or reduced.

Duration of this Agreement

30. This Agreement is in force from the date of signing until June 30, 2008 unless sooner terminated by the Council in accordance with the terms of this Agreement.

Early Termination

31. The Council may by seven days' written notice to Reconciliation Vic., terminate this Agreement if:
 - 31.1. Reconciliation Vic. has failed to comply with an obligation of Reconciliation Vic. under this Agreement in a serious or ongoing respect; or
 - 31.2. A receiver, official manager, receiver and manager, or administrator, is appointed to Reconciliation Vic.; or
 - 31.3. Reconciliation Vic. takes any step towards or is placed in liquidation; or
 - 31.4. Reconciliation Vic. ceases to fulfil the aims set out in its Charter.

Dispute Resolution

32. In the event of any dispute or difference arising between the Council and Reconciliation Vic. in respect to the Agreement, the following steps will be taken:
 - 32.1. Council's representative will meet with the one or both of the Co-Chairs of the Reconciliation Vic. in order to seek mutual resolution and agreement in relation to the dispute.
 - 32.2. If no agreement is reached parties shall provide formal written notice outlining the unresolved issues. The steps outlined below will then apply.
 - 32.3. In the event of any dispute or difference arising between the Council and Reconciliation Vic. in the application of the grant pursuant to the Agreement, the Council or Reconciliation Vic. may give to the other party notice of the dispute or difference. The notice shall give sufficient details of the dispute or difference as to enable the other parties to ascertain the nature of the dispute alleged. The dispute or difference shall then be referred as soon as practicable to an arbitrator who shall determine the dispute or difference. The parties will mutually agree upon the arbitrator. The decision of the arbitrator shall be final and binding on the parties.
 - 32.4. The cost of such assistance will be agreed by both parties before entering into the process, and shared equally between Reconciliation Vic. and Council.

Waiver

33. Any waiver or agreement on the part of the Council in not enforcing any term of this Agreement to the full extent possible by law or under the Agreement shall not be deemed to be a waiver in any way of any other rights or obligations of the Council.

Severance

34. If any term of this Agreement or its application to any person or fact or situation is or becomes invalid or unenforceable, the remaining terms shall not be affected and each shall be valid and enforceable to the fullest extent permitted by law.

Notices

35. Any notice required to be given pursuant to this Agreement by one party to the other shall be sufficiently given or served if it is delivered in writing personally or by registered pre-paid post or by facsimile to the other party at that party's usual place of business and the notice shall be deemed to have been served and received when in the ordinary course of transmission the notice would have been received.

Law

36. This Agreement is governed by the Laws of the State of Victoria and the Commonwealth of Australia.

Interpretation

37. In the case of ambiguity, the appended documents may be used in the interpretation of this agreement.
38. Except as expressly provided in this Agreement, this Agreement constitutes the entire Agreement between the parties.

Indemnity

39. Reconciliation Vic. indemnifies and agrees to keep the Council indemnified from any Claim in respect of: personal injury to or the death of any person; loss of or damage to any property; or loss or damage of any kind, arising out of or as a consequence of:
- 39.1. any breach by Reconciliation Vic. of this Agreement;
 - 39.2. any false, misleading or deceptive statement or conduct of Reconciliation Vic.;
 - 39.3. any breach by Reconciliation Vic. of any statute; and
 - 39.4. any act of Reconciliation Vic. giving rise to a civil or criminal liability.

Continuing Obligation

40. This indemnity is a continuing obligation, separate and independent from the other obligations, of Reconciliation Vic. This indemnity survives termination of this Agreement.

Insurance

41. Reconciliation Vic. must maintain at its own cost and expense, and on terms acceptable to the Council public liability to the value of \$10,000,000 and such other insurance as the Council may from time to time require in connection with this Agreement.

Evidence of Insurance

- 42 Reconciliation Vic. must produce on-demand to the Council contact officer, satisfactory evidence of the insurance.

Breach of Insurance Policy

- 43 Reconciliation Vic. must not do anything to derogate or make void or inapplicable any policy of insurance which Reconciliation Vic. is required to maintain under this Agreement.

Notification of Certain Events

42. Reconciliation Vic. must notify the Council's representative immediately of:

- 43. any activity, event or issue relating to the collaboration which will or may be controversial or may injure the reputation of the Council; or
- 43.2 any circumstance which will or may adversely affect the collaboration or Reconciliation Vic.; and
- 43.3 of any matter connected with the project or the Funding which may give rise to an actual, potential or perceived conflict of interest at any time during the term of the Agreement.

43. The parties acknowledge that the notifications required are intended to ensure that the Council is able to address any media issues which may arise in relation to such activity or circumstance. In some cases, Reconciliation Vic. may be required to post a clear and visible notice at the venue where any applicable activity is to be displayed or performed.

Confidential Information

- 44 Reconciliation Vic. acknowledges that all information which comes into its possession relating to the business or affairs of the Council as a result of or in the performance of this Agreement, and which Reconciliation Vic. is informed is of a confidential nature, remains the confidential information of the Council and may only be disclosed to those of Reconciliation Vic.'s officers and employees who:

- 44.1 have a need to know (and only to the extent that each has a need to know);
- 44.2 are aware that confidential information must be kept confidential; and
- 44.3 such other persons as have been agreed to in writing with the Council.

Assignment

44. Reconciliation Vic. must not assign or novate or purport to assign or novate this Agreement or any right or obligation under this Agreement unless it obtains the prior written consent of the Council, which may be withheld or granted in the Council's absolute discretion.

Schedule of Representative Names

Melbourne City Council

Colleen Lazenby

Manager Community Support
200 Lt Collins Street
MELBOURNE VIC 3000
Phone: 9658 9995
Fax: 9650 1112
Email: collaz@melbourne.giv.gov.au

Contact Officer

Zoë Tiller

Project Officer
200 Lt Collins Street
MELBOURNE VIC 3000
Phone: 9658 9402
Fax: 9650 1112
Email: zoetil@melbourne.giv.gov.au

Reconciliation Vic.

Name Bernie Millane

Title Acting Co-Chair
Address Ross House
Level 4, 247-251 Flinders Lane
MELBOURNE VIC 3000
Phone: (03) 9890-9651
Fax: N/A
Email: bmillane@vicnet.net.au

Name: Eleanor Bourke

Title: Co-Chair
Address: Ross House
Level 4, 247-251 Flinders Lane
MELBOURNE VIC 3000
Phone: (03) 9662-1645
Fax: N/A
Email: N/A

AS A RECORD THE PARTIES HAVE EXECUTED THIS AGREEMENT

Signed for and on behalf of)
Melbourne City Council by the)
Group Manager Community Services)
Pursuant to Instrument of Delegation)
Authorised by a resolution of the)
Council passed on 10 June 1995) _____

Signed for and on behalf of)
Reconciliation Vic. by)
) _____
Prof. Eleanor Bourke/ Bernie Millane
Reconciliation Victoria

Ms Lyn Morgain
Manager, Program Development
Community Services
City of Melbourne
GPO Box 1603 M
MELBOURNE VIC 3000

23rd December 2004

Dear Lyn

Request for Funding

We write to thank the City of Melbourne for the support we have received during 2004. Reconciliation Victoria values the partnership with the City of Melbourne identifying this as a major example of leadership within the local government sector on reconciliation and Indigenous issues.

We wish to continue our partnership with you. We seek your support for ongoing funding for a three year period to continue working in concert and with mutual respect to achieve the following outcomes:

- Organising activities to be held during Reconciliation Week 2005 of a similar type to those developed by City of Melbourne Arts & Culture and Community Services branches in previous years;
- Exploring the opportunity for flying the Aboriginal flag permanently;
- Exploring the possibility of a collaborative arts-based project on the theme and nature of "reconciliation";
- Working together towards the revision of the City of Melbourne's Statement of Commitment;
- Explore opportunities for the development of a cultural centre on a site of significance
- Exploring the possibility of including the reconciliation theme in the Commonwealth Games agenda; and
- Increasing the promotion of reconciliation within the local government sector.

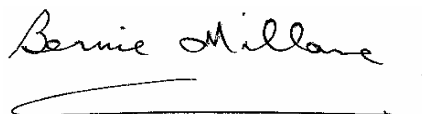
We are committed to achieving at least five of these seven outcomes in partnership with the City of Melbourne and where it is within the capacity of the parties, all outcomes are to be achieved to a significant degree. We expect to fulfil our commitments and as requested will provide a risk management plan for all relevant activities as part of a funding agreement with the support of relevant staff at the City of Melbourne.

We thank you for your support to date and look forward to the next stage of the partnership.

Yours sincerely



Professor Eleanor Bourke
▪ Co-Chair
Reconciliation Victoria



Bernie Millane
Acting Co-Chair
Reconciliation Victoria



Memorandum of Understanding between The City of Melbourne and Reconciliation Victoria Inc.

Parties

The parties to this memorandum of understanding (“Agreement”) are the City of Melbourne and Reconciliation Victoria Incorporated.

Objective/Purpose

The parties recognise the need to work in concert, with mutual respect, to develop better designed, targeted and locally customised solutions for Aboriginal and Torres Strait Islander peoples in the City of Melbourne.

The parties are committed to providing leadership, education and targeted programs to ensure:

- **Respect** for the diversity of cultures, and the rights of all living in the City of Melbourne;
- Increased understanding of Indigenous **rights** and heritage; and
- **Recognition** of the unique status of Indigenous peoples within the City of Melbourne.

Statement of Recognition

The parties are committed to the following principles (derived from the recent amendment to the State *Constitution Act (Vic) 1975*):

- The City of Melbourne acknowledges that the settlement of Melbourne occurred without proper consultation, recognition or involvement of the Aboriginal people of the area;
- The City of Melbourne recognises that the Aboriginal people of the Melbourne area are the original custodians of the land on which the City was established and:
 - (a) have a unique status as the descendants of Australia's first people; and
 - (b) have a spiritual, social, cultural and economic relationship with their traditional lands and waters within Victoria; and
 - (c) continue to make a unique and irreplaceable contribution to the identity and well-being of Melbourne.

The Agreement

This Agreement identifies how the parties will work together to achieve the outcomes detailed in the request for funding, with a focus on working towards better results for Aboriginal and Torres Strait Islander peoples in the City of Melbourne and in accordance with the terms of the funding agreement.

Shared Principles

In achieving the objective the parties are committed to the following principles:

- Equity;
- Diversity;
- Inclusion;
- Empowerment; and
- Respect and recognition of shared histories.

Roles and responsibilities

Reconciliation Victoria agrees to:

- Work in partnership with the City of Melbourne;
- Present the City of Melbourne with a diverse range of perspectives on reconciliation;
- Provide the City of Melbourne with an expert perspective on reconciliation;
- Provide the opportunity to ensure that the City of Melbourne's actions are aligned with the broader reconciliation movement;
- Advise of and share with the City of Melbourne the range of opportunities, issues, and concerns regarding reconciliation within the community; and
- Support the City of Melbourne's reconciliation activities.

City of Melbourne agrees to:

- Develop a leadership role in the local government sector;
- Identify and pursue opportunities to present on reconciliation;
- Commit to promoting awareness of reconciliation within Council;
- Develop a co-ordinated response across a range of Council areas to pursue the reconciliation agenda;
- Aim to increase reconciliation initiatives within Council planning and documentation;
- Advocate for the inclusion of the reconciliation theme in the Commonwealth Games agenda;
- Support the objectives of Reconciliation Victoria and those of the partnership through their reconciliation activities;
- Advise of relevant internal policy issues and their implications for Reconciliation Victoria; and
- Assist with the implementation of the outlined outcomes.

Protocols for Working Together

- The parties agree to form a Steering Group and a Working Group to ensure the following functions are carried out:

Terms of Reference

Purpose of the **Steering Group**: to oversee the implementation and monitoring of this Agreement. This body will meet quarterly for the duration of the Agreement.

- Membership: the Steering Group will include a representative of the executive management team of Community Services, the Co-Chairs of Reconciliation Victoria, and an Officer from each of the Parties.
- Quorum of the Steering Group is considered to exist if one of the Chairs of Reconciliation Victoria, the management representative of the City of Melbourne, and an officer from either of the Parties are in attendance.

Purpose of the **Working Group**: to implement the outcomes outlined in the request for funding in accordance with the terms of the funding agreement, measure progress, work towards achieving improvements and report on the success of activities in a transparent manner. This body is to meet six-weekly for the duration of the Agreement.

- The Working Group will provide an annual report regarding progress towards achieving the Agreement's priorities to the City of Melbourne and Reconciliation Victoria.
- Membership: the Working Group will be composed of Officers of each of the Parties.
- The parties may agree to jointly establish other working arrangements as required to assist in the implementation and monitoring of this Agreement.
- Additional resources will be negotiated on an as needs basis by each organisation to implement the joint initiatives.

Dispute Resolution

In the event of any dispute or difference arising between the Council and Reconciliation Victoria in respect to the Agreement, it is agreed that an Executive representative from Council will meet with a Co-Chair/s of Reconciliation Victoria in order to seek mutual resolution and agreement in relation to the dispute.

Signed by:

Lord Mayor John So
City of Melbourne

Signed by:

Prof. Eleanor Bourke/ Bernie Millane
Reconciliation Victoria

FINANCE ATTACHMENT

**MEMORANDUM OF UNDERSTANDING 2004/08 BETWEEN CITY OF MELBOURNE
AND RECONCILIATION VICTORIA INCORPORATED**

The recommendation of the report would pre commit the Council to funding \$100,000 over the next 5 years while the Agreement is in place.

Joe Groher
Manager Financial Services

LEGAL ATTACHMENT

MEMORANDUM OF UNDERSTANDING 2004/08 BETWEEN CITY OF MELBOURNE AND RECONCILIATION VICTORIA INCORPORATED

Under Section 141 of the *Local Government Act 1989* (“the Act”) the Council may apply monies to enable it to perform its functions and exercise its powers.

Legal advice has been provided in relation to the proposed Memorandum of Understanding and Funding Agreement between the Council and Reconciliation Victoria Inc.

Section 3C (1) of the Act provides that:

“The primary objective of a Council is to endeavour to achieve the best outcomes for the local community having regard to the long term and cumulative effects of decision.”

Section 3D(2) of the Act provides that the role of a Council includes

“(a) acting as a representative government by taking into account the diverse needs of the local community in decision making;...”

Section 3E of the Act provides that the functions of a Council include:

“(a) advocating and promoting proposals which are in the best interests of the local community;

The recommendation contained in this report is within the powers and functions of the Council pursuant to the provisions of the Act.

Instrument of Delegation

On 16 December 2004 the Council resolved to delegate to the Community and Culture Committee the power, duties and functions directly relating or ancillary to indigenous affairs.

Alison Lyon
Manager Legal & Governance