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| --- |
| **Melbourne Renewable Energy Project 2.0** |
| **Memorandum of Understanding**1. **A**
2. **B**
3. **C**
4. **D**
5. **E**
6. **F**
7. **G**

**The parties**1. **Melbourne City Council (ABN 55 370 219 287) of 120 Swanston Street, Melbourne, VIC 3000 (“CoM”)**

**Facilitator**  |

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**THIS AGREEMENT** is made on 2019

BETWEEN:

1. **A**
2. **B**
3. **C**
4. **D**
5. **E**
6. **F**
7. **G**

**Each a "Party" and together "the Parties".**

**In addition to the Facilitator as defined in this agreement**

1. **Melbourne City Council (ABN 55 370 219 287) of 120 Swanston Street, Melbourne, VIC 3000**

RECITALS

1. The Parties wish to form a Joint Purchasing Group that will enable the aggregation of a load of electricity large enough to attract competitive bids from utility scale renewable energy projects to enable the Parties to meet voluntary emission reduction targets.
2. The Parties intend to purchase renewable energy from an electricity retailer who will source the corresponding electricity load from a new or existing utility scale renewable energy project.
3. The Parties are still developing the commercial arrangements to deliver the Proposal and they may choose to enter into a further agreement, which will create a more detailed and binding legal framework for the delivery of the Proposal.
4. The Parties intend to conduct a tender process and negotiate collectively to appoint an electricity retailer to supply electricity to the purchasing group. It is anticipated that each Party will sign a separate electricity supply agreement with the retailer as part of the group Power Purchase Agreement (PPA).
5. In consideration of the Parties participating in the Joint Purchasing Group and exchanging information as contemplated by this document:
	1. the Parties agree to enter into this MOU to reflect the common understanding of the Parties in relation to the process to develop the Proposal
	2. The Facilitator agrees to enter into this MOU with the Parties to carry out the role as identified in clause 5.

THE PARTIES AND THE FACILITATOR AGREE AS FOLLOWS:

1. INTERPRETATION
	1. Definitions

The following definitions apply in this document:

**Concept Plan:** means the plan to deliver the Proposal that includes the identification of key issues and their proposed means of resolution and sets out any particular electricity supply requirements of the Parties.

**Electricity Supply Agreement:** means an electricity supply agreement between the Retailer and a Party.

**Facilitator:** means an organisation assisting the process, in this instance Melbourne City Council. The Facilitator:

* + 1. will not be party to the resulting PPA
		2. has no decision making or voting rights.

**Further Agreement:** means a binding agreement between the Parties that will be drafted and executed upon the successful award of PPA by the Parties. The further agreement is envisaged to document any ongoing rights of obligations of the Parties as they relate to each other for the duration of the PPA.

**Intellectual Property Rights** or **IPR:** means all intellectual property rights in Australia and throughout the world, including:

* + 1. patents, copyright, registered designs, trade or service marks, trade, business or company names, and any right to have confidential information kept confidential;
		2. any application or right to apply for registration of, or assert or waive, any of the rights referred to in paragraph (a); and
		3. moral rights, trade secrets, ideas, concepts, materials, know-how and techniques.

**Lead Customer:** means [organisation name], who is responsible for leading key aspects of the process on behalf of the Joint Purchasing Group. This may include contracting legal advice, issuing tender documents and guiding decision making for the Joint Purchasing Group.

**MOU:** means this Memorandum of Understanding.

**Party:** means a party to this MOU.

**Planning Approval:** means a planning approval issued under a planning scheme that authorises the use and development of land for the purposes of developing the Project.

**Procurement Advisor:** means the entity appointed by the Parties to provide procurement support and advice.

**Project:** means the renewable energy project or projects to be developed by the Project Proponent.

**Project Proponent:** means the entity or entities that will develop the Project and will enter into a power purchase agreement with the Retailer. The Project Proponent may, but need not be, a related entity of the Retailer.

**Proposal:** means the proposal by the Parties to

* + 1. form a joint purchasing group to purchase renewable energy from a utility scale renewable energy project (or a combination of several projects); and
		2. conduct the Tender Process in order to select the Project(s), the Project Proponent and Retailer.

**Retailer:** means the entity selected by the Parties following the Tender Process to sell electricity from the Project to the Parties.

**Tender Process:** a tender process through which the Project Proponent and Retailer will be selected by the Parties.

1. OBJECTIVES of the parties

The purpose of this MOU is to provide a general framework for ongoing cooperation between the Parties in the planning, development and delivery of the Proposal.

The Parties have the following common objectives in relation to the Proposal:

* + 1. directly support a new or existing utility scale renewable energy project and drive investment in large scale renewable energy projects;
		2. use the renewable energy they purchase to contribute to voluntary emission reduction targets;
		3. to secure long term competitive pricing for electricity by entering into a long term Electricity Supply Agreement;
		4. demonstrate public and corporate leadership and a positive example that other large energy users can follow.
1. Support of Parties
	* 1. The Parties will support each other with respect to the Proposal and acknowledge that:
			1. they have a mutual interest in the successful planning, development and delivery of the Proposal;
			2. they will work in a co-operative manner with the common intention of achieving the delivery of the Proposal in accordance with the objectives set out in clause 2; and
			3. where the Parties' views differ, they will work openly and constructively to resolve them in a manner consistent with the achievement of the objectives of the Parties set out in clause 2.
		2. The Parties will aim, where reasonably possible and in accordance with their confidentiality obligations and reasonable commercial interests, to share information relevant to the Proposal with each other. In the normal course of events, the Parties will work on the assumption that information should be freely exchanged.
2. the project
	1. Project principles

The Parties will continue working together to develop Project criteria. At a minimum, it is agreed that the Project shall meet the following criteria. It shall:

* + 1. have an electricity generating capacity sufficient to supply the Parties’ nominated requirements for renewable energy, which is anticipated to be approximately 138GWh per annum;
		2. generate electricity from an eligible renewable energy source within the meaning of the *Renewable Energy (Electricity) Act 2000* (Cth), subject to the following energy sources being excluded from selection:
			1. biomass projects with native timber as the energy source; and
			2. any others agreed to by the Parties.
		3. have obtained Planning Approval, or already be dispatching generation into the National Electricity Market (NEM) at the time that the Tender Process closes;
		4. be capable of connecting or already connected to the NEM;
		5. have demonstrated support from stakeholders, including environmental NGOs and community groups.
	1. The Project Proponent

The Parties agree that the Project Proponent:

* + 1. will have demonstrated competence and experience in developing utility scale renewable energy projects;
		2. will be in a position to deliver the Project to meet the electricity supply timing requirements of the Parties ; and
		3. may consist of one entity or a group of entities.
1. ROLE of the facilitator
	* 1. The Facilitator will:
			1. bring together the Parties to assist them to form a Joint Purchasing Group;
			2. organise meetings, facilitate workshops, assist with media releases and enquiries and set out a broad process that Parties may choose to follow to form a successful Joint Purchasing Group;
			3. contract energy market advice to assist the Parties in defining the commercial parameters of a PPA, provide business case modelling, develop a request for tender and assist with technical and commercial evaluation of offers;
			4. share insights and documentation from the Melbourne Renewable Energy Project as appropriate, which may include customer agreements, PPA Key Terms and a Retail Service Agreement;
			5. act as an observer to the tender evaluation and negotiation process and assist the Lead Customer and Joint Purchasing Group to identify issues and solutions.
		2. The Facilitator will contribute the equivalent of 1FTE of its staff time in 2019-20, spread across relevant team members.
2. Responsibilities of the Parties
	* 1. Each Party agrees to:
			1. attend meetings arranged by the Facilitator or Lead Customer;
			2. co-operate and work in good faith with the other Parties in order to finalise the Proposal;
			3. advise the other Parties immediately if it no longer desires to be a Party to the Proposal; and
			4. contribute to costs associated with the Proposal as set out in Section 6.3.
	1. Tender Process
		1. Following the execution of this MOU, the Parties will work together to:
			1. further refine the Project criteria;
			2. negotiate and finalise the appointment of the Procurement Advisor (or assign procurement administration responsibilities to a Party within the Joint Purchasing Group);
			3. negotiate and finalise the appointment of a legal advisor to act on behalf of the Joint Purchasing Group;
			4. determine the structure and timing of the Tender Process;
			5. together with the relevant advisors, draft the documents for the Tender Process, which is to be based on the agreed Concept Plan;
			6. work with the relevant advisors to deliver the Tender Process.
		2. The Parties shall have equal voting rights and shall make decisions by unanimous agreement.
		3. The Parties shall apply a framework for passive and active decision-making:
			1. Active decisions need to be made unanimously and will require formal response from all Parties.
			2. Passive decisions will provide the opportunity for input from all Parties within the required timeframes. If Parties have not responded before deadline, no response will be considered as acceptance of the proposal.
			3. Active decision points include: Approval of Request for Tender documentation and proceed to tender in market, Contract Award.
			4. Passive decision points include: Appointment legal advisor and Procurement Advisor, and minor issues associated with day to day management of the project.
	2. Cost sharing
		1. The Parties and the Facilitator agree that:
			1. each Party will make a financial base contribution of $20,000 to the development and delivery of the Proposal, such amount to be deposited into a bank account nominated by the Lead Customer (“**Base Contributions**”)
			2. the Lead Customer is entitled to draw down on the Base Contributions for the Proposal Costs incurred by the Lead Customer;
			3. costs incurred by the Lead Customer in relation to the Proposal Costs exceeding the total amount of Base Contributions will be evidenced by tax invoice showing amounts incurred, reported to the Joint Purchasing Group and may be subject to audit or inspection by the Parties;
			4. costs incurred in excess of the total Base Contributions will be shared between the Parties on a cost recovery basis, payable by the Parties as a debt due pursuant to the proportions under the Cost Sharing Proportions (Appendix 1);
			5. the Lead Customer shall not allow the total Proposal Costs to exceed the total Estimated Proposal Costs (Appendix 2), excluding the CoM financial contribution (vi), without the unanimous approval of all Parties to this agreement;
			6. the Facilitator will make a financial contribution to costs associated to the development and delivery of the Proposal of no more than $145,000 (ex GST) within the 2018-19 and 2019-20 financial years.
		2. In this clause 6.3, ”**Proposal Costs**” means the reasonable external costs incurred by the Lead Customer in connection with the Proposal, including costs in obtaining all authorisation and approvals required for the Proposal, legal costs for advising on the Proposal, preparation of the ACCC Authorisation application, any tender and other documents required for the Proposal, negotiation of legal terms, cost of preparing the Further Agreement, procurement and tender costs and cost of engaging the Procurement Advisor.
	3. Further Agreement

The Parties will give further consideration to entering into a Further Agreement, to create a more detailed and binding legal framework for the delivery of the Proposal including mechanisms to:

* + 1. aggregate the electricity consumption of all Parties in determining whether any relevant minimum load threshold is met;
		2. allocate any financial liability accruing under any take or pay arrangements to which the Parties and the Retailer are a party;
		3. enable the novation of an Electricity Supply Agreement to a third party;
		4. set out any ongoing contract administration tasks, roles and responsibilities that affect to the Joint Purchasing Group as a whole;
		5. set out how decisions by the buying group are to be made and other governance processes relevant to delivery and implementation of the Proposal; and
		6. any other matters agreed by the Parties.
	1. Electricity Supply Agreements

It is anticipated that each Party will enter into a separate Electricity Supply Agreement. It is anticipated that each Electricity Supply Agreement shall include, subject to each Party’s reasonable commercial requirements and internal approvals, the following key terms: the following key terms:

* + 1. a term of approximately 10 years;
		2. a commitment to a minimum electricity consumption threshold (which may be aggregated amongst the Parties);
		3. the supply of electricity commencing between 1 July 2020 and 1 January 2021, or otherwise another date as agreed by the Parties.
	1. Competition law
		1. The Parties acknowledge that joint purchasing arrangements give rise to a risk of contravening the *Competition and Consumer Act 2010* (Cth).
		2. In order to address this risk, the Parties will work together to seek an authorisation (**Authorisation**) from the Australian Competition and Consumer Commission (**ACCC**) in order to ensure compliance with the *Competition and Consumer Act 2010* (Cth) and agree that :
			1. the Lead Customer will engage a legal advisor to prepare the Authorisation application and in doing so, it will consult the Parties and will provide a draft to the Parties for their review, and approval, prior to submitting it to the ACCC;
			2. each Party will co-operate in the preparation of the Authorisation application.
		3. The Parties acknowledge that in the course of the activities contemplated by this MOU, it may be necessary for the Parties to exchange competitively sensitive information about the price, terms, consumption or other aspects of a Party's electricity procurement arrangements outside of the Proposal, or the identity of a Party's electricity suppliers outside of the Proposal.
		4. Without limiting clause 10 (**Confidential Information**), the Parties agree that:
			1. they will only disclose such information to the other Parties (and their respective advisors) for the purpose and to the extent required to pursue the Proposal in accordance with this MOU, and will not disclose such information to any other party for any other purpose or to any other extent; and
			2. they will only use such information disclosed by other Parties for the purpose and to the extent required to pursue the Proposal in accordance with this MOU and will not otherwise use that information within or outside of their own organisation.
	2. Media
		1. Following the execution of this MOU, the Parties will work together to develop a media and communications plan that will cover, among other things processes for dealing with media requests and talking points on the Proposal.
		2. Until otherwise agreed, all media and public communication in relation to the Proposal shall be made by the Facilitator and all media enquiries shall be directed to the Facilitator’s contact officer.
1. Addition of PARTIES
	* 1. The Facilitator or any Party may propose to add a new Party to this MOU.
		2. Addition of new Parties will be by unanimous agreement of the existing Parties and with any conditions as agreed by the Parties.
		3. Following a decision of the Parties to add a new Party, the MOU shall be varied by the Parties in accordance with clause 11.3.
2. Term and termination
	* 1. The rights and obligations of the Parties under this MOU begin upon its execution.
		2. A Party may cease to be a Party to this MOU by providing written notice to the Facilitator and the other Parties. Each Party agrees to provide such written notice as soon as possible if it wishes to withdraw from the Proposal. The Party acknowledges that the obligations set out in clause 10 (Confidential Information) will continue to apply to it after it has ceased to be a Party to the MOU.
		3. If a Party ceases to be a Party to this MOU any payment made towards the Base Contributions defined under clause 6.3(a)(i) will be forfeited. Parties will only be liable for any Proportional Costs defined under clause 6.3(a)(iv) incurred by the Lead Customer up until the date of termination under clause 8(b).
3. Intellectual Property
	* 1. This MOU does not alter the pre-existing IPR of the Parties.
		2. The Parties acknowledge that, as between the Parties, Facilitator will own any IPR that are created by Facilitator or the Energy Advisor in the course of pursuing the Proposal in accordance with this MOU.
		3. The Facilitator hereby grants to all other Parties a perpetual, irrevocable and royalty-free licence to use any IPR that vests in Facilitator in the course of pursuing the Proposal in accordance with this MOU.
		4. The Parties acknowledge that, as between the Parties, the Lead Customer will own any IPR that are created by the Lead Customer or its advisors in the course of pursuing the Proposal in accordance with this MOU. The Lead Customer hereby grants to all other Parties a perpetual, irrevocable and royalty-free licence to use any IPR that vests in the Lead Customer in the course of pursuing the Proposal in accordance with this MOU.
4. Confidential Information
	* 1. The Parties acknowledge the information exchanged between them in the course of discussions about matters referred to in this MOU may contain confidential information. Accordingly, the Parties will not release or share with any third party (with the exception of the Parties' respective advisors) any confidential information of another Party, without the consent of the relevant Party or Parties, or as required by law or stock exchange.
		2. The Parties acknowledge that the following information is confidential information with respect to a Party:
			1. information relating to existing electricity supply arrangements of a Party, including the electricity price it is charged and the amount of electricity it consumes;
			2. information relating to the business operations of a Party, including revenue, profit or other financial information and other information relating to the Party that a person in the position of the Party may reasonably consider to be confidential information and which is not already in the public domain; and
			3. any other information that a Party may provide for the purposes of achieving the objectives set out in clause 2 of this MOU and which it advises the Parties is confidential.
		3. A Party must not make press or other public statements (which includes public announcements or press releases) relating to the Proposal without the agreement of the Lead Customer (other than as required by law or stock exchange) as to the manner, timing and content of the press or public statement.
5. General
	1. Legal Effect
		1. This MOU does not have legal effect and is non-binding except for clauses 6.3, 8, 9 10 and 11. In particular, there is no obligation on any Party to purchase electricity on the terms set out in this MOU or at all.
		2. Subject to this clause 11.1(a), the Parties acknowledge and agree that no Party will be bound by any contract for the Proposal until it has been executed by the relevant Parties.
	2. Entire Agreement
		1. This Agreement represents the entire agreement between the Parties.
		2. Provisions in this MOU may be superseded by other agreements that the Parties may enter in the future relating to the Proposal.
	3. Assignment and Variation
		1. A Party cannot assign or otherwise transfer any right or obligation arising from this MOU without the written consent of the other Parties.
		2. The terms of this MOU may be amended or varied by the written agreement of the Parties. The variation will take effect from the date specified in the variation document.
	4. Relationship of the Parties

The Parties enter into this MOU as independent entities and nothing in this document creates a relationship of employer and employee, principal and agent or partnership between the Parties.

* 1. Counterparts

This MOU may be executed in counterparts.

* 1. Governing Law

This MOU is governed by the law in force in Victoria, Australia.

* 1. Notices and Contact Officers
		1. Notices

A notice or consent under this MOU is only effective if it is in writing and sent by mail or email to the relevant Party's Contact Officers set out below. If it is sent by mail, it is taken to have been received 3 working days after it is posted.

* + 1. Contact Officers

 ***[****buyer contact details redacted****]***

* 1. Costs and Expenses

Each Party must pay its own expenses incurred in negotiating and executing this MOU.

* 1. Dispute Resolution

The Parties agree that if a dispute or difference arises between one or more Parties in relation to any matter under this MOU, the Parties in dispute will work together in good faith to promptly resolve it. If after having used all reasonable efforts to resolve the dispute or difference at project officer level, the dispute or difference remains unresolved, it shall be elevated to the CEO (or CEO delegate) of the relevant Party or Parties for resolution. The CEOs (or their delegates) will meet within 14 days of referral, in order to resolve the dispute or difference in a manner consistent with the objectives of the Parties as set out in clause 2. This clause does not prohibit a Party from enforcing its rights in another forum (including through the courts).

**EXECUTED** as an agreement:

|  |  |  |
| --- | --- | --- |
| Signed for and on behalf of the **[insert organisation]** by its duly authorised officer, in the presence of: |  |  |
|  |  |  |
|  |  |  |
| Signature of witness |  | Signature of officer |
|  |  |  |
| Name |  | Name |
|  |  |  |
| Date |  | Date |

|  |  |  |
| --- | --- | --- |
| Signed for and on behalf of the **[insert organisation]** by its duly authorised officer, in the presence of: |  |  |
|  |  |  |
|  |  |  |
| Signature of witness |  | Signature of officer |
|  |  |  |
| Name |  | Name |
|  |  |  |
| Date |  | Date |

|  |  |  |
| --- | --- | --- |
| Executed by **[insert organisation]** by its Attorney under Power of Attorney dated 31 July 2008, in the presence of: |  |  |
|  |  |  |
|  |  |  |
| Signature of witness |  | Signature of Attorney |
|  |  |  |
| Name |  | Name |
|  |  |  |
| Date |  | Date |

Appendix 1 – Cost Sharing Proportions

The Parties have been asked to nominate an electricity volume they intend to contribute as part of the Melbourne Renewable Energy Project 2.0. The nominated electricity volume is the basis for the Cost Sharing Proportions for costs in excess of the Base Contributions.

Parties may amend their nominated electricity volume within 6 weeks of execution of this agreement. Any change to the cost sharing proportions will be done through unanimous agreement by the Joint Purchasing Group and will not be retrospective.

In the event that a Party terminates their participation in the MOU under clause 8(b) or a new Party added by agreement of the Parties, the Cost Sharing Proportions will be re-cast with the remaining Parties nominated electricity volumes against the new total volume.

The Cost Sharing Proportions are nominated as follows:

|  |  |  |
| --- | --- | --- |
| **Party** | **Nominated Electricity Volume (GWh)** | **Cost Sharing Proportions** |
| A |  |  |
| B |  |  |
| C |  |  |
| D |  |  |
| E |  |  |
| F |  |  |
| G |  |  |
| Total |  | 100% |

Appendix 2 – Estimated Proposal Costs

The total Estimated Proposal Costs associated with the Melbourne Renewable Energy Project 2.0 are based on the best estimate of the Parties to take the project to the point of contract execution. The Estimated Proposal Costs are broken down as follows:

|  |
| --- |
| **Estimated Proposal Costs** |
| Legal Services | $200,000 |
| Energy Advice | $145,000 |
| Procurement Assistance | $30,000 |
| Contingency | $20,000 |
| Sub-Total | $395,000 |
| Less CoM Contribution (for Energy Advice) | -$145,000 |
| **Total** | **$250,000** |