<<TEMPLATE>>

MEMORANDUM OF UNDERSTANDING FOR JOINT PROCUREMENT

*[Drafting Note: This MOU template has been developed to be used as a non-binding MOU. Councils should obtain independent legal advice as appropriate before adopting an MOU for any part of the procurement process.]*

**BETWEEN**

**X COUNCIL** (ABN: )

of [insert address]

(“**X**”)

**AND**

**Y COUNCIL** (ABN: )

of [insert address]

(“**Y**”)

AND

**Z COUNCIL** (ABN: )

of [insert address]

(“**Z**”)

AND

(“**the parties**”)

**TABLE OF CONTENTS**

[1 PARTICIPATING MEMBERS 3](#_Toc202196283)

[2 PURPOSE 3](#_Toc202196284)

[3 BACKGROUND 3](#_Toc202196285)

[4 DEFINITIONS 4](#_Toc202196286)

[5 PRELIMINARIES 4](#_Toc202196287)

[6 OBJECTIVES OF THE MOU AND THE PROJECT 5](#_Toc202196288)

[7 KEY PRINCIPLES 5](#_Toc202196289)

[8 TERM of MOU 5](#_Toc202196290)

[9 ROLES AND RESPONSIBILITIES 5](#_Toc202196291)

[10 FUNDING 7](#_Toc202196292)

[11 INFORMATION SHARING AND CONFIDENTIALITY 7](#_Toc202196293)

[12 HOW THE PARTICIPATING MEMBERS WILL WORK TOGETHER 7](#_Toc202196294)

[13 DISPUTE RESOLUTION 8](#_Toc202196295)

[14 TERMINATION 8](#_Toc202196296)

[15 VARYING THIS MOU 8](#_Toc202196297)

**T****HIS MEMORANDUM OF UNDERSTANDING** is made the ……….. day of 20....

*[Drafting Notes:*

1. *This Memorandum of Understanding (MOU) template is provided for assisting councils and/or their representative organisation to develop a joint procurement for waste services. It is an example template and indicative only. Councils should obtain their own legal advice. Councils and/or their representative organisation should consider their own needs and requirements in developing an MOU for the purposes of a joint tender.*
2. *The MOU is made only once all Participating Members have executed the document.*
3. *Please read the MOU Guidance Notes located on the EPA webpage for further guidance when preparing your document.*
4. *Clauses or portions highlighted yellow are example clauses. Details must be filled in, and these clauses must be amended to suit the purpose of procurement.]*
5. PARTICIPATING MEMBERS
   1. <<Insert relevant details. Example wording: Participating Members commit to work collaboratively to develop a joint procurement program, henceforth called the <<insert Project name>>, and referred to throughout this document as the “Project”, with the objective of working towards cost savings, efficiencies and best practice.>> The following are the Participating Members:

South Westland Shire Council A.B.N. XXX XXX XXX;

North Southland Shire Council A.B.N. XXX XXX XXX;

Etc

1. PURPOSE
2. .
   1. The intention of this MOU is to: The intention of this Memorandum of Understanding (MOU) is to:
3. secure Participating Members’ commitment to the Project;
4. ensure each Participating Member of the Project will use their best efforts to adhere to the spirit and content of this MOU; and
5. adhere to a governance arrangement for the Project, as outlined in Clause 9 below.
   1. Unless stated, this MOU is not a legally binding agreement.
   2. <<Optional - While the Participating Members do not intend this MOU to be legally binding, this MOU represents Participating Members’ intent to procure the services under the terms of Section 55 of the *Local Government Act 1993*.>>
6. BACKGROUND

*[Drafting Note: This should explain the background for the project and reason for entering into the MOU.]*

* 1. <<Insert relevant details. Example wording: Participating Members have collectively determined to explore the options for a potential joint waste collection Contract.>>
  2. <<Example wording: Participating Members have their waste and recycling collection contracts ending in #date# respectively. Participating Members seek to jointly invite tenders, in order that they may commence joint collection Contract(s) and/or processing Contract(s) if acceptable tenders are received, following the expiration of the current agreements.>>
  3. <<Example wording: Participating Members wish to enter into this MOU to explore joint procurement opportunities, record the terms of their agreement to invite tenders for the same, and explore joint waste collection Contract(s) and/or processing Contract(s), and to safeguard the Participating Members and the integrity of the process.>>

1. DEFINITIONS
   1. In this MOU:
2. **Clause** means a clause of this MOU.
3. **Corporations Act** means the *Corporations Act 2001* (Cth).
4. **Contract** means a contract or proposed contract entered into between the Participating Members.
5. **Duly Authorised Representative** means a representative of the Party nominated or the substituted representative nominated by the General Manager (or Chief Executive Officer, as appropriate).
6. **General Manager** means the persons being employed by each Party as General Manager, also known as Chief Executive Officer.
7. **Insolvency Event** means the happening of any of these events:
8. a Party suspends payment of its debts;
9. where a Party is a corporation:
10. the Party becomes an externally-administered body corporate under the Corporations Act;
11. steps are taken by any person towards making the Party an externally-administered body corporate (but not where the steps taken consist of making an application to a court and the application is withdrawn or dismissed within fourteen (14) days);
12. a controller (as defined in section 9 of the Corporations Act) is appointed to all or substantially all of that Party’s assets or any steps are taken for the appointment of such a person (but not where the steps taken are reversed or abandoned within fourteen (14) days); or
13. the Party is taken to have failed to comply with a statutory demand within the meaning of section 459F of the Corporations Act.
14. **Participating Members** means the following organisations: <<insert names>>
15. **Party** means each of the signatories to this MOU.
16. **Project** means <<insert description or clarity of the project name>>.
17. (insert other definitions as required)
18. PRELIMINARIES

*[Drafting Note: This can explain briefly the framework for the management of this project, and councils’ relationship to each other in the context of this project.]*

* 1. Each Party is a Participating Member of the Project.
  2. <<Optional - The Participating Members of the Project have been meeting on a regular basis since XXXX to share information and coordinate collaborative activities.>>
  3. [*Drafting Note: If clause 5.2 is not used, the beginning of clause 5.3 is not relevant and should be deleted*]. Now, in conjunction with the regular meetings and activities referred to in clause 5.2, each Participating Member of the Project wishes to work together to develop a joint procurement program for (insert).
  4. This MOU formally acknowledges that each Party is an equal partner.
  5. This MOU reflects a commitment by each Party to achieve the goals of the Project.
  6. Each Party acknowledges that the effective implementation of their waste services relies on an effective and strong partnership to achieve best outcomes.
  7. It is intended that this MOU will serve as a framework under which more specific areas of cooperation and further mechanisms for such cooperation can be achieved.

1. OBJECTIVES OF THE MOU AND THE PROJECT
   1. The objectives of the MOU are to:
2. <<Example wording: Provide a forum for communication, cooperation and coordination between Participating Members of the Project.>>
3. <<Example wording: Harmonise waste services, achieve better value for money for residents and/or plan for procurement of a Contract for waste services >>
4. Conduct activities to achieve the following outcomes for the Project:
5. <<Example wording: Participating Members to work collaboratively to identify options to jointly procure a Contract for waste services.>>
6. <<Example wording: Participating Members to produce a Project Probity Plan, Procurement Plan, Tender Evaluation Plan, and Project Working Group and Project Control Group Charters in pursuit of the above objectives for the Project.>>
7. KEY PRINCIPLES

*[Drafting Note: This should encompass the fundamental principles of the agreement and partnership outcomes.]*

* 1. The Participating Members to this MOU commit to the following principles:

1. Participating Members will engage with each other collaboratively and with a shared commitment to joint problem solving;
2. (insert as required) <<example wording: The impact of the actions of the Participating Members on each other will be recognised, considered and managed appropriately;>>
3. (insert as required) <<example wording: Meetings need to be regularly scheduled as required;>>
4. (insert as required) <<example wording: Each Participating Member will try to understand the culture and different models that make up other Participating Members’ operational environment;>>
5. (insert as required) <<example wording: Participating Members will work together as drivers of change and improvement to achieve better waste services through partnership>>
6. TERM of MOU

*[Drafting Note: Include anticipated duration of the Project together with start and end dates.]*

* 1. This MOU commences on (insert date) and will expire after (insert) unless terminated by a Participating Member in accordance with clause 14 of this MOU, or renewed by agreement of every Participating Member of the Project pursuant to clause 8.2.
  2. This MOU may be extended by whatever further term is proposed by any Participating Member of the Project provided that the proposal is in writing and every other Participating Member of the Project accepts that proposal as evidenced in writing.
  3. The Participating Members agree to review the operation of this MOU in a timely manner, prior to its expiration.

1. ROLES AND RESPONSIBILITIES
2. .

*[Drafting Notes:*

1. *This is where councils can tackle the question of how the project will be planned and coordinated i.e. will there be a working group/control group? Which council will coordinate the project? What would be a reasonable timeframe of notice to provide to all participants, if a participant wishes to withdraw from the process? This section can also include any roles and responsibilities which councils may be aware of at this early stage in the project, such as:*
2. *Whether contractors will be procured to produce any documents such as a procurement strategy.*
3. *Who will lead and manage the procurement process (which entity).*
4. *Some of the details of who is responsible for undertaking certain tasks may not be known until the following types of documents are produced: the Project Probity Plan, Procurement Plan, Tender Evaluation Plan, the Project Working Group and Project Control Group Charters (Terms of Reference). But if these documents are already produced then the MOU can reference that these will be followed.*
5. *This section may also outline the intention that each council is to provide an officer authorised to be a representative on the control/working group.*
6. *Clearly specify the key responsibilities for each Party to the MOU. Joint procurement case studies have shown that complexities may arise when multiple councils work together in procurement, therefore it is vital to:*
7. *establish and maintain a well-defined steering committee and ensure continuous updates at every stage;*
8. *Designate a project manager with appropriate delegation and commence planning early, consider allowing for extra contingency time for unexpected challenges such as legislative changes and contractual negotiations; and*
9. *Identify a lead Participating Member for the purposes of coordinating activities and making some key decisions where required to keep the Project.*
10. *By agreement with the Participating Members it may be acceptable to outsource some roles and responsibilities, particularly where no member possesses all the requirements above.]*

**Government Agency Status**

* 1. Nothing in this MOU abrogates or fetters, or is intended to abrogate or fetter, the lawful and proper discharge by Participating Members of any of their statutory responsibilities as governmental agencies under any relevant laws.
  2. In the event of any conflict between the unfettered discretion of Participating Members in the exercise of their statutory powers as governmental agencies and the performance of their obligations under this MOU, the former prevails.

**Relationship between the Participating Members**

* 1. <<Example wording: Except as expressly provided to the contrary in this MOU, nothing in this MOU will constitute the Participating Members as:

1. Principal and agent;
2. Employer and employee;
3. Partners; or
4. Otherwise liable for the acts and/or omissions of any other Party.
   1. A Participating Member must not represent to any third party that a Participating Member are any of the above (paras. (a) to (d)).>>

**Roles and Responsibilities**

* 1. <<Example wording: As far as practical, roles and responsibilities will be allocated to Participating Members who:

1. Are best placed to undertake the applicable tasks or actions;
2. Are resourced and available to undertake the applicable tasks or actions; and
3. Have the relevant expertise, skill and experience to undertake the applicable tasks or actions.>>
   1. <<Example wording: The lead Participating Member is responsible for preparing a project plan including resource allocation and identifying roles and responsibilities, and setting reporting responsibilities back to the other Participating Members.>>
   2. (insert other roles and responsibilities as required)
4. FUNDING

*[Drafting Note: This does not need to be prescriptive but may outline that the parties will reach an agreement about how the Project will be funded. This template is designed to be used as a non-binding MOU and parties should seek independent legal advice (both as to the appropriateness of using an MOU, and if so, its drafting), before including any provisions related to financial arrangements].*

* 1. The Participating Members agree to the following <<Example wording: Participating Members agree to discuss how the cost of the procurement process for the Project will be borne between them>>

1. (insert as required)
2. INFORMATION SHARING AND CONFIDENTIALITY

*Drafting Note: This section should address how each Participating Member will share information (confidential or otherwise), and how Participating Members deal with confidential information. Councils may also include clauses to state the exclusivity or confidentiality of this partnership or project for the duration of the Project, if required.]*

* 1. <<Example wording: Participating Members agree that it may be necessary to share confidential information to meet the goals, purposes and objectives of this MOU and that in doing so all such information must remain confidential.>>
  2. <<Example wording: No Participating Member must allow, make or cause any disclosure of confidential information without the prior written consent of the Participating Member(s) who are the source of that confidential information.>>
  3. <<Example wording: It is at the sole discretion of each Participating Member whether to disclose confidential information to any Participating Member or Participating Members of the Project, and to what extent and what form any disclosure (if any) may take.>>
  4. <<Example wording: Participating Members are responsible for securely storing and restricting access to any confidential information disclosed.>>
  5. <<Example wording: Any Participating Member must report any actual or potential breach of these provisions to the other Participating Members of the Project and must promptly implement a plan to mitigate any potential damage as soon as they become aware of any actual or potential breach.>>

1. HOW THE PARTICIPATING MEMBERS WILL WORK TOGETHER

*[Drafting Note: This section can address how communications will work for e.g. whether a group email will be set up. If possible, identify if a General Manager or CEO can be involved on the Project Steering Committee, or on an as-needed basis.]*

* 1. Participating Members reserve the right to withdraw from any procurement process, subject to compliance with Clause 14 of this MOU, and entry into this MOU does not bind Participating Members to accept any of the tenders received.
  2. The Participating Members agree on the following:

**Meetings and Cooperation**

* 1. The Participating Members commit to a (quarterly or other) meeting during the term of this MOU between the Duly Authorised Representative for each Participating Member to discuss (insert).
  2. The Participating Members may agree to meet additionally, as required.

**Governance**

* 1. <<Insert preferred rules for governance. Example wording: The Participating Members will form a Project Steering Committee to govern the development of a shared service application under this MOU.>>
  2. <<Example wording: Each Participating Member will nominate a representative for the Project Steering Committee who may be the General Manager of each Participating Member, or their delegate.>>
  3. <<Example wording: The Project Steering Committee may advise or review specifications or requirements, selection criteria, facilitate communication between Participating Members, attend meetings of Participating Members and assist in other responsibilities as required.>>
  4. << Optional for consideration - Participating Members may require members of the Project Steering Committee to sign Deeds of Confidentiality. >>

1. DISPUTE RESOLUTION
2. .

*[Drafting Note: Alternative dispute resolution measures include mediation and arbitration.]*

* 1. If a dispute arises between Participating Members under this MOU, any Participating Member may serve on all other Participating Members (regardless of whether the dispute involves all Participating Members or not) a written notice, which identifies and provides particulars of the dispute, including identifying the relevant Participating Members involved in the dispute.
  2. After service of the notice, the relevant Participating Members must each nominate one person to mediate the dispute.
  3. If the relevant Participating Members are unable to resolve the dispute by mediation within fourteen (14) days of notification of the dispute, the dispute must be referred to the Chief Executive Officers or General Managers of the relevant Participating Members.
  4. The Chief Executive Officers or General Managers of the relevant Participating Members must then attempt to resolve the dispute. <<Optional wording: In the event the dispute is still unable to be resolved, the Participating Members may opt to refer the matter to arbitration or other means of dispute resolution.>>

1. TERMINATION

*Drafting Note: Participating Members should consider how to minimise the impact of termination on other Parties, and consider (and amend as needed) the highlighted notice periods below to allow sufficient notice period for the same.]*

* 1. This MOU may be terminated if one of the following occurs:

1. a Participating Member provides fourteen (14) days written notice to the other Participating Members; or
2. a Party:
3. suffers an Insolvency Event;
4. is in breach of any material provision of this MOU, and such a breach, if remediable, is not remedied within fourteen (14) days after a Participating Member has given notice in writing to the Party in breach requiring such breach to be remedied (or such longer period having regard to the nature of the breach); or
5. repudiates this MOU,

in which case a Party not in default may by notice in writing to the Party in default (with a copy of the notice being sent to the remaining Parties) terminate this MOU.

1. VARYING THIS MOU
   1. This MOU may be varied at any time by agreement between all Participating Members of the Project, provided that any variation is evidenced in writing and sent to all Participating Members of the Project and any subsequent agreement is also in writing and provided by all Participating Members. Any such variation will take effect from a date that the Participating Members have mutually agreed in writing.

Each Participating Member of the Project confirms their commitment to this MOU as follows:

*[Drafting Note: Your organisation may have its own delegations, rules or procedures addressing which roles are authorised to sign an MOU.]*

**Signed** for (name of Council or representative body) by its authorised delegate pursuant to s.377 of the *Local Government Act 1993*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of delegate)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Delegate (please print)

I certify that I am an eligible witness and that the delegate signed in my presence

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of Witness)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Witness (please print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of Witness (please print)

*An eligible witness is a person who has known the authorised delegate for more than 12 months or who has sighted identifying documentation. It is a matter for Council to make sure that an authorised delegate actually has the requisite authority to sign on behalf of Council.*

**Signed** for (name of Council) by its authorised delegate pursuant to s.377 of the *Local Government Act 1993*

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of delegate)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Delegate (please print)

I certify that I am an eligible witness and that the delegate signed in my presence

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(Signature of Witness)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name of Witness (please print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Address of Witness (please print)