

Dated

2008

**CITY OF ARMADALE
and
CITY OF GOSNELLS
and
CITY OF SOUTH PERTH**

**ESTABLISHMENT AGREEMENT
OF THE
RIVERS REGIONAL COUNCIL**

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AGREEMENT

THIS ESTABLISHMENT AGREEMENT dated

2008

BETWEEN **CITY OF ARMADALE** of 7 Orchard Avenue, Armadale, Western Australia

AND **CITY OF GOSNELLS** of 2120 Albany Highway, Gosnells, Western Australia

AND **CITY OF SOUTH PERTH** of Civic Centre Cnr Sandgate Street and South Terrace South Perth Western Australia ("**the Participants**")

RECITALS

- A. By the First Establishment Agreement the Participants agreed to establish a regional local government named the South East Metropolitan Regional Council.
- B. The Minister approved the First Establishment Agreement and, in the Government Gazette dated 3 July 2001, the Minister declared the establishment of the South East Metropolitan Regional Council pursuant to section 3.61 of the Local Government Act 1995.
- C. By the Second Establishment Agreement the Participants agreed to amend the First Establishment Agreement by revoking it and substituting it with the Second Establishment Agreement. Under the Second Establishment Agreement the name continued as the South East Metropolitan Regional Council.
- D. The Participants have agreed to amend the Second Establishment Agreement by revoking it and substituting it with this Establishment Agreement. Under this Establishment Agreement the name is to be changed to the Rivers Regional Council.
- E. The Participants have resolved on the dates referred to in Schedule 1 to enter into this Establishment Agreement and to submit it to the Minister for approval.

OPERATIVE PART

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Establishment Agreement, unless the contrary intention appears:

"Act" means the Local Government Act 1995;

"Anticipated Exceptional Deficit" means the amount, if any, of a Deficit which, during a financial year the RRC determines will, or is likely to, occur in that year by reason of:

- (i) an expense for which no expenditure estimate is included in the RRC's annual budget for that year; or
- (ii) an expense for which an expenditure estimate is included in the RRC's annual budget for that year but the expense is exceptional having regard to that estimate; or
- (iii) a shortfall in income for which an income estimate is included in the annual budget for that year but the shortfall is exceptional having regard to that estimate;

“Budget Deficiency” has the same meaning as the expression “budget deficiency” is given in Part 6 of the Act;

“Deficit”, for a financial year, means the amount, if any:

- (a) by which the expenses of the RRC exceeds the revenues and other income of the RRC; and
- (b) which is shown as such in the annual financial report, for that year, prepared by the RRC in accordance with the Act and the regulations made under the Act;

“district” has the same meaning as given to it in the Act;

“Household Waste” means all waste from residential premises within the district of a Participant which is collected by or on behalf of a Participant but excludes that waste where it is garden waste, recyclable waste or bulk rubbish collected separately from other waste.

“First Establishment Agreement” means the establishment agreement between the Participants dated 24 May 2001 as varied by a deed of variation between the Participants undated but stamped 11 April 2002 and approved by the Minister;

“Minister” means the Minister of the Crown to whom the administration of the Act is for the time being committed by the Governor and includes a Minister of the Crown for the time being acting for or on behalf of the Minister;

“Operative Date” means the date of approval by the Minister of this Establishment Agreement;

“Paid Surplus” means a Surplus or portion of a Surplus which the RRC determines is to be paid to the Participants;

“Participants” means the parties to this Establishment Agreement and **“Participant”** means any one of them;

“Region” means the districts of the Participants;

“Regional Purpose” means any regional purpose referred to in clause 5;

“RRC” means the Rivers Regional Council;

“RRC Council” means the council of the RRC;

“Second Establishment Agreement” means the establishment agreement between the Participants dated 10 January 2005 and approved by the Minister;

“Surplus”, for a financial year, means the amount, if any:

- (a) by which the revenues and other income of the RRC exceeds the expenses of the RRC; and
- (b) which is shown as such in the annual financial report, for that year, prepared by the RRC in accordance with the Act and the regulations made under the Act.

1.2 Interpretation

In this Establishment Agreement, unless the contrary intention appears:

- (a) words suggesting the singular include the plural and vice versa;
- (b) words suggesting any gender include any other gender;
- (c) reference to a person include a company, corporation, an unincorporated or incorporated association or statutory authority;
- (d) references to clauses, paragraphs, subparagraphs and Schedules are to clauses, paragraphs, and subparagraphs of, and schedules to, this Establishment Agreement as amended from time to time in accordance with the Act;
- (e) headings used for clauses, paragraphs, subparagraphs, Schedules and the table of contents are for ease of reference only and do not affect the interpretation of this Establishment Agreement;
- (f) references to laws include any modification or re-enactment of those laws, or any legislative provisions substituted for those laws, and all orders, local laws, planning schemes, by-laws, regulations and other statutory instruments issued under those laws;
- (g) a reference to the word “includes” means includes without limitation and a reference to the word “including” means including without limitation;
- (h) a reference to any body is:
 - (i) if that body is replaced by another organisation, taken to refer to that organisation; and
 - (ii) if that body ceases to exist, taken to refer to the organisation which most nearly or substantially serves the same purposes or objects as that body; and
- (i) all dollar amounts specified in this Establishment Agreement are in Australian dollars.

2. SECOND ESTABLISHMENT AGREEMENT REVOKED

The Second Establishment Agreement is revoked and substituted with this Establishment Agreement commencing on the Operative Date.

3. NAME

The name of the regional local government is the Rivers Regional Council.

Footnote:

1. Section 3.62(1) of the Act provides that a regional local government is a body corporate with perpetual succession and a common seal.
2. A regional local government has the same general function of a local government including its legislative and executive functions. See Part 3 and section 3.66 of the Act.
3. Except as stated in section 3.66, the Local Government Act 1995 applies to a regional local government as if:
 - (a) the participants' districts together made up a single district; and
 - (b) the regional local government were the local government established for that district.

4. REGION

The RRC is established for the Region.

5. REGIONAL PURPOSES

The RRC is established for the following regional purposes:

- (a) to undertake the processing, recycling, treatment, sale and disposal of Household Waste delivered by the Participants;
- (b) to investigate and assess the possibilities and methodology of carrying out and to identify funding opportunities for, any service or facility on a regional basis;
- (c) without limiting any of the other regional purposes set out in this clause:
 - (i) to investigate and assess the possibilities and methodologies of undertaking the processing, recycling, treatment, sale and disposal of waste, other than Household Waste, which is delivered by the Participants (but not to carry out that undertaking); and
 - (ii) to acquire any interest in land considered by the RRC to be necessary or desirable to accommodate facilities for the processing, recycling, treatment, sale and disposal of waste referred to in sub-paragraph (i);”
- (d) to influence and liaise with local, State and Federal Governments in the development of policies and legislation for the benefit of the Region;
- (e) to provide advice, information and education to the Participants and the communities of the Participants in relation to the functions of the Participants; and
- (f) to carry out and do all other acts and things which are reasonably necessary for the bringing into effect of the purposes referred to in paragraphs (a) to (e) inclusive of this clause.

Footnotes:

1. In certain circumstances, a proposal to carry out a Regional Purpose may require the preparation of a business plan under the Act – see section 3.59.
2. The RRC is required to plan for the future of the Region by virtue of section 5.56(1) of the Act.
3. Regulations 19C and 19D of the Local Government (Administration) Regulations 1996 deal with plans for the future.

6. THE COUNCIL

6.1 Appointment of members

- (1) A Participant is to appoint 2 members of the council of the Participant to be a member of the RRC Council.
- (2) A Participant may appoint a member of the council of the Participant who may act temporarily in place of a member of the RRC Council, appointed by the Participant, during any period in which the member of the RRC Council is unable by reason of illness, temporary absence from the State, conflict of interest or for any other cause to perform the functions of the office.

Footnote:

Section 3.62(b) of the Act provides that a regional local government is to have, as its governing body, a council established under the Establishment Agreement and consisting of members of the councils of the participants.

6.2 Tenure of members of the RRC Council

A member of the RRC Council holds office until:

- (a) the Friday prior to the day on which the next biennial ordinary election to elect councillors of the Participant which appointed that member is to be held under the Act;
- (b) the member ceases to be a member of the council of the Participant; or
- (c) the member is removed by the Participant,

whichever is the earlier.

Footnote:

Sections 2.32 and 2.33 of the Act set out circumstances in which the office of a member of a councillor becomes vacant.

6.3 Election of chairman and deputy chairman

- (1) The members of the RRC Council are to elect a chairman and a deputy chairman:
 - (a) at the first meeting of the RRC Council following the day on which biennial ordinary elections to elect councillors to the Participants are held; or
 - (b) if those biennial ordinary elections are held on more than one day then at the first meeting of the RRC Council following the latest of those days.

- (2) If the office of chairman or deputy chairman becomes vacant then the members of the RRC Council are to elect a new chairman or deputy chairman, as the case requires.
- (3) The election of the chairman and deputy chairman is to be conducted by the CEO in accordance with the procedure prescribed under the Act for the election of a mayor and a deputy mayor, respectively, by a council.

6.4 Tenure of chairman and deputy chairman

The chairman and deputy chairman hold those offices until the election of a new chairman and deputy chairman pursuant to clause 6.3(1).

6.5 Role of chairman

The chairman:

- (a) presides at meetings of the RRC Council;
- (b) carries out civic and ceremonial duties on behalf of the RRC;
- (c) speaks on behalf of the RRC;
- (d) performs such other functions as are given to the chairman by the Act, any other written law or this Agreement; and
- (e) liaises with the CEO of the RRC on the RRC's affairs and the performance of its functions.

Footnotes:

1. The role of the RRC Council is set out in section 2.7 of the Act.
2. The functions of the CEO are set out in section 5.41 of the Act.
3. The chairman may agree to the CEO speaking on behalf of the RRC - see section 5.41(f) of the Act.

6.6 Role of deputy chairman

- (1) The deputy chairman performs the functions of the chairman when authorised to do so under this clause.
- (2) If:
 - (a) the office of chairman is vacant; or
 - (b) the chairman is not available or is unable or unwilling to perform the functions of chairman,

then the deputy chairman may perform the functions of chairman.

6.7 Role of members of RRC Council

A member of the RRC Council:

- (a) represents the interests of the ratepayers and residents of the Region;

- (b) facilitates communication between the community of the Region and the RRC Council;
- (c) participates in the RRC's decision-making processes at meetings of the RRC Council and its committees; and
- (d) performs such other functions as are given to the member by the Act or any other written law.

7. CONTRIBUTIONS TO A BUDGET DEFICIENCY, A DEFICIT OR AN ANTICIPATED EXCEPTIONAL DEFICIT

7.1 Application of clause

- (1) This clause applies if in any year:
 - (a) a Budget Deficiency is disclosed in the annual budget of the RRC;
 - (b) a Deficit is disclosed in the annual financial report of the RRC; or
 - (c) an Anticipated Exceptional Deficit is determined by the RRC.
- (2) This clause applies only to a Budget Deficiency or a Deficit which occurs after the Operative Date or to an Anticipated Exceptional Deficit which is determined after the Operative Date.

7.2 Contributions by Participants towards a Budget Deficiency, a Deficit or an Anticipated Exceptional Deficit

The Participants must pay to the RRC contributions towards a Budget Deficiency, a Deficit, or an Anticipated Exceptional Deficit as the case may be, in accordance with the steps set out in Schedule 2.

7.3 Time for payment of contributions

The contributions referred to in clause 7.2 must be paid by each Participant to the RRC within 42 days, or any earlier time agreed by the Participants, after:

- (a) in the case of contributions towards a Budget Deficiency – the date on which the annual budget is prepared and adopted by the RRC;
- (b) in the case of contributions towards a Deficit – the date on which the annual financial report is prepared and submitted to the RRC's auditor;
- (c) in the case of contributions towards an Anticipated Exceptional Deficit – the date on which the Anticipated Exceptional Deficit is determined by the RRC.

7.4 Late payment of contributions

If a Participant fails to pay the contribution referred to in clause 7.2 on or before the due date for payment then, in addition to the contribution, the Participant must pay to the RRC interest on the contribution at the overdraft rate charged by the RRC's bank on amounts of the same size as the unpaid contribution calculated from and including the due date to but excluding the actual date of payment.

8. CONTRIBUTIONS TO THE ACQUISITION OF LAND

- (1) Where the RRC Council determines that the Participants are to make contributions towards the acquisition of land then the Participants must make those contributions in equal proportions.
- (2) Contributions referred to in subclause (1) are capital contributions for the purpose of clauses 10.2 and 11.5.

9. DISTRIBUTION OF A PAID SURPLUS

9.1 Application of clause

This clause applies only to a Paid Surplus which occurs after the Operative Date.

9.2 Acknowledgment

The Participants acknowledge that it is for the RRC to determine if a Surplus or portion of a Surplus is to be paid to the Participants and the manner and timing of any payment, having a regard to the prudent management of its cash flow and financial requirements and other relevant matters.

9.3 Distribution of Paid Surplus between the Participants

The Participants agree that any Paid Surplus is to be distributed between them in proportions calculated in accordance with Schedule 3.

10. WINDING UP

10.1 Winding up by agreement

The RRC is to be wound up by agreement of all of the Participants.

Footnote:

Section 3.63(1) of the Act provides as follows:

- (1) A regional local government is to be wound up –
 - (a) at the direction of the Minister; or
 - (b) in accordance with the establishment agreement.”

10.2 Division of assets

- (1) If the RRC is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of the RRC then the property and assets are to be realised and:
 - (a) firstly, to the extent that the proceeds, along with any surplus funds, are

sufficient to do so the Participants are to be repaid their respective capital contributions as shown in the accounting records of the RRC; and

(b) secondly, the balance, if any, is to be divided among the Participants in the proportions set out in Schedule 4.

(2) For the avoidance of doubt, for the purposes of subclause (1), the capital contributions of the Participants do not accrue interest.

10.3 Division of liabilities

If the RRC is to be wound up and there remains any liability or debt in excess of the realised property and assets of the RRC then the liability or debt is to be met by each of the Participants in the proportions set out in Schedule 4.

11. WITHDRAWAL OF A PARTICIPANT

11.1 Withdrawal only by agreement

A Participant may only withdraw from the RRC by agreement in writing between the Participants.

11.2 Notice

A Participant wishing to withdraw from the RRC must give to each of the other Participants and to the RRC, notice in writing of its wish to do so.

11.3 Negotiations in good faith

The Participants must negotiate in good faith with a view to reaching agreement and the Participants must do so:

- (a) as soon as practicable following receipt of a notice under clause 11.2; and
- (b) from time to time when reasonably requested to do so by any one of the Participants.

11.4 Requirements of agreement

An agreement under clause 11.1:

- (a) is to specify the agreed date on which the withdrawal is to take effect; and
- (b) is to specify either:
 - (i) the agreed amount to be paid to or by the withdrawing Participant; or
 - (ii) the agreed methodology for determining the amount to be paid to or by the withdrawing Participant.

11.5 Matters relevant to negotiations

When negotiating under clause 11.3, the Participants are to have regard to:

- (a) the following principles:
 - (i) if the RRC has an excess of assets over liabilities as shown in the financial statements of the RRC, then the withdrawing Participant's proportionate entitlement to the excess is to be determined as if the RRC were being wound up and:
 - (A) firstly, to the extent that the withdrawing Participant's proportionate entitlement to the excess is sufficient to do so, the withdrawing Participant is to be given credit for its capital contributions as shown in the accounting records of the RRC;
 - (B) secondly, the withdrawing Participant is to be given credit for any balance remaining of that proportionate entitlement to the excess; or
 - (ii) if the RRC has an excess of liabilities over assets as shown in the financial statements of the RRC, then the withdrawing Participant's proportionate liability for the excess is to be determined as if the RRC were to be wound up and then the withdrawing Participant must meet its proportionate liability of the excess; and
- (b) any factor or circumstances considered relevant by the Participants including any financial consequences for the RRC and the Participants other than the withdrawing Participant, associated with any contractual obligations of the RRC, by reason of the proposed withdrawal.

11.6 Failure to reach agreement

Any failure by the Participants to reach agreement under this clause is not to be treated as a dispute for the purpose of clause 13.

12. BORROWINGS

Part 6, Division 5, Subdivision 3 of the Act is to apply.

Footnote:

1. Section 3.66(4) of the Act provides that Part 6, Division 5, subdivision 3 does not apply in relation to a regional local government unless the Establishment Agreement provides that it does.
2. Part 6, Division 5, subdivision 3 of the Act deals with borrowings and includes the power to borrow and restrictions on borrowings.

13. DISPUTE RESOLUTION

13.1 No proceedings

A party must not start arbitration proceedings in respect of a dispute arising out of this Agreement (“**Dispute**”) unless it has complied with this clause.

13.2 Notification of dispute

A party claiming that a Dispute has arisen must notify the other parties to the Dispute giving details of the Dispute.

13.3 Reasonable efforts to resolve Dispute

- (1) During the 14 day period after a notice is given under clause 11.2 (or longer period agreed in writing by the parties) (“**Negotiation Period**”), the parties must use their reasonable efforts to resolve the Dispute.
- (2) Within the first 7 days of the Negotiation Period, if the Dispute continues, the chief executive officers of the parties and the chief executive officer of the RRC, must meet, and use their reasonable endeavours to resolve the Dispute.

13.4 Dispute resolution process

If the Dispute is not resolved within the Negotiation Period, the parties must meet and endeavour to agree on:

- (a) a process for resolving the Dispute other than by litigation or arbitration (such as by further negotiations, mediation, conciliation or expert determination);
- (b) the procedure and timetable for any exchange of documents and other information relating to the Dispute;
- (c) the procedural rules and timetable for the conduct of the selected mode of proceeding;
- (d) a procedure for the selection and compensation of any independent persons engaged by the parties to assist in resolution of the Dispute; and
- (e) whether or not the parties should seek the assistance of a dispute resolution organisation.

13.5 Arbitration

If the Parties are unable to agree on a process for resolving the Dispute in accordance with clause 13.4 within 21 days after the Negotiation Period then any party may notify the others in writing (“**arbitration notice**”) that it requires the dispute to be referred to arbitration then, upon receipt of the arbitration notice by the recipients, the dispute is referred to arbitration under and in accordance with the provisions of the Commercial Arbitration Act 1985.

13.6 Legal representation

For the purposes of the Commercial Arbitration Act 1985, the Participants consent to each other and to the RRC being legally represented at any arbitration.

Footnotes:

1. Amendment of Establishment Agreement

The Participants may amend this Establishment Agreement by agreement made with the Minister's approval - see section 3.65(1) of the Act.

2. Admission of Other Local Governments

This Establishment Agreement can be amended to include another local government as a party to the amending agreement - see section 3.65(2) of the Act.

SCHEDULE 1

PARTICIPANT	DATE OF RESOLUTION TO ENTER INTO THIS ESTABLISHMENT AGREEMENT
CITY OF ARMADALE	17 December 2007
CITY OF GOSNELLS	18 December 2007
CITY OF SOUTH PERTH	26 February 2008

SCHEDULE 2

CALCULATION OF CONTRIBUTIONS TOWARDS A BUDGET DEFICIENCY, A DEFICIT OR AN ANTICIPATED EXCEPTIONAL DEFICIT

2.1 Contributions towards a Budget Deficiency

Each Participant must pay a contribution towards the Budget Deficiency calculated as follows:

$$\text{Participant's contribution} = \text{BD} \times \frac{\text{TP}}{\text{TTP}}$$

Where:

- (a) BD is the Budget Deficiency;
- (b) TP is the number of tonnes of the Participant's Waste in the previous year;
- (c) TTP is the number of tonnes of all of the Participants' Waste in the previous year;
- (d) "previous year" means the financial year preceding the financial year in which the Budget Deficiency is to occur.

2.2 Contributions towards a Deficit

Each Participant must pay a contribution towards the Deficit calculated as follows:

$$\text{Participant's contribution} = \text{D} \times \frac{\text{TP}}{\text{TTP}}$$

Where:

- (a) D is the Deficit;
- (b) TP is the number of tonnes of the Participant's Waste in the relevant year;
- (c) TTP is the number of tonnes of all of the Participants' Waste in the relevant year;
- (d) "relevant year" means the financial year in which the Deficit occurs.

2.3 Contributions towards an Anticipated Exceptional Deficit

Each Participant must pay a contribution towards the Anticipated Exceptional Deficit as follows:

$$\text{Participant's contribution} = \text{AED} \times \frac{\text{PT}}{\text{PTT}}$$

Where:

- (a) AED is the Anticipated Exceptional Deficit;
- (b) PT is the number of tonnes of the Participant's Waste in the previous year;
- (c) PTT is the number of tonnes of all of the Participants' Waste in the previous year;
- (d) "previous year" means the financial year preceding the financial year in which the Anticipated Exceptional Deficit is determined.

SCHEDULE 3
CALCULATION OF PROPORTIONS IN WHICH PARTICIPANTS ARE TO
RECEIVE A PAID SURPLUS

3.1 Calculation of proportions

Each Participant is to receive a proportion of the Paid Surplus calculated as follows:

$$\text{Participant's proportion} = \text{PS} \times \frac{\text{TP}}{\text{TTP}}$$

Where:

- (a) PS is the Paid Surplus;
- (b) TP is the number of tonnes of the Participant's Waste in the relevant year;
- (c) TTP is the number of tonnes of all of the Participants' Waste in the relevant year;
- (d) "relevant year" means the financial year in which the Surplus occurs.

SCHEDULE 4

PROPORTIONS OF PARTICIPANTS FOR THE PURPOSE OF WINDING UP

- 4.1** For the purpose of clauses 10.2(b) and 10.3, the proportion of each Participant is the proportion that the number of tonnes of the Participant's Waste for the previous 5 financial years bear to the number of tonnes of all of the Participants' Waste for the same period.

EXECUTED by the Parties

THE COMMON SEAL of CITY OF ARMADALE)
was hereunto affixed in the presence of:)
)

Mayor

Chief Executive Officer

THE COMMON SEAL of CITY OF GOSNELLS)
was hereunto affixed in the presence of:)
)

Mayor

Chief Executive Officer

THE COMMON SEAL of CITY OF SOUTH)
PERTH was hereunto affixed in the presence of:)
)

Mayor

Chief Executive Officer

Approved

Ljiljana Ravlich MLC
Minister for Local Government

_____ 2008