

**CITY OF BUNBURY  
And  
SHIRE OF HARVEY**  
(The Participants)

**ESTABLISHMENT AGREEMENT  
OF THE  
BUNBURY-HARVEY REGIONAL COUNCIL**

THIS ESTABLISHMENT AGREEMENT dated **Add Date**

BETWEEN CITY OF BUNBURY of 4 Stephen Street, Bunbury, Western Australia

AND SHIRE OF HARVEY of 102 Uduc Road, Harvey, Western Australia

#### RECITALS

- A. The districts of the Participants were constituted as a regional district by virtue of an Order of the Governor made under the Former Act and published in the Government Gazette on 30<sup>th</sup> March 1990.
- B. Pursuant to the Former Act and by virtue of the Order of the Governor, a regional council was then constituted.
- C. Under the Former Constitution Agreement dated 30<sup>th</sup> March 1990 made between all of the Participants, the Regional Council so constituted was named the Bunbury-Harvey Regional Council.
- D. By virtue of transitional provisions of the Act, the Regional Council continues as a regional local government as if it had been constituted as a regional local government under the Act.
- E. The Participants have agreed to amend the Former Constitution Agreement by revoking it and substituting it with this Establishment Agreement.
- F. 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. FORMER CONSTITUTION AGREEMENT

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

##### 2. NAME

The name of the regional local government continues to be the BUNBURY-HARVEY REGIONAL COUNCIL (BHRC).

##### **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.*

##### 3. REGION

The BHRC is established for the Region.

#### 4. REGIONAL PURPOSES

The regional purposes for which the BHRC is established are:

- a) To undertake the removal, collection, processing, recycling, treatment, sale and disposal of waste for the benefit of the communities of the participants and region;
- b) To provide Landfill Rehabilitation services for the benefit of the communities of participants and the region;
- c) To provide Waste Education facilities;
- d) To provide Risk Management, Training and Advisory Services;
- e) To provide Environmental Services;
- f) For Regional, Economic and Community Development;
- g) To investigate and assess the possibilities of, and the methodologies for, carrying out a range of services on a regional basis; and
- h) 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 paragraph (a) to (e) of this clause.

**Footnote:**

*In certain circumstances, a proposal to undertake a Regional Purpose may require the preparation of a business plan under the Act – see section 3.59.*

#### 5. OBJECTIVES

The objectives of the BHRC are:

- a) To provide effective and cost efficient waste collection and disposal, consistent with safeguarding all environmental elements, for the benefit of the participants and the residents of the Region;
- b) To ensure the region's waste services are able to meet demands associated with projected population growth, and proposed state and federal government policy.
- c) To operate programmes to dispose of waste accepted by the BHRC via landfill, recycling and reuse in accordance with best practice;
- d) To implement one or more preferred waste treatment methods, including landfill, organics processing, recycling and waste-to-energy either separately, or with others, for treatment of at least that waste generated within the Region;
- e) To support initiatives to minimise waste-at-source generation through interaction with government, industry groups and the community;
- f) To establish business systems necessary for the ongoing management of the BHRC's business, maximising the life of existing landfill facilities;
- g) To obtain the appropriate level of resources, financial and physical, for the operation of the BHRC business activities;
- h) To use best endeavours to operate profitably, to be self-funding and to be responsible for the raising of any necessary capital or loans to meet its needs independent of the Participants;
- i) Provide the local agricultural industry with high quality organic compost to build up soil with carbon and trace elements;
- j) Provide the communities of the region with mulch for rehabilitation.

No failure or alleged failure of the BHRC to meet any of the objectives set out in the above, shall preclude any of the Participants from meeting its obligations under this Agreement or otherwise give rise to any claim or entitlement on its part.

## 6. DEFINITIONS

In this Establishment Agreement, unless the context requires otherwise:

**“Act”** means the Local Government Act 1995.

**“BHRC”** means the Bunbury-Harvey Regional Council.

**“Environmental Services”** means the provision of technical and administrative support relating to assessment and management of environmental impacts including, without limiting the generality of the foregoing, the provisions of guidelines and standards for:

- Integrated catchment arrangements
- Protection of remnant vegetation
- Native fauna
- Surface water systems
- Controlled release and development of land
- Assistance in promoting and coordinating programmes on environmental matters.

**“Former Constitution Agreement”** means the constitution agreement made on 30<sup>th</sup> March 1990 between the parties constituting, pursuant to the Local Government Act 1960, a regional district known as the Bunbury-Harvey Regional District and a council of that regional district known as Bunbury-Harvey Regional Council.

**“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 upon which the Minister approves this Establishment Agreement.

**“Rate of Interest”** means, for the purpose of clause 9, means the rate of interest determined from time to time by the BHRC Council as being the rate of interest which in the opinion of the BHRC Council would be a reasonable rate of return on the surplus if invested.

**“Region”** means the districts of the Participants.

**“Regional, Economic and Community Development”** means developing strategies for waste minimisation and the promotion of BHRC services to the region.

**“Regional Purpose”** means any regional purpose referred to in clause 4.

**“Waste”** means any and all kinds of rubbish; refuse and waste material which local governments are from time to time permitted by law to collect, treat or dispose of

## 7. THE COUNCIL

### 7.1 Appointment of Members

- (1) A Participant is to appoint a member or members of the council of the Participant to be a member of the BHRC Council, in the numbers set out in Schedule 2.
- (2) The existing members of the BHRC Council appointed immediately prior to the Operative Date shall remain in office after the Operative Date.
- (3) A Participant may appoint a member of the council of the Participant who may act temporarily in place of each member of the BHRC Council, appointed by the Participant during any period in which the member of the BHRC 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.*

### 7.2 Tenure of Members of the BHRC Council

A member of the BHRC Council shall hold office until:

- (a) The Friday prior to the local government election held in May every 2 years after the Operative Date;
- (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.*

### 7.3 Election of chairperson and deputy chairperson

- (1) The members of the BHRC Council shall elect a chairperson and a deputy chairperson:
  - (a) At the first meeting of the BHRC Council following the Operative Date;
  - (b) At the first meeting of the BHRC Council following the first Saturday:
    - (i) In May following the Operative Date; and
    - (ii) In May every 2 years thereafter.
- (2) If the office of chairperson or deputy chairperson becomes vacant then the members of the BHRC Council shall elect a new chairperson or deputy chairperson, as the case requires.
- (3) The election referred to in subclause (2) shall take place at a meeting held at least 4 weeks after the date on which the office became vacant.

### 7.4 Tenure of chairperson and deputy chairperson

The chairperson and deputy chairperson shall hold those offices until the election of a new chairperson and deputy chairperson pursuant to clause 7.3(1).

## 7.5 Role of chairperson

The chairperson:

- (a) Presides at meetings of the BHRC Council;
- (b) Carries out civic and ceremonial duties on behalf of the BHRC;
- (c) Speaks on behalf of the BHRC;
- (d) Performs such other functions as are given to the chairperson by the Act, any other written law or this Agreement; and
- (e) Liaises with the CEO on the BHRC's affairs and the performance of its functions.

### **Footnotes:**

1. *The role of the BHRC 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 chairperson may agree to the CEO speaking on behalf of the BHRC - see section 5.41(f) of the Act.*

## 7.6 Role of deputy chairperson

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

## 7.7 Role of members of BHRC Council

A member of the BHRC Council shall:

- (a) Represents the interests of the residents of the Region;
- (b) Facilitate communication between the community of the Region and the BHRC Council;
- (c) Participate in the BHRC's decision-making processes at meetings of the BHRC Council and its committees; and
- (d) Perform such other functions as are given to the member by the Act or any other written law.

## **8. FINANCIAL CONTRIBUTIONS**

***Tony would like this whole section removed but not sure that is possible.***

### 8.1 Annual contributions

- (1) The annual contribution of each Participant shall be an amount which bears the same proportion to the deficiency, if any as disclosed in the budget for a financial year as the tonnages of waste disposed of by the participant bears to the total tonnages of waste disposed of by all participants at the time of the adoption of that budget.

- (2) The Annual Contribution calculated in accordance with the preceding clause (1) shall be varied if in the opinion of the Council it is reasonable to do so taking into account:
  - (a) The usage of each Participant in the financial year under consideration:
  - (b) The predicted usage of the facilities by a Participant in the year under consideration.

## 8.2 Other Contributions

Where the BHRC Council determines that the Participants will make any contribution for a Regional Purpose, other than the annual contribution referred to above, including, without limitation, the Participants will make those contributions as requested.

## 8.3 Manner of payments of contribution

The contributions referred to in clauses 8.1 and 8.2 shall be paid by each participant to the BHRC in the manner determined by the BHRC Council.

## 8.4 Late payment of contributions

Unless otherwise agreed, if a Participant fails to pay to the BHRC a sum of money owing under this clause on or before the due date for payment, that Participant shall, in addition to the sum of money due and payable, pay to the BHRC, interest at the overdraft rate charged by the BHRC's bank on amounts of the same size as the unpaid sum, calculated from and including the due date of payment to but excluding the actual date of payment.

## 8.5 Annual financial statements

When submitting the same to the BHRC's auditor each year, the BHRC shall give to each Participant a copy of the BHRC's annual financial statements including details of all assets and liabilities.

## 9. DIVIDEND

BHRC will pay an agreed amount on a per tonne basis each financial year in the form of a dividend in lieu of a lease agreement.

## 10. WITHDRAWAL OF A PARTICIPANT

### 10.1 Withdrawal

A Participant may, at any time in any year, give to the BHRC notice of its intention to withdraw from the BHRC.

### 10.2 When withdrawal to take effect

The withdrawal of a Participant under clause 10.1 shall take effect from the end of the financial year following the giving of two (2) years notice of withdrawal under clause 10.1.

### 10.3 Entitlement or liability of withdrawing Participant

As soon as practicable after the withdrawal of a Participant takes effect, the BHRC shall:

- (a) Distribute to the Participant an amount equal to that which would have been payable to the Participant if the BHRC had been wound up; or
- (b) Be entitled to recover from the Participant an amount equal to the liability or debt which would have been payable by the Participant if the BHRC had been wound up, as the case may be.

10.4 Participants may be required to pay distribution

If the BHRC is unable to meet the distribution referred to in clause 10.3(a) from funds on hand then, unless the BHRC Council decides otherwise, the Participants (other than the Participant which has withdrawn) shall pay the distribution in the proportions set out in Schedule 3.

11. WINDING UP

11.1 Winding up by agreement

The Participants may, by agreement, wind up the BHRC.

11.2 Division of assets

(1) If the BHRC is to be wound up and there remains, after satisfaction of all its debts and liabilities, any property and assets of the BHRC then the property and assets shall be realised and:

- (a) The proceeds, along with any surplus funds, shall be used to repay to the Participants their respective capital contributions; and
- (b) The balance, if any, shall be divided among the Participants in the proportions set out in Schedule 3.

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

11.3 Division of liabilities

If the BHRC is to be wound up and there remains any liability or debt in excess of the realised property and assets of the BHRC then the liability or debt is to be met by each of the Participants in the proportions set out in Schedule 3.

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 13.2 (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 BHRC, 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 shall 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 and the dispute (unless meanwhile settled) shall upon receipt of the arbitration notice by the recipients then be and is hereby 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 BHRC being legally represented at any such arbitration.

## 14. INTERPRETATION

### 14.1 Interpretation

In this Establishment Agreement, unless the context requires otherwise:

- (a) Words importing the singular include the plural and vice versa;
- (b) Words importing any gender include the other genders;
- (c) References to persons include corporations and bodies politic;
- (d) References to a person include the legal personal representatives, successors and assigns of that person;

- (e) A reference to a statute, planning scheme, or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them (whether of the same or any other legislative authority having jurisdiction);
- (f) References to this or any other document include the document as varied or replaced, and notwithstanding any change in the identity of the parties;
- (g) References to writing include any mode of representing or reproducing words in tangible and permanently visible form;
- (h) An obligation of two or more parties shall bind them jointly and severally;
- (i) If a word or phrase is defined other parts of speech and grammatical forms of that word or phrase have corresponding definitions;
- (j) References to a person or body which has ceased to exist or has been reconstituted, amalgamated, reconstructed or merged, or the functions of which have become exercisable by any other person or body in its place, shall be taken to refer to the person or body established or constituted in its place or by which its functions have become exercisable;
- (k) An obligation incurred in favour of two or more parties shall be enforceable by them jointly and severally;
- (l) Reference to anything (including, without limitation, any amount) is a reference to the whole or any part of it and a reference to a group of things or persons is a reference to any one or more of them;
- (m) Reference to a month and cognate terms means a period commencing on any day of a calendar month and ending on the corresponding day in the next succeeding calendar month but if a corresponding day does not occur in the next succeeding calendar month the period shall end on the last day of the next succeeding calendar month;
- (n) Includes means includes without limitation;
- (o) References to this Establishment Agreement include its schedules.

#### 14.2 Headings and footnotes

Headings and footnotes shall be ignored in construing this Establishment Agreement.

#### 14.3 Time

- (a) References to time are to local time in Perth, Western Australia;
- (b) Where time is to be reckoned from a day or event, that day or the day of that event shall be excluded.

**Footnote:**

*Amendment of Establishment Agreement*

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

*Admission of Other Local Governments*

2. 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 Bunbury	Add Date
Shire of Harvey	Add Date

SCHEDULE 2

Participant	Number of Councillors
City of Bunbury	Add Number of Councillors
Shire of Harvey	Add Number of Councillors

SCHEDULE 3

Participant	Proportion
City of Bunbury	Add Percentage
Shire of Harvey	Add Percentage