

THIS AGREEMENT is made the 1st day of July 2011

BETWEEN

**The Fire and Emergency Services Authority of Western Australia**, a body corporate established by the Fire and Emergency Services Authority of Western Australia Act 1998 of 480 Hay Street Perth ("**FESA**")

AND

the local government whose name and address appear in Item 1 of the Schedule hereto ("**LG**")

WHEREAS

- (A) Under section 36ZJ of the Fire and Emergency Services Authority of Western Australia Act 1998 ("**the FESA Act**") FESA may, with the approval of the Minister, enter into a written agreement with a local government that provides for the local government to pay to FESA an amount equal to the total amount of levy payable for a levy year on all leviable land in the local government's district.
- (B) The LG is a local government incorporated under the Local Government Act 1995 and has agreed to enter into this ESL agreement with FESA.
- (C) The Minister for Police; Emergency Services; Road Safety has approved FESA entering into this ESL agreement.

NOW THE PARTIES HERETO AGREE AND DECLARE as follows:-

- 1. Words and expressions specifically defined in the FESA Act whenever used in this ESL agreement shall have the same meaning as in the FESA Act unless expressly defined herein or the context otherwise requires.
- 2. This ESL agreement is made subject to the provisions of the FESA Act and the parties hereto shall observe, perform and comply with all applicable provisions of the FESA Act and the Regulations thereunder and any Ministerial guidelines for the time being issued by the Minister under section 36Y of the FESA Act ("**the Guidelines**") as if fully set forth herein as agreements by the parties.
- 3. This ESL agreement shall commence on the date mentioned in Item 2 of the Schedule ("**the Commencement Date**") and shall enure until one of the parties gives to the other at least 3 months written notice that this ESL agreement is to terminate ("**Term**") whereupon after the said period of notice this ESL agreement is to end.
- 4. The LG shall calculate the total amount of levy payable for each separate levy year the subject of this ESL agreement on all leviable land, excluding land owned by the LG, for the time being in the LG's district ("**the Total ESL**") at the time or times and in the manner specified in the FESA Act and Regulations thereunder and the Guidelines.

2.

5. (a) The LG shall pay to FESA the Total ESL for the current levy year without abatement or deduction whatsoever EITHER:
- (i) by four instalments on the twenty-first day of the months of September, December, March and June respectively of that levy year; OR
  - (ii) with the prior written consent of FESA, by one single instalment on the twenty-first day of September in the levy year.
- The payment option to apply will be specified in Item 3 of the Schedule ("**Elected Payment Option**").
- (b) The September, December and March instalments under clause 5(a)(i) shall each be for an amount equal to thirty per cent (30%) of the Total ESL for that levy year.
  - (c) The June instalment under clause 5(a)(i) shall be for an amount equal to ten per cent (10%) of the Total ESL for that levy year.
  - (d) The LG must ensure that each instalment under clause 5(a)(i) or 5(a)(ii) (as the case may be) is received by FESA no later than 5.00 p.m. on the date hereinbefore fixed for payment of that instalment, and in this respect time shall be of the essence of this agreement PROVIDED that if the date fixed for payment of an instalment is a Saturday, a Sunday or a gazetted public holiday in Western Australia, the LG must ensure that the instalment is received by FESA prior to that date on a day which is not a Saturday, Sunday or gazetted public holiday.
6. (a) Within fourteen (14) days after the date of issue by the LG of its levy assessment notices in each levy year, the LG must duly complete and deliver to FESA an Emergency Services Levy Assessment Profile Return Form in accordance with Schedule 4 of FESA's Emergency Services Levy Manual of Operating Procedures issued for the leviable year concerned.
- (b) In the event that an Emergency Services Levy Assessment Profile Return Form is not delivered by 1 September of the leviable year concerned, **FESA will estimate** the ESL payable for land that is located within the LG area concerned. This ESL billing estimate will determine quarterly instalment amounts under clause 5(a)(i) or the single payment amount under clause 5(a)(ii) and any variation between the LG assessment and the FESA estimate will be adjusted in the next instalment for a LG paying quarterly instalments under clause 5(a)(i) or as a special adjustment (invoice for increase or refund for reduction, as the case may be) for a LG making a single payment under clause 5(a)(ii).

3.

- (c) Following the completion of each and every levy year to which this Agreement relates, and prior to 31 July next, the LG must duly complete and provide to FESA an ADVICE OF EMERGENCY SERVICES LEVY ADJUSTMENT ("ADVICE"), in the form of Annexure "A" hereto, containing full written details of any adjustments made or required to be made to any of the figures previously supplied to FESA by the LG, under the provisions of this ESL agreement, to ensure that payments due under this Agreement can be accurately calculated in accordance with clauses 5(d) and 5(e).
- (d) Where any adjustments have been made to any of the figures previously supplied to FESA by the LG under the provisions of this ESL agreement and full written details of those adjustments have been supplied to FESA under clause 6(c), by a LG making payments in accordance with clause 5(a)(i):
  - (i) on or before 31 May, then, if requested by the LG, the June instalment of that levy year will be increased or reduced (as may be appropriate) by the full nett amount of any adjustments referred to in the ADVICE provided by the LG under clause 6(c); or
  - (ii) on or before 31 July, then the September instalment of the next levy year will be increased or reduced (as may be appropriate) by the full nett amount of any adjustments referred to in the ADVICE provided by the LG under clause 6(c); or
  - (iii) after 31 July, the next available levy instalment will be increased or reduced (as may be appropriate) by the full nett amount of any adjustments referred to in the ADVICE provided by the LG under clause 6(c).
- (e) Where the LG with the prior written consent of FESA pays to FESA the Total ESL for the current levy year by one single instalment under clause 5(a)(ii), the provisions of clauses 5(b), 5(c), and 6(d)(i) shall not apply. If 6(d)(iii) applies the LG must pay to FESA the full amount of any adjustment due and owing to FESA contemporaneously with its provision of the ADVICE, or FESA must refund to LG the full amount of any overpayment by LG within 21 days of receipt of the ADVICE.

- 7. FESA shall pay to the LG the fees determined by the Minister from time to time under section 36W of the FESA Act for the LG's assessment, collection and recovery of the levy and levy interest in each levy year, not later than 31 October in the levy year.

4.

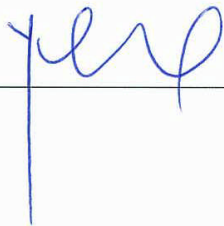
8. (a) EXCEPT as expressly provided in this ESL agreement, FESA shall not be liable or obliged to pay or reimburse the LG for any loss, costs, fees, charges, duties, expenses or liabilities whatsoever in respect of or arising out of or related to the assessment, collection and recovery of the levy or levy interest or the performance of the LG's obligations under this ESL agreement or the FESA Act.
- (b) The LG must pay to FESA in full all monies payable by the LG to FESA under this ESL agreement on the due dates for payment thereof notwithstanding that the LG has failed or been unable to collect, recover or receive any of those monies from the person or persons liable for payment thereof for whatever reason or cause.
9. (a) If the LG commits a breach or default of any provision of this ESL agreement or the FESA Act which is capable of being remedied by subsequent performance, FESA may, without prejudice to any right of action or remedy which has accrued or may accrue in favour of either party, by notice in writing to the LG specify the breach or default and require the LG within a reasonable time specified in the notice to remedy the breach or default.
- (b) FESA may, by notice in writing to the LG, immediately terminate this ESL agreement in whole or in part, but without prejudice to any right of action or remedy which has accrued or may accrue in favour of either party where the:-
  - (i) LG is in breach or default of a material or essential term of this ESL agreement, whether or not FESA has given notice under paragraph (a) herein in relation to that breach or default;
  - (ii) LG has failed to comply with a notice under paragraph (a) of this clause;
  - (iii) LG commits a breach or default under this ESL agreement or the FESA Act which is not capable of being remedied, whether or not FESA has given notice under paragraph (a) in relation to that breach or default; or
  - (iv) Council of the LG is suspended or dismissed under Part 8 of the Local Government Act 1995.
10. The provisions of this Agreement may only be changed by written agreement between the parties.
11. FESA and the LG shall also observe, perform and comply with the Additional Clauses (if any) contained in Item 4 of the Schedule hereto.

In witness whereof the parties have executed this ESL agreement on the day and year first hereinbefore written.

Signed for and on behalf of  
**The Fire and Emergency Services Authority of Western Australia**  
by **Jo Harrison-Ward Chief Executive Officer**  
and being a person duly authorised under  
section 38(5) of the FESA Act:

  
\_\_\_\_\_ Chief Executive Officer

in the presence of:

  
\_\_\_\_\_ Witness

The Common Seal of  
**The Shire of York**  
was hereunto affixed by the authority of a resolution  
of the Council in the presence of:

\_\_\_\_\_ Lord Mayor/Mayor/President

\_\_\_\_\_ Chief Executive Officer

## **THE SCHEDULE**

**Item 1 ("LG"):**

The Shire of York

**Item 2 ("Commencement Date"):**

1st July 2011

**Item 3 ("Elected Payment Option"):**

5(a) (i)

**Item 4 ("Additional Clauses"):**

**ANNEXURE A**

**ADVICE OF EMERGENCY SERVICES LEVY ADJUSTMENT**

Return For Financial Year:

[Insert Local Government Name]

[Australian Business No.]

Ref	Property Use	Current Year ESL Only - As Applicable to Each ESL Category										TOTAL	
		ESL Category 1		ESL Category 2		ESL Category 3		ESL Category 4		ESL Category 5		No. of Assessments	ESL Billing Adjustment (-) or + (\$)
1	Residential	No. of Assessments	ESL Billing Adjustment (-) or + (\$)	No. of Assessments	ESL Billing Adjustment (-) or + (\$)	No. of Assessments	ESL Billing Adjustment (-) or + (\$)	No. of Assessments	ESL Billing Adjustment (-) or + (\$)	No. of Assessments	ESL Billing Adjustment (-) or + (\$)		
2	Vacant												
3	Farming												
4	Commercial												
5	Industrial												
6	Miscellaneous												
7	Mining Tenements												
8	ESL Category 5												
9	TOTAL												

Declaration of Accuracy & Compliance

Name of Declaring Officer

Position Title of Declaring Officer

Contact Details of Declaring Officer

[Signature]

[Date]

[Please Print]

[Please Print]

[E-mail]

[Phone]

Note: This advice is to be submitted to notify FESA of ESL billing adjustments carried out in levy year because billing errors have been rectified, interim valuations, which altered the 1st July GRV, have been processed and ESL charge cappings have been amended.

