



SHIRE OF YORK

CONTRACT OF EMPLOYMENT  
CHIEF EXECUTIVE OFFICER  
2014

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## **THIS CONTRACT OF EMPLOYMENT**

is made on the Twenty Third day of July 2014

### **BETWEEN:**

1. **Shire of York**  
**1 Joaquina Street**  
**YORK WA 6302**

and

- 2 **Michael Keeble**  
**17 Forbes Street**  
**YORK WA 6302**

1. POSITION

- 1.1 The position is that of Chief Executive Officer of the Local Government. This contract relative to that position is made under and subject to the Local Government Act 1995.

## **2. DEFINITIONS**

In this Contract:

- 2.1 "Act" means the *Local Government Act 1995*;
- 2.2 "CEO" means the Chief Executive Officer of the Local Government;
- 2.3 "Confidential Information" means any and all confidential information, data, reports, operations, dealings, records, materials, plans, statistics, finances or other agreements and things (other than an agreement or thing which is already in the public domain), whether written or oral and of whatever type or nature relating to property, assets, liabilities, finances, dealings or functions of the Council or any undertaking from time to time carried out by the Council.
- 2.4 "Council" means the Council of the Local Government;
- 2.5 "Long Service Leave Regulations" means the Local Government (Long Service Leave) Regulations.
- 2.6 "Policies" means the policies adopted by Council.
- 2.7 "Position" means the office or position defined in Clause 1.
- 2.8 "Remuneration Package" means the total of the remuneration package specified in Clause 12.
- 2.9 "Term" means, the term specified in Clause 4.

## **3. CONSTRUCTION**

Unless expressed to the contrary, words importing:

- 3.1 The singular include the plural and vice versa.
- 3.2 If a word or phrase is defined, cognate words or phrases having

corresponding definitions;

A reference to:

- 3.3 A person includes a firm, an unincorporated association, an incorporated association, a corporation and a government or statutory body or authority.
- 3.4 A person includes their legal personal representatives, successors and assigns.
- 3.5 A statute, ordinance, code, regulation, award or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them.
- 3.5 A right includes a benefit, remedy, discretion, authority or power.
- 3.6 An obligation includes a warranty or representation and a reference to a failure to observe or perform an obligation includes a breach of warranty or representation.
- 3.7 Provisions or terms of this Contract, or another document, contract, understanding or arrangement include a reference to both express and implied provisions and terms.
- 3.8 This Contract or any other document includes this Contract or other document as varied or replaced and notwithstanding any change in the identity of the parties.
- 3.9 Writing includes any mode of representing or reproducing words in tangible and permanently visible form, and includes facsimile transmissions or other electronic mail or transmissions.
- 3.10 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 anyone or more of them.
- 3.11 Headings are for convenience only and do not affect the interpretation of this Contract.

#### **4. TERM OF EMPLOYMENT**

Subject to the terms and conditions contained in this contract, the Local Government will employ the CEO for a term of 1 year, commencing on the 16<sup>th</sup> day of October, 2014 and expiring on the 15<sup>th</sup> day of October, 2015.

#### **5. FURTHER CONTRACTS**

There is no compulsion on either the Council or the CEO to agree to a new Contract. The Council and/or the CEO may initiate discussions not later than 3 months prior to the expiry of the Term for the parties to enter into a new Contract for a further term with the Council making a decision to finalise those discussions not later than 1 month prior to the expiry of the term of this Contract. In the event that the Council and the CEO agree to a new contract, a new contract will be executed.

#### **6. CHIEF EXECUTIVE OFFICER'S DUTIES AND FUNCTIONS**

The CEO must carry out the duties and functions as are:

- 6.1 set out in the Position Description and as varied from time to time by

- agreement between the parties;
- 6.2 set out in the policies of the Local Government as adopted by the Local Government from time to time during the term of employment;
  - 6.3 imposed by the Act or in any other statute and associated regulations relevant to the position.

The CEO shall:

- 6.4 work such reasonable hours as are necessary to carry out the duties and functions of the position;
- 6.5 observe and carry out all lawful directions given by the Council, in relation to the performance of the CEO's duties and functions under this Contract;
- 6.6 disclose any financial or other interest relating to the business of the Local Government in accordance with the Act or which conflicts or may conflict with the discharge of the duties and functions of the office and comply with any reasonable direction given by the Council in respect of that interest;
- 6.7 devote the whole of his/her professional effort to his/her employment and will not hold any position or take on any activities which may in any way be seen to conflict with the CEO's obligations under this contract unless approved by the Council (or, if the Council so chooses, by the President).

## **7. PERFORMANCE CRITERIA**

The position of CEO will be the subject of two sets of performance criteria:

1. A "generic" set of ongoing performance requirements centered around the Chief Executive Officer's accountability for giving effect to responsibilities in a manner agreeable to Council:-
  - the extent to which the Chief Executive Officer is effective and efficient in the management, development and coordination of the resources of the Council;
  - the extent to which the Chief Executive Officer is committed to innovation and review in the planning and delivery of services administered by the Council;
  - the manner by which the Chief Executive Officer maintains and enhances a corporate approach within the Council;
  - the nature of relationships with the Council, Senior Staff, other staff and community;
  - the extent to which the Chief Executive Officer projects the image of the Council;
  - the manner by which the Chief Executive Officer implements the programs and policies of the Council and the extent to which these policies are communicated to the public;
  - the extent to which the Chief Executive Officer maintains and enhances the reputation of the Council as a provider of cost effective services for the community.

- the manner and effectiveness of the internal and external communications of the Chief Executive Officer;
- the extent to which the Chief Executive Officer is committed to forward planning in the management of the Council's resources and the review of formulation of policies;
- the manner by which the program of Council, adopted through the annual budget, is achieved;
- the manner by which cost effectiveness and productivity is demonstrated.

2. Annual performance targets to be negotiated within 1 month of commencement.

These Performance Criteria may be varied and any other criteria may be included by agreement between the parties at any time during the term of this contract.

## **8. PERFORMANCE REVIEWS**

- 8.1 Council will ensure that a review of the CEO's performance is conducted annually or more frequently if the Council or the CEO perceives there is a need to do so.
- 8.2 In any case, a performance review may be initiated in June 2015.
- 8.3 Performance reviews will be conducted in accordance with the provisions of this contract.
- 8.4 Where an external facilitator is to be used, both parties must agree to the nominated facilitator.
- 8.5 The CEO will prepare and submit to the council and/or facilitator an assessment of his own performance prior to the assessment by council.
- 8.6 The final report on the performance of the CEO is to be forwarded to Council for consideration to either accept or reject the report.

### **Key Performance Indicators**

- 8.7 All Special Projects delivered on time and within budget forecast.
- 8.8 Deliver efficiency dividend without sacrificing service delivery of at least 5% with a stretch target of 7.5%.
- 8.9 Debtors to be collected on time (within our trading terms), any debtor greater than 60 days are to be explained.
- 8.10 Creditors to be paid on time (within our trading terms), any creditor greater than 60 days are to be explained.
- 8.11 Rates collection. Outstanding rates are to be no more than 12.5% of total annual rates. (Currently greater than 25%). It is expected that over a two year period outstanding rates will be equal to or less than the industry norm of less than 5%.
- 8.12 Investment income. Investments are to be actively managed within the local government guidelines to achieve an investment income 20% greater than achieved in the 2013-2014 financial year.
- 8.13 Implements processes and reporting mechanisms to receive, monitor and manage:  
Action requests  
Complaints

## **9. CONFIDENTIAL INFORMATION**

- 9.1 The CEO shall not divulge any confidential information about the Local Government both during and after his/her term of employment with the Local Government. Confidential information includes all information and intellectual property relating to the functions and operations of the Local Government which is not made available to the public.
- 9.2 In the event of termination, the CEO must deliver to the Local Government all confidential information relating to the local government in the CEO's possession and must not keep or make copies of such information.

## **10. CONDUCT**

- 10.1 The CEO shall at all times carry out his/her duties and functions in the best interests of the Local Government, and ensure that the CEO's actions do not bring the Local Government into disrepute or cause the Local Government damage.
- 10.2 The CEO will comply with the code of conduct adopted by the Local Government pursuant to section 5.103 of the Act or as prescribed in Regulations under the Act.

## **11. SUSPENSION**

- 11.1 The Council may suspend the CEO from duty on full pay during any period in which the CEO has been charged with a criminal offence, and that charge has not been determined.

## **12. REMUNERATION**

In order to ensure compliance with section 5.39 (7) and (8) of the Local Government Act 1995, the remuneration package is categorised as follows to reflect the provisions of the Salaries and Allowances Tribunal's Determination dated 24 June 2014.

Consequently, the remuneration is detailed into 2 categories:

- Total Reward Package
- Other benefits

The Local Government will provide the CEO with the remuneration package detailed below:

- 12.1 The CEO shall be entitled to a total remuneration package of \$239,988 per annum, which takes into account:
- the requirement to attend Council meetings outside working hours;
  - An acknowledgment that the position is measured on performance and not on the number of hours worked; and
  - All additional loadings and allowances.

The components represented by the total reward package may include:

- Base salary

- Annual Leave Loading (deemed to be included in base salary)
- Associated FBT accrued (total annual amount of fringe benefits tax paid by the local government for all fringe benefits provided to the CEO).
- Association membership fees
- Grooming / clothing allowance
- Health insurance
- Superannuation (all mandatory and non-mandatory employer superannuation contributions)
- Travel or any other benefit taken in lieu of salary.
- Travel for spouse or any other family member
- Unrestricted entertainment allowance.
- Utilities allowances (any water, power or any other utility subsidy provided to the CEO); and
- Any other form of payment, in cash or not, in consideration of a reward or benefit of the CEO's duties.
- Total Reward Package (SAT Determination Schedule 1 Level 3)

Cash Component

Base Salary ( including leave loading)	\$ 169,882
Superannuation @ 9.5%	\$ 16,139
Contributory Superannuation @ 5%	\$ 8,494
MOB Phone and Laptop	\$ 2,500
Professional Development	\$ 1,000
Professional Membership	\$ 400
Grooming	\$ 800
Utilities and Home Phone	<u>\$ 250</u>
Total Cash Component	\$ 199,465
Non - Cash Component	
Motor Vehicle Private Use	\$ 17,000
Housing Subsidy	\$ 15,600
FBT	<u>\$ 7,923</u>
Total Non - Cash Component	\$ 40,523
Total Cost to the Shire	\$ 239,988

## 12.2 Cash Salary & Isolation Allowance

12.2.1 The Remuneration Package referred to in subclause 12.1 shall be reviewed annually by Council. There is no obligation on the local government to increase the salary or amount of the remuneration package. A review shall not result in a decrease in the Total Reward Package.

12.2.2 The CEO's salary shall be payable fortnightly, in arrears to an account nominated by the CEO.

## 12.3 Superannuation Contributions

12.3.1 The Local Government will make Superannuation Guarantee



Contributions during the term of the contract of 9.5% of the Chief Executive Officer's base salary and any isolation allowance (if applicable), or such higher percentage as the Government may legislate for from time-to-time.

12.3.2 Subject to the CEO making contributions equivalent to at least 5% of his salary, the local government shall make an additional contribution equivalent to 5% of the CEO's base salary and any isolation allowance (if applicable).

12.3.2 The CEO may elect to pay additional superannuation contributions as part of the salary sacrifice arrangement with the Local Government. Such an agreement will result in a lower cash component being paid to the CEO.

#### 12.4 Electricity Allowance

12.4.1 This allowance is calculated on an FBT-year basis (ie. From 1 April to 31 March in the following year). Part-year entitlements are calculated on a pro rata basis.

12.4.2 For employees resident in the Shire-owned dwellings, the Shire will continue to pay the electricity bills and will recoup from the employee any charges above the standard maximum annual allowance.

#### 12.5 Water Allowance

12.5.1 750kL of water is provided free of charge to staff tenants of Shire housing each year. This allowance is calculated on an FBT-year basis (ie. From 1 April to 31 March in the following year). Part-year entitlements are calculated on a pro rata basis.

12.5.2 The Shire will pay the water bills and will recoup from the employee any charges relating to water consumption in excess of 750kL.

#### 12.6 Uniform / Grooming Allowance

12.6.1 The allowance can be paid in fortnightly instalments through payroll, and the CEO will be responsible for his or her own uniform and grooming costs and will not be required to account for either the allowance or the expenditure.

12.6.2 The CEO can arrange his or her own uniform purchases, or alternatively these can be supplied by the Shire's uniform supplier but will have to be paid for by the CEO.

12.6.3 Officers whose contracts provide for a uniform allowance to make a once-only election to forego the allowance in favour of having uniforms provided by the Shire to a maximum value of \$800 (ex GST). This option is also open to the CEO.

#### 12.7 Professional Membership

12.7.1 On production of an invoice for the CEO's annual subscription to Local Government Managers Australia (LGMA) or other professional association approved by the Council, the Shire will pay the subscription fee on the CEO's behalf.

## 12.8 Expenses

- 12.8.1 Subject to Council Policy, provided that in the absence of any related Council Policy the CEO may recoup any legitimate business expenses incurred for Shire-related purposes and in consultation with the Shire President.

## 12.9 Fringe Benefits Tax

- 12.9.1 The Local Government shall pay any liability with respect to Fringe Benefits Tax incurred as a result of the benefits provided in this Contract, or the ordinary carrying out of Local Government business by way of functions or travelling.
- 12.9.2 The Salaries and Allowances Tribunal has determined that the total amount of fringe benefits tax paid by the Local Government for all fringe benefits provided to a CEO must be included in the Total Reward Package for the purposes of compliance with the Tribunal's determination.

## 12.10 Other benefits (not included in the Total Reward Package)

### 12.10.1 Motor Vehicle

12.10.1.1 The Local Government shall provide for the private and business use of the CEO a motor vehicle (currently a Holden Caprice) or to the equivalent standard: minimum seating capacity of five persons.

12.10.1.2 The Salary and Allowances Tribunal has determined that any motor vehicle provided to the CEO by the local government is to be considered a tool of trade, and that any private benefit of the vehicle will not be considered as part of the Total Reward Package.

12.10.1.3 However, the Australian Taxation Office still considers the provision of a motor vehicle to be a taxable Fringe Benefit, and the Salary and Allowances Tribunal has determined that the total amount of FBT for all benefits provided to the CEO will form part of the Total Reward Package. Therefore, FBT relating to the motor vehicle provided will form part of the Total Reward Package, even though the benefit of having a motor vehicle provided will not.

12.10.1.4 The Local Government shall be responsible for all running costs of the motor vehicle including, but not limited to all registration, insurance, fuel and maintenance costs of the motor vehicle.

12.10.1.5 The CEO is responsible for:

- a) Keeping a motor vehicle log book for the first three months of employment, and for three months immediately following the allocation of any replacement vehicle; and
- b) organising for: the motor vehicle to be maintained, serviced and cleaned in an appropriate manner.

12.10.1.6 Unlimited private use entitles the CEO and a driver designated by the CEO to use the motor vehicle for both business and private purposes in Western Australia, subject to:

- (a) the terms and conditions of the Local Government's insurance policy in respect of the vehicle in place from time to time with which the CEO agrees to comply.

#### 12.10.2 Housing

12.10.2.1 The Local Government shall provide, free of rental, the furnished residence at 17 Forbes Street York to the CEO for his use during the life of this contract.

12.10.2.2 The Salaries and Allowances Tribunal has determined that, where a local government owns a property and provides that property to the Chief Executive Officer for accommodation, the value of this accommodation will not be included in the Total Reward Package.

#### 12.10.3 Professional Development

12.10.3.1 The CEO will be entitled to attend one conference or other professional development activity per year at the Shire's expense, to a maximum duration of one week and a maximum total cost (including travel and accommodation) of \$1,000.

12.10.3.2 However the Council may, upon application from the CEO, approve additional professional development activities in excess of the duration or cost specified in subparagraph 12.10.3.1.

12.10.3.3 This benefit relates specifically to the CEO's professional development only; any expenses related to attendance at conferences by the CEO's spouse or other family members is to be borne by the CEO.

12.10.3.4 The Salaries and Allowances Tribunal has determined that professional development costs and benefits (restricted to the CEO) are excluded from the Total Reward Package.

#### 12.10.4 Internet Connection and Telephone Allowance

12.10.4.1 The Local Government shall provide the CEO with a high-speed (ADSL+2 or better) internet connection at the CEO's place of residence.

12.10.4.2 The Local Government shall pay call costs from the telephone at the CEO's residence.

12.10.4.3 For the purposes of the Salaries and Allowances Tribunal's determination, the provision of internet and telephony at the CEO's residence are regarded as "tools of trade" and do not form part of the Total Reward Package.

#### 12.10.5 Other productivity aids

12.10.5.1 The following items are to be provided by the Local Government to the CEO as “tools of trade” and do not form part of the Total Reward Package:

- A Telstra Next G account for the CEO's mobile phone (the CEO is to provide the handset of his or her choice, which may be salary-sacrificed). The Shire will pay for calls (but not for “premium services”, which may be barred).
- A Telstra Next G USB Mobile Broadband Modem and/or a Telstra Next G connection for a tablet computer for use when the Chief Executive Officer is away at meetings, etc.
- A VPN or similar remote access to the Shire of Halls Creek's computer network.

#### 12.11 Salary Sacrifice

12.11.1 The CEO may elect to enter into a salary sacrifice arrangement with the Local Government in relation to superannuation contributions to a complying fund or funds of the CEO's choice up to a maximum permitted by law.

12.11.2 The CEO may elect to enter into a salary sacrifice arrangement with the Local Government in respect to other FBT free or FBT exempt items.

12.11.3 Where the CEO elects to enter into any salary sacrifice arrangement in accordance with 12.11.1 and 12.11.2 above, the cash salary payable in accordance with this Contract shall be reduced accordingly.

#### 12.12 Tax Effective Packaging

12.12.1 The parties agree that at any time during the term of this Contract they may enter into negotiations and agree to vary any elements of the remuneration package provided in this Contract with a view to making the remuneration package most tax effective and to the parties mutual advantage, provided that such variation shall not add to the cost to the Local Government and are lawful.

#### 12.13 Valuation

12.13.1 The value to be allocated to each component of the CEO's total remuneration shall be determined by the Local Government in accordance with such valuation principles as it may adopt from time to time to value benefits extended to its employees.

12.13.2 Any change in valuation of any component of the remuneration package shall not reduce the total value of the remuneration package:

## **13. LEAVE**

### 13.1 Annual Leave

- 13.1.1 The CEO is entitled to six weeks' paid Annual Leave each year, to be taken during agreed periods. No leave loading is to be paid as the remuneration package is deemed to be sufficient to compensate for leave loading.

### 13.2 Long Service Leave

- 13.2.1 Long service Leave shall be in accordance with the Local Government (Long Service Leave) Regulations.

### 13.3 Personal Leave

- 13.3.1 The CEO is entitled to two weeks (cumulative) per annum paid Personal Leave when he/she is absent:

- due to personal illness or injury (sick leave); or
- for the purposes of caring for an immediate family or household member who is sick and requires the CEO's care and support (carer's leave);

- 13.3.2 The CEO is entitled to two days Bereavement Leave as non-cumulative leave on any occasion on which a member of the CEO's immediate family or household dies.

### 13.4 Parental Leave

- 13.4.1 Parental Leave encompasses Maternity Leave, Paternity Leave and Adoption Leave, and is available if the CEO has been employed for a 12 month period or more immediately preceding the commencement of the leave.

- 13.4.2 The leave is unpaid (including Public Holidays), and is available for a period of up to 52 weeks in one unbroken period. Personal leave is not available and no leave entitlements accrue during the period of Parental Leave.

- 13.4.3 The CEO may take any other forms of paid leave to which he/she are entitled, such as annual or long service leave, in substitution for some or all of this 52 week period. The maximum entitlement to Paternity Leave is reduced by any maternity leave taken by the CEO's spouse. Paternity Leave cannot normally be taken while the CEO's spouse is on maternity leave.

### 13.5 Public Holidays

- 13.5.1 The CEO shall be entitled to Western Australian Gazetted public holidays and 2 days in lieu for the day after New Years Day and the Tuesday after Easter.

## **14. TERMINATION**

### 14.1 Termination at End of Term

- 14.1.1 The employment of the CEO shall, unless the term is extended, terminate on the expiry of the term (ie. On the date specified in clause 4) without requirement of either party giving notice.

## 14.2 Termination on Notice for Any Reason

- 14.2.1 Notwithstanding the prescribed term, either party may terminate the CEO's employment during the term by written notice in accordance with this sub-clause.
- 14.2.2 Either party may terminate the CEO's employment for any reason by giving 3 months written notice of termination to the other.
- 14.2.3 Alternatively to sub-clause 14.2.2, the Council may terminate the CEO's employment:
  - 14.2.3.1 Summarily if the CEO's conduct is such as to justify summary termination at common law; or the CEO commits any wilful or serious misconduct or wilful neglect in the discharge of the CEO's responsibilities or obligations under this Contract; or wilfully disobeys any reasonable and lawful order or direction by the Council; or is convicted and under sentence for a crime or has been convicted of a serious Local Government offence within the meaning of section 2.22 of the *Act*; or
  - 14.2.3.2 On 4 weeks written notice to the CEO on the grounds of the CEO's misconduct or poor performance.

## 14.3 Payment In Lieu Of Notice

- 14.3.1 The Council may elect to pay the CEO in lieu of notice, in which event the CEO's employment will terminate immediately upon such payment being made.
- 14.3.2 If the CEO fails to give notice in accordance with this clause, the Local Government may deduct an amount equal to the sum the CEO would have earned during the notice period from any moneys held by the Local Government and which otherwise would have been due and payable to the CEO.
- 14.3.2 The maximum amount of remuneration payable to the CEO on termination, for any reason, is not to exceed 3 months remuneration.

## 14.4 Work During Notice

- 14.4.1 The Local Government may, as an alternative to payment in lieu of notice, elect for the employment to continue for the notice period but not require the CEO to work during the period of notice or during any one or more periods during the period of notice.

# 15. INCONSISTENCY AND SEVERANCE

- 15.1 This Contract shall be governed by and construed in accordance with the laws of the State of Western Australia.
- 15.2 If there is any inconsistency between this Contract and any Industrial Relations Law, the Industrial Relations law prevails, but only to the extent of the

inconsistency.

- 15.3 If there is any inconsistency between this Contract and the *Local Government Act 1995*, the Act prevails but only to the extent of the inconsistency.
- 15.4 Each provision of this document shall be read and construed independently of the other provisions of this document so that if one or more are held to be invalid for any reason whatsoever, then the remaining provisions shall be valid to the extent that they are not held to be so invalid.
- 15.5 If a provision of this document is found to be void or unenforceable but would be valid if some part hereof were deleted or the period of application reduced, such provision shall apply with such modification as may be necessary to make it valid and effective.

## **16. ALTERATIONS TO THIS CONTRACT**

- 16.1 This contract may only be varied or replaced by agreement in writing signed by the parties.

## **17. NOTICES**

Any notice or other communication between the parties:

- 17.1 must be in legible writing to the last recorded (or known) address;
- 17.2 is regarded as being given to the sender and received by the addressee;
- if by person, when delivered;
  - if by post, 3 business days from and including the date of postage; and
  - if by facsimile transmission, whether or not legibly received, when transmitted to the addressee, but if the delivery or receipt is on a day which is not a business day or is after 4.00pm (addressee's time) it is regarded as received at 9.00am on the following business day.
  - if by email, the date of receipt shown on the email.
- 17.3 If the sender is advised that a facsimile transmission is not legible within 2 hour after transmission, the facsimile transmission is not regarded as legible.

## **18. OTHER TERMS AND CONDITIONS**

- 18.1 Subject to any express provision in this Contract to the contrary, each party shall bear its own legal and other costs and expenses relating directly or indirectly to the preparation of, and performance of its obligations arising out of this Contract.

## 19. EXECUTION BY THE PARTIES

THE COMMON SEAL of the Local Government was hereunto affixed by authority of a resolution of the Council in the presence of:

\_\_\_\_\_  
Cr Matthew Reid

President

Signed by:

\_\_\_\_\_  
Michael Keeble

Chief Executive Officer

In the presence of:

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

Witness

Name of Witness