



Ref: 2004 05183 L0228
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15 July 2014

Mr Brent Bailey
Deputy Chief Executive Officer
Shire of Jerramungup
PO Box 92
Jerramungup WA 6337

Dear Brent

Re: Licence Agreement – Boxwood Hill Dam – Reserve 30274

Please find enclosed 3 copies of the above Licence Agreement.

Could you please arrange to have signed where flagged and return all copies to Water Corporation for execution after which a copy will be returned to you for your records.

Should you have any queries please do not hesitate to contact the undersigned.

Yours sincerely

A handwritten signature in black ink, appearing to read "Cathrine Taylor".

Cathrine Taylor
Property Officer
Procurement and Property Branch

LICENCE (LAND ONLY)

Water Corporation

Shire of Jerramungup

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LICENCE (LAND ONLY)

Reference table

1	Date licence is made	The _____ day of _____ 20__.
2	Licensor	<p>Water Corporation, ABN 28 003 434 917 a body corporate established under the <i>Water Corporation Act 1995</i> (WA) of John Tonkin Water Centre, 629 Newcastle Street, Leederville, Western Australia 6000.</p> <p>Licensor's address for service of notices: PO Box 100, Leederville, Western Australia 6902 Attention: The Manager, Property Management – Procurement and Property Branch.</p> <p>Licensor's facsimile number for service of notices: (08) 9420 3730 – Attention: The Manager, Property Management – Procurement and Property Branch.</p>
3	Licensee	<p>Shire of Jerramungup a body corporate established under the <i>Local Government Act 1995</i> (WA)</p> <p>Licensee's address for service of notices: PO Box 92, Jerramungup, Western Australia, 6337,</p> <p>Licensee's facsimile number for service of notices: (08) 9835 1161</p>
4	Land	Lot 51 on Deposited Plan 168632 being the whole of the land in Certificate of Title Volume LR3018 Folio 515 and the subject of Reserve 30274
5	Premises	All of the Land
6	Period of licence (clause 3.1)	The period commencing on the Commencing Date and ending on the Expiry Date.
7	Commencing Date (clause 3.1)	1 January 2012
8	Expiry Date (clause 3.1)	31 December 2021
9	Further Term (clause 15.1)	Nil
10	Commencing Date (clause 15.1)	Not applicable
11	Licence Fee (clause 4.1)	\$1,000 per annum (plus GST)

12	Review of Licence Fee (clause 4.1)	On 1 January 2017, the Licence Fee will be increased to \$1,750 per annum (plus GST)
13	Manner of payment of Licence Fee (clause 4.2)	By annual payments in advance on the Commencing Date and each anniversary of the Commencing Date.
14	Permitted Use (clause 7.1)	Dam, water supply and gravel pit.
15	Public liability insurance amount (clause 10.1)	\$10,000,000.00.

Licence conditions

1 Grant of licence

The Licensor licences the Premises to the Licensee on the conditions in this licence.

2 Meaning of words

In this licence:

Term	Meaning
Act	includes any and all Acts of the Parliament of the Commonwealth, and of the State of Western Australia, and includes any ordinance, rule, regulation, by-law, order, code of practice, guideline and proclamation made or issued under any such Act, now in existence, or which comes into existence.
Authorisation	includes: <ol style="list-style-type: none">1 any consent, registration, filing, agreement, notice of non-objection, notarisation, certificate, licence, approval, permit, authority or exemption from, by or with an Authority; and2 in relation to anything which an Authority may prohibit or restrict within a specific period, the expiry of that period without intervention or action or notice of intended intervention or action.
Authority	any government or governmental, semi-governmental, statutory, municipal, local, administrative, fiscal, judicial, native title, native heritage or planning, body, department, commission, authority, tribunal, agency or entity or other public body, local authority or other authority of any kind.
Business Day	a day which is not a Saturday, Sunday or public holiday in Perth.
Charges	any charges imposed by an Authority in relation to the Premises or the Land or any property which includes the Premises or the Land.
Commencing Date	the date in Item 7.
Contaminant	a solid, liquid, gas, odour, heat, sound, vibration, radiation or substance which makes or may make the Premises or the area

Term	Meaning
	<p>surrounding or near the Premises:</p> <ol style="list-style-type: none"> 1 unsafe or unfit for habitation by persons or animals; 2 degraded in its capacity to support plant life; 3 otherwise environmentally degraded; or 4 not comply with an Environmental Law.
Contaminate and Contamination	have corresponding meanings.
Environment	<p>all components of the Earth, including:</p> <ol style="list-style-type: none"> 1 land, air and water; and 2 any layer of the atmosphere; and 3 any organic or inorganic matter and any living organism; and 4 human-made or modified structures and areas, and includes ecosystems that include components referred to in paragraphs 1 to 3 (inclusive).
Environmental Law	<p>all present and future laws regulating or relating to the Environment including, but not limited to::</p> <ol style="list-style-type: none"> 1 the <i>Environmental Protection Act 1986 (WA)</i>, the <i>Rights in Water and Irrigation Act 1914 (WA)</i>, the <i>Dangerous Goods Safety Act 2004 (WA)</i> and the <i>Contaminated Sites Act 2003 (WA)</i>; and 2 laws concerning: <ul style="list-style-type: none"> • land use, planning or heritage; • coastal properties and water catchments; • pollution of air or water; • noise; • soil or groundwater contamination; • chemicals and waste; • used, hazardous or dangerous goods or substances; • building regulations; • public and occupational health and safety; • noxious trades; and • any other aspect of protection of the Environment or person or property;
Environmental Liability	any obligation, cost, expense, fee and all other Losses or harm, howsoever occasioned, incurred or suffered by the Licensor under

Term	Meaning
	an Environmental Law (including without limitation any cost to the Licensor in connection with the carrying out of work by its employees or others and the administration of the carrying out of the work) in connection with or arising from the Licensee's or any of the Licensee's Visitors' use, control or occupation of the Premises or any breaches by the Licensee or any of the Licensee's Visitors of any Environmental Law.
Expiry Date	the date in Item 8.
Facility	a lavatory, sink, drain, main, pipe or other water, sewerage or plumbing facility, and a gas or electrical fitting or appliance in or on the Land.
Item	an item in the reference table at the front of this licence.
Land	the land in Item 4.
Landgate	the Western Australian Land Information Authority established under the <i>Western Australian Land Authority Act 1992</i> (WA).
Licence Fee	includes the Licence Fee set out in the reference table to this licence and any reviewed or other licence fee from time to time payable in respect of this licence.
Licensee	the person named in Item 3 and includes, where the context allows: <ol style="list-style-type: none"> 1 if the Licensee is a body corporate, the Licensee's successors; 2 if the Licensee is an individual, the Licensee's executors and administrators; and 3 the Licensee's assigns and persons claiming through the Licensee.
Licensee's Property	everything in or on the Premises that does not belong to the Licensor, and includes all the Licensee's fixtures, fittings, signs, equipment and goods and any Licensee's Works.
Licensee's Rights	the rights granted by the Licensor to the Licensee in respect of the Premises under this licence.

Term	Meaning
Licensee's Visitors	each of the Licensee's employees, agents, contractors, service suppliers, sub-contractors, customers and other visitors and any other person who at any time is on the Premises with or without the consent of the Licensee.
Licensee's Works	any works or other things (including the Permitted Use) that the Licensee may carry out or place in, on or over the Premises and where the context permits includes any products of those works (Licensee's Works).
Licensor	the person named in Item 2 and includes, where the context allows: <ol style="list-style-type: none"> 1 the Licensor's successors and assigns; 2 the Licensor's employees; and 3 any person authorised by the Licensor.
Licensor's Officers	each person from time to time holding, or authorised to act temporarily in that office, in the following designated posts in the Licensor: <ol style="list-style-type: none"> 1 each director of the Licensor; 2 each corporate secretary of the Licensor; 3 each manager of the Licensor or of any branch, division, section or other part of the Licensor.
Loss	includes any loss, claim, liability, damage, cost or expense (whether in the nature of economic loss, loss of profits or otherwise).
Permitted Use	the use specified in Item 14.
Power	includes a right, power, authority, discretion, remedy or privilege.
Premises	the premises described in Item 5.
Services	all or any services running through, or servicing, the Premises, including but not limited to, electricity, gas, oil, fuel, water or other like commodity, facility or service.
Taxes	every tax, charge or duty imposed by an Authority in relation to this licence, the Land or the Premises or any property which includes

Term	Meaning
	the Land or the Premises.

3 How long is the licence for?

3.1 Period, start and end

This licence is for the period in Item 6. The period starts on the Commencing Date and ends at midnight on the Expiry Date.

3.2 Conditions attaching to licence

The licence:

- (a) does not create an interest in the Land; and
- (b) confers no right of exclusive occupation of the Premises to the Licensee.

3.3 Continuing occupation after Expiry Date

If the Licensee continues to occupy the Premises after the Expiry Date, the Licensee does so on the same terms as are in this licence and at the Licence Fee payable immediately before the Expiry Date. The Licensor or the Licensee may end that licence on any day by giving at least 10 Business Days' notice to the other.

3.4 No caveats

- (a) The Licensee must not lodge or attempt to lodge any caveat over the Land or the Premises to protect any interest or purported interest of the Licensee under or relating to this licence.
- (b) In consideration of the Licensor granting the Licensee's Rights, the Licensee irrevocably appoints the Licensor and each and every of the Licensor's Officers, jointly and severally to be the attorney of the Licensee in the name and on behalf of the Licensee and as the act and deed of the Licensee to sign and lodge at Landgate a withdrawal of: any caveat lodged by or on behalf of the Licensee, and the Licensee:
 - (1) undertakes to ratify, confirm and allow all that any attorney does or causes to be done under or by virtue of this clause 3.4; and
 - (2) indemnifies the Licensor and each attorney in respect of:
 - (A) any Loss the Licensor or that attorney suffers or incurs arising from or relating to any act done or purported to be done under or by virtue of this clause 3.4; and
 - (B) the Licensor's and each attorney's costs and expenses of and incidental to the withdrawing of any caveat lodged by or on behalf of the Licensee affecting the Land or the Premises.

4 Paying Licence Fee

4.1 How much must Licensee pay?

The Licensee must pay the Licensor the Licence Fee in Item 11 (as varied in accordance with Item 12) in the manner specified in Item 13.

4.2 How must Licensee pay?

The Licensee must pay the Licence Fee at the times specified in Item 13.

5 GST

- (a) Any reference in this clause to a term defined or used in *A New Tax System (Goods and Services Tax) Act 1999* (Cth) is, unless the context indicates otherwise, a reference to that term as defined or used in that Act.
- (b) Any amount referred to in this licence which is relevant in determining a payment to be made by one of the parties to the other is exclusive of any GST unless indicated otherwise.
- (c) If GST is imposed on a supply made under or in connection with this licence then the consideration provided for that supply is increased by the rate at which that GST is imposed. The additional consideration is payable at the same time as the consideration to which it relates.
- (d) The supplier must issue a tax invoice to the recipient of the supply at the time of payment of the GST inclusive consideration or at such other time as the parties agree.
- (e) If one of the parties to this licence is entitled to be reimbursed for an expense or outgoing incurred in connection with this licence, then the amount of the reimbursement will be net of any input tax credit which may be claimed by the party being reimbursed in relation to that expense or outgoing.

6 What other money must Licensee pay?

6.1 Charges and Taxes

- (a) The Licensee must bear and pay all Charges and Taxes whether directly or indirectly assessed or levied on or in respect of the Land or the Premises or on both and notwithstanding that the Premises may form only part of the Land.
- (b) The Licensee must pay the amounts under this clause 6.1 direct to the assessing Authority on time or, at the Licensor's request, to the Licensor in time for the Licensor to make the payment to the assessing Authority on time.

6.2 Reimbursing Licensor's insurance premiums

The Licensee must repay to the Licensor on request all premiums payable by the Licensor for insurance relating to the Premises.

6.3 Lessor's costs and transfer duty

The Licensee must pay:

- (a) the Lessor's reasonable costs of and incidental to the instructions for and the preparation, execution and duty endorsement of this licence and all usual copies of it;
- (b) transfer duty on this licence and any other document arising from this licence;
- (c) the Lessor's reasonable legal and other costs arising from the Licensee's breach of this licence (for example: preparing a notice of breach (see clause 13.2), remedying the breach (see clause 13.3); and
- (d) the Lessor's reasonable costs of considering the Licensee's request for the Lessor's consent.

6.4 Adjustments and errors

- (a) If the Lessor has to calculate the money the Licensee owes by using a time period, and this licence starts or ends during that time period, the Lessor must make the necessary proportional adjustment. The adjustment must be based on the proportion that the number of days that the Licensee is the tenant bears to the number of days during the time period.
- (b) If either the Licensee or the Lessor proves an error in any calculation, the Lessor must correct it and any necessary adjusting payment must be made as soon as possible.

7 What are Licensee's obligations concerning Premises?

7.1 Using Premises

- (a) The Licensee must, and must ensure that the Licensee's Visitors must, only use the Premises for the Permitted Use, or any other use to which the Lessor consents.
- (b) The Licensee:
 - (1) must satisfy itself that the Premises are capable of being lawfully used for the Permitted Use; and
 - (2) acknowledges that the Lessor makes no representation and gives no warranty regarding the use to which the Premises may lawfully be put.
- (c) The Licensee must, and must ensure that the Licensee's Visitors must, obtain and obey all approvals, consents, licences and permits required to carry on the Permitted Use in the Premises (for example: those needed for environmental matters and matters concerning trade waste and dangerous goods).
- (d) The Licensee must not, and must ensure that the Licensee's Visitors must not, put any sign or advertisement outside the Premises unless the Licensee gets the Lessor's consent.
- (e) The Licensee must not, and must ensure that the Licensee's Visitors must not, use the Premises in a way that interferes with the usual operation of services which the Lessor supplies to the Premises.

- (f) The Licensee must not, and must ensure that the Licensee's Visitors must not, store dangerous substances (for example: hazardous chemicals, flammable liquids, acetylene, gas, volatile or explosive oils, compounds or substances) on the Premises unless the storage of such substances is reasonably incidental to the Permitted Use.
- (g) The Licensee must, and must ensure that the Licensee's Visitors must, at all times duly and punctually comply with the requirements of all Acts, Authorisations and the requirements of all relevant Authorities from time to time in respect of, or which affect the use of, the Premises or which impose any duty or obligations on the owner, occupier or user of the Premises.

7.2 Letting others into Premises

- (a) The Licensee is responsible for the conduct of all people the Licensee allows in the Premises (for example: the Licensee's customers, employees, contractors and agents).
- (b) The Licensee is not responsible for the conduct of people the Licensor requires to be on the Premises (for example: the Licensor's employees and agents).

7.3 Maintaining Premises and Licensee's Property

- (a) The Licensee must keep the Premises clean and tidy and in the same condition as they were in at the Commencing Date, except for fair wear and tear.
- (b) The Licensee must keep all the Licensee's Property in good and safe working order, repair and condition and free from damage.
- (c) The Licensee must:
 - (1) keep all lawns and garden areas on the Premises and any nature strips adjoining the Premises trim, well-watered and in good condition; and
 - (2) maintain all firebreaks within the Premises in accordance with all laws and otherwise to the satisfaction of the Licensor.

7.4 Fences

The Licensee is responsible for:

- (a) all fences (if any) now or hereafter permitted to be erected or constructed on the boundaries of the Premises included but not limited to, compliance with the requirements under the *Dividing Fences Act 1961* (WA);
- (b) the maintenance of those fences in good order and condition; and
- (c) any required relocation or re-establishment of such fences at the termination of the term of this licence or any renewed term or early termination of this licence.

7.5 Disposing of rubbish

The Licensee must arrange for the regular removal of rubbish from the Premises.

7.6 Damage to Premises or persons

The Licensee must not, and must ensure that the Licensee's Visitors must not, cause (whether by act or omission) any damage to the Premises, or any danger or injury to, or

death of, any person in or on the Premise, and must tell the Licensor as soon as the Licensee knows of any:

- (a) injury, death or loss in the Premises; or
- (b) likely cause of danger or risk to any person in the Premises.

7.7 Licensee must obey the law and notices

The Licensee must, and must ensure that the Licensee's Visitors must, obey any law (including, but not limited to, Environmental Laws) or proper notice from any competent authority requiring the Licensee to do anything concerning:

- (a) the Premises;
- (b) the Permitted Use;
- (c) the health and safety of people using the Premises; or
- (d) this licence.

7.8 How Licensee must behave

The Licensee must not, and must ensure that the Licensee's Visitors must not, do anything that is or may reasonably be considered to be dangerous, offensive or a nuisance to, or that may interfere with, anyone.

7.9 Changes to the Premises

The Licensee may not make nor permit or allow to be made any alteration or addition to the Premises unless the Licensor gives its prior written consent to any such alteration or addition which consent the Licensor may:

- (a) grant or refuse; or
 - (b) grant subject to any conditions,
- as the Licensor determines.

7.10 Licensee not to Contaminate Land

The Licensee must:

- (a) not, and must ensure that the Licensee's Visitors do not:
 - (1) do anything on the Land or the Premises; or
 - (2) bring anything onto the Land or the Premises,
 which will or might Contaminate the Land; and
- (b) if such Contamination of the Land or the Premises occurs, immediately remediate, remove, abate, neutralise and treat that Contamination to the Licensor's satisfaction.

7.11 Environmental Liability indemnity

The Licensee indemnifies the Licensor against:

- (a) all Loss the Licensor may suffer or incur in respect of any matter referred to in clause 7.10; and
- (b) any Environmental Liability.

8 What are Licensee's obligations when this licence ends?

8.1 Licensee's general obligations

- (a) When this licence ends, the Licensee must:
 - (1)
 - (A) give back the 2002 License Area to the Licensor in the same layout and condition as they were in at the commencement of the 2002 Licence;
 - (B) give back the rest of the Premises (excluding the Gravel Pit) to the Licensor in the same layout and condition as they were in at the Commencing Date, except for fair wear and tear, and free from Contaminants taking into account the state of the Premises at the Commencing Date; and
 - (C) revegetate the Gravel Pit using the local native flora common to the surrounding areas; and
 - (2) remove any sign or advertisement installed inside or outside the Premises and repair any damage caused.
- (b) The Licensee must make sure all the Licensee's Property is removed and repair any damage caused. Anything left becomes the Licensor's property and the Licensor may keep, sell or give it away.
- (c) The Licensee must pay the Licensor's reasonable costs of dealing with any of the Licensee's Property left in the Premises (for example: removing the property and restoring the Premises to the required condition).
- (d) In this clause 8.1:
 - (1) 2002 Licence means the licence between the Licensor and the Licensee for the 2002 License Area commencing on 1 January 2002 and expiring on 31 December 2011;
 - (2) 2002 License Area means the premises the subject of the 2002 Licence, being the area hatched in black as shown on the plans attached as Annexure A; and
 - (3) Gravel Pit means the gravel pit situated on the Premises.

9 Prohibition on dealing with Premises and this licence

The Licensee must not deal with the Premises or the Licensee's interest in the Premises (for example: assigning, sharing or licensing them). Sections 80 and 82 of the *Property Law Act 1969* (WA) do not apply to this licence.

10 Licensee's insurance, release and indemnity

10.1 Licensee's insurance

- (a) The Licensee must have current insurance policies covering public liability arising from the use or occupation of the Premises for the amount in Item 15 in respect of any one claim and unlimited in the aggregate or any higher amount the Licenser may from time to time require which policy must be in the name of the Licensee noting the interest of the Licenser.
- (b) The Licensee must give the Licenser evidence of the Licensee's insurance, if the Licenser asks for it.
- (c) The Licensee must not do anything that may:
 - (1) cancel or make invalid any insurance of the Premises or the Licensee; or
 - (2) increase the Licenser's insurance premiums.

10.2 Licensee's risk; release and indemnity to Licenser

- (a) The Licensee occupies and uses the Premises at the Licensee's own risk.
- (b) The Licensee releases the Licenser from liability for any damage, Loss, injury or death occurring in the Premises, except to the extent that this was caused or contributed to by the Licenser's negligence.
- (c) The Licensee indemnifies the Licenser against any action or demand arising from any damage, Loss, injury or death caused by:
 - (1) the Licensee's or any of the Licensee's Visitors' act or negligence; or
 - (2) the Licensee's or any of the Licensee's Visitors' use or occupation of the Premises.
- (d) The Licensee's indemnity does not apply to the extent that the Licenser caused or contributed to the damage, Loss, injury or death by its negligence.

11 What are Licenser's rights and obligations?

11.1 Licenser may enter Premises

- (a) After giving the Licensee at least one Business Days' notice, the Licenser may enter the Premises at any reasonable time to inspect the Premises.
- (b) If there is an emergency, the Licenser may enter the Premises at any time without giving the Licensee notice.

11.2 Licenser may do things on Licensee's behalf

The Licenser may carry out any of the Licensee's obligations on the Licensee's behalf if the Licensee does not carry them out on time after receiving a notice of breach. The Licensee must promptly reimburse the Licenser's reasonable costs of doing this.

11.3 Licensor's consent or approval

If the Licensor's consent is required, the Licensor must consider the request promptly, and must be fair and reasonable in giving or withholding it. The Licensor may also require the Licensee to obey any reasonable conditions before the Licensor gives its consent or approval.

12 What happens if Licensee cannot use or access the Premises?

If the Licensee cannot use or access the Premises or its use or access to the Premises is materially affected then either party may terminate this licence by notice to the other.

13 What happens if Licensee breaches this licence?

13.1 Licensee breaches

The Licensee breaches this licence if:

- (a) the Licensee or any of the Licensee's Visitors disobeys any provision of this licence; or
- (b) the Licensee becomes an externally-administered body corporate (as defined in the *Corporations Act 2001*(Cth)).

13.2 Notice of breach

- (a) If the Licensee breaches this licence by disobeying a provision of this licence, the Licensor must give the Licensee a notice describing the breach and requiring the Licensee either to remedy the breach (if it can be remedied) or to make reasonable monetary compensation to the Licensor.
- (b) The Licensor must give the Licensee at least 5 Business Days to obey the Licensor's notice.

13.3 Licensor's rights if Licensee breaches this licence

If the Licensee or any of the Licensee's Visitors:

- (a) breaches this licence; and
- (b) where the breach is the disobedience of a provision of this licence, does not remedy that breach within the time required,

the Licensor may do one or more of the following:

- (c) re-enter and take possession of the Premises and end this licence;
- (d) recover from the Licensee any Loss the Licensor suffers due to the Licensee's breach;
- (e) carry out the Licensee's obligations on the Licensee's behalf (see clause 11.2); and
- (f) exercise any of the Licensor's other legal rights.

13.4 What else may Licensor do?

If the Licensor ends this licence under clause 13.3, it does not affect the Licensor's right to enforce:

- (a) payment of any Licence Fee or other money which was payable by the Licensee to the Licensor before this licence was ended; or
- (b) any other right arising from a breach by the Licensee of the Licensee's obligations before this licence was ended.

14 What if the Licensor wishes to terminate this licence before the Term ends?

14.1 Licensor may terminate by giving written notice

Subject to clause 14.2 and despite any other provision of this licence, the Licensor may terminate this licence before the end of the Term by giving the Licensee written notice.

14.2 When may the Licensor give written notice?

The Licensor may only terminate this licence under clause 14.1 for the purposes of:

- (a) installing, operating, repairing, servicing or maintaining any of the Services or the Facilities; or
- (b) complying with any Authorisation, requirement, notification or order of any Authority having jurisdiction or authority over or in respect of the Land or Premises, and
- (c) if the only reasonable way the Licensor can comply with and complete clause 14.2(a) or 14.2(b) is to terminate this licence.

14.3 When does termination take effect?

The termination is to take effect on the date specified in the notice.

14.4 What period of notice must the Licensor give?

That date referred to in clause 14.3 must be at least 3 months after the notice is given to the Licensee.

14.5 What are the Licensee's obligations on termination

In addition to any other obligations in this licence that the Licensee must comply with on any termination:

- (a) on the termination date, this licence will terminate and the Licensee, and any sub-tenant or occupier of the Premises, is to give up vacant possession of the Premises to the Licensor; and
- (b) the Licensee remains liable for the payment of Licence Fee and to comply with its other obligations under this licence until the termination date, and in the case of obligations which are expressed to survive the termination of the Licence, until they have been met.

14.6 What liability has the Licensor for any Loss occasioned by that termination?

The Licensor will not, in any circumstances, be liable for any Loss sustained by the Licensee or any person claiming under, or through, the Licensee as a result of, or arising directly or indirectly in any way from, the termination of this licence under this clause 14 except in relation to any liability for misrepresentation or fraud.

15 Option to extend the licence

15.1 Option

If in the reference table at the front of this licence the Licensor gives the Licensee the option to extend this licence for a further term specified in the reference table, the option is exercisable by the Licensee giving notice to the Licensor not earlier than 6 months and not later than 3 months before the end of the term of this licence unless otherwise stated in the reference table.

15.2 Loss of option

If, when the Licensee notifies the Licensor or, if the notice has been given at the end of the term of this licence, an event described in clause 13.1 has occurred and it has not been remedied or waived, the option to extend this licence ceases to have effect and the Licensee ceases to be entitled to an extension of this licence.

15.3 Terms of extension

The extension of this licence is to be on the same terms as this licence except that:

- (a) the Licence Fee applicable at the commencement date of the extended licence is to be the same as the Licence Fee payable under this licence immediately before the end of the term of this licence unless the commencement date is also a date on which the Licence Fee is to be reviewed, in which case, the Licence Fee is subject to review on that date by the method set out in this licence; and
- (b) any option to extend this licence included in this licence but which has been exercised does not apply.

15.4 Documentation

- (a) The Licensee is to promptly sign a deed of extension of licence, to be prepared by the Licensor or its solicitors, when requested by the Licensor.
- (b) Clause 6.3 relating to costs, expenses, duties and fees applies in relation to that deed.

16 Communication between the parties

16.1 Notices must be in writing

A notice, request, consent, approval or waiver (each a **notice**) to be given under this licence must be in writing.

16.2 Delivering notices

- (a) If the Licensor wants to give a notice to the Licensee, the Licensor must:
 - (1) give it to the Licensee personally;
 - (2) leave it at, or post or fax it to, the Premises; or
 - (3) leave it at, or post or fax it to, the Licensee's registered office or the Licensee's last known business address.
- (b) If the Licensee wants to give a notice to the Licensor, the Licensee must:
 - (1) give it to the Licensor personally; or
 - (2) leave it at, or post or fax it to:
 - (A) the Licensor's registered office; or
 - (B) any other address that the Licensor nominates.

16.3 When notice is taken as given

A notice is taken as given:

- (a) if delivered, on delivery;
- (b) if posted, 3 Business Days after posting; and
- (c) if faxed, on completion of transmission,

but if delivery or receipt is on a day which is not a Business Day or is after 5.00pm at the place of delivery or receipt, it is taken as given at 9.00am on the next Business Day.

17 Rules and Regulations

17.1 Licensee not to interfere with Licensor's operations

The Licensee must not, and must ensure that each of the Licensee's Visitors must not, create a nuisance, obstruct, disturb or interfere with the Licensor or any of the Licensor's employees, agents, contractors, service suppliers, sub-contractors, customers and other visitors and any other person who at any time is on the Premises or the Land with the Licensor's consent, whether in respect of any operations or business that the Licensor may from time to time conduct on the Land or otherwise.

17.2 Licensee and Licensee's Visitors must comply with Rules and Regulations

The Licensee must, and must ensure that each of the Licensee's Visitors must, promptly comply with any rules, regulations, guidelines or directions that the Licensor may from

time to time notify to the Licensee in writing relating to the use or occupation of the Premises or the Land, including any requirements as to any of the following:

- (a) management, and control of the Licensor's operations;
- (b) access or security; or
- (c) health or safety,

(Rules and Regulations) and:

- (d) the Licensee must, and must ensure that the Licensee's Visitors must, at all times fully comply with the Rules and Regulations; and
- (e) the Licensee must promptly on becoming aware of any loss of or damage to the Premises or the Land, or anything in, on or under them (including any fencing or gates), notify the Licensor and provide full details thereof.

17.3 No liability of Licensor for Rules and Regulations

The Licensor is not liable for any Loss arising out of non-enforcement of the Rules and Regulations.

17.4 Authorisations

The Licensee must obtain and at all times maintain and comply with all Authorisations from time to time required to use the Premises for the Permitted Use.

18 Licensor's statutory Powers and functions

18.1 Statutory Powers add to express Powers

The Powers conferred on the Licensor by or under any Act, are in addition to the Powers conferred on the Licensor by this licence.

18.2 Acts that alter agreement of parties

If at any time and for so long as:

- (a) any Act applies to this licence;
- (b) under that Act the conflicting provision of that Act prevails,

each conflicting provision of this licence is deemed to be amended to the extent necessary to resolve the conflict with that Act.

18.3 Licensor's statutory functions

Nothing contained in or implied by this licence has the effect of constraining the Licensor in respect of, placing any fetter on, or otherwise prejudicing or affecting any of, the Licensor's statutory Powers, duties, protections and functions, including those contained or referred to in any Act.

19 Other matters

19.1 Individual and joint liability

If 2 or more people are named in Item 3, each person named in the Item is liable for their obligations individually and together with each other person in the Item.

19.2 Western Australian law applies

This licence is governed by Western Australian law.

19.3 Saturdays, Sundays and public holidays

Anything to be done on a Saturday, Sunday or public holiday in Perth must be done by the next Business Day.

19.4 Payments under this licence

All payments under this licence must be made:

- (a) to the Licensor or any other person the Licensor nominates;
- (b) in the place the Licensor nominates;
- (c) if the Licensor directs, by order on the Licensee's bank for payment to the credit of the account, at the bank and branch that the Licensor nominates; and
- (d) without any deduction or set-off.

19.5 Civil liability

Part 1F of the *Civil Liability Act 2002* (WA) does not apply to this licence

19.6 Variation of this licence

A variation of this licence must be in writing and signed by the parties.

19.7 Whole agreement

This licence replaces any previous agreement, representation, warranty or understanding between the parties concerning its subject matter and contains the whole agreement between the parties.

19.8 Interpretation

- (a) In this licence, where the context allows:
 - (1) when a party is required not to do something, this includes not allowing the thing to be done;
 - (2) a word or expression in the singular includes the plural and the plural includes the singular;
 - (3) words of one gender include any gender;
 - (4) a reference to a person includes an individual and a body corporate;
 - (5) a reference to a right includes a remedy, power or discretion;

- (6) a reference to a clause or a schedule is a reference to a clause in or a schedule to this licence; and
 - (7) a reference to this licence includes the reference table and the schedules.
- (b) Examples in this licence are descriptive only and not exhaustive.
- (c) A heading in this licence may be used to help interpretation, but is not legally binding.
- (d) A provision of this licence must not be construed against a party solely because that party was responsible for preparing this licence or that provision.

Schedule 1

Licence Fee Review Method

(a) **CPI Review Method**

- (1) On each of the dates specified in Item 12(a) (each a **Review Date**), the Licence Fee for the time being reserved under this licence is to be adjusted in relation to the Licence Fee payable for the review period commencing on the relevant Review Date as follows:

The amount determined by the following formula:

$$R = \frac{CR \times CCPI}{PCPI}$$

Where:

R = the adjusted Licence Fee payable from and including the relevant Review Date

CR = the Licence Fee payable (or which but for any Licence Fee free or Licence Fee reduced period would have been payable) for the review period immediately preceding the Review Date in question;

CCPI = the CPI as last published by the Australian Statistician prior to the relevant Review Date;

PCPI = the CPI as last published by the Australian Statistician prior to the immediately preceding Review Date (or, in the case of the first review, as last published prior to the Commencing Date)

- (2) For the purposes of sub-clause (1)

CPI means the consumer price index compiled by the Australian Bureau of Statistics for Perth (Capital City) (all groups index numbers) or any substitute for that index accepted by the Government of the Commonwealth of Australia from time to time provided that if the index number base adopted by the Australian Statistician for the index number at any time is updated the index number is to be appropriately adjusted as from the same time. If at any time either or both the Consumer Price Index and the index number is discontinued or suspended or, in the reasonable opinion of the Licensor, substantially is altered there is to be substituted for the Consumer Price Index and the index number the alternative method of computing changes in the cost of living which is mutually agreed in writing between the Licensor and the Licensee during the period of 10 Business Days after written notice given by the Licensor to the Licensee or, failing that agreement, which in the opinion of an expert appointed by the President for the time being of the Institute of Chartered Accountants in Australia (WA Division) at the request of the Licensor or the Licensee or both of them most closely reflects changes in the cost of living for the Perth Metropolitan Region (the costs of that expert being borne by the Licensor and the Licensee in equal shares);

review period means the period between the Commencing Date and the first Review Date, the period between each subsequent Review Date, the period between the Expiry Date and the Review Date immediately preceding the Expiry Date and, if the Term is extended or renewed, the period between the date of expiration of the extended or renewed term and the Review Date immediately preceding the date of expiration of the extended or renewed term.

(b) Market Review Method

- (1) On or before the relevant date specified in Item 12(b) (**Review Date**), the Licensor is to notify the Licensee in writing (**Licensor's Notice**) of the amount which the Licensor considers to be the reviewed Licence Fee for the Premises. The amount specified in the Licensor's Notice is to be the relevant reviewed Licence Fee from that Review Date unless the Licensee notifies the Licensor in writing (**Licensee's Notice**) within 10 Business Days of the date on which the Licensor's Notice is taken as given that the Licensee disputes the reviewed Licence Fee amount specified in the Licensor's Notice.
- (2) If the Licensee gives the Licensor a Licensee's Notice in accordance with sub-clause (b)(1) above and the Licensor and the Licensee have not agreed upon the Licence Fee payable for the relevant Licence Fee period within 10 Business Days of the giving of the Licensee's Notice that Licence Fee will be the current market value of the Premises (**Current Market Value**) and as is to be determined and paid in the manner specified in sub-clauses (3) to (11) inclusive below.
- (3) The Current Market Value payable from the relevant Review Date will be determined by a Valuer agreed upon by the Licensor and the Licensee and appointed by the Licensor.
- (4) If the parties are unable to agree on a Valuer within 10 Business Days after the Licensee gives the Licensee's Notice accordance with sub-clause (b)(1) above, either the Licensor or the Licensee may request the President for the time being, or the person acting or deputising for the President, of the Australian Property Institute (Inc.) (WA Division) (**President**) to nominate a valuer for that purpose.
- (5) The Valuer appointed under this clause (b) will act as an expert and not an arbitrator.
- (6) If the Valuer appointed under this clause (b):
 - (A) does not accept the appointment to act;
 - (B) becomes incapacitated or dies; or
 - (C) resigns,
 then the provisions of this clause (b) shall apply to effect the appointment of another valuer as if the date the Valuer became unable to act was the date of giving of the Licensee's Notice.
- (7) The cost of the Valuer referred to in sub-clause (6) is to be borne and paid by the parties in equal shares.
- (8) The Licence Fee for each year in the Licence Fee period as reviewed is payable in the manner specified in the reference table, or if no manner is so specified by equal consecutive calendar monthly instalments calculated to the nearest cent by dividing the Licence Fee by the figure 12, provided that, pending agreement or determination

as aforesaid, payment is to be made by the Licensee at the rate payable immediately before the Review Date.

- (9) The amount of any difference in Licence Fee paid under sub-clause (9) and the amount of Licence Fee agreed or determined to be payable for the period from the relevant Review Date shall be paid by the Licensee or credited to the Licensee (as the case may be) with or at the time for payment of the next Payment Date following agreement or determination.

- (10) Despite anything to the contrary expressed in or implied by this licence:

- (A) Time is not of the essence in the giving of the Licensor's Notice; in particular, the Licensor is not, by reason of its failure to give a Licensor's Notice upon or within any time period after a Review Date, to forfeit its right to have the Licence Fee reviewed as at that Review Date.
- (B) Time is of the essence for the giving of the Licensee's Notice and the implementation by the Licensee of any of the subsequent rent review procedures contemplated by these provisions.

(c) **Licence Fee not less after review**

Despite anything in the previous provisions, the Licence Fee payable after a Review Date shall not be less than the Licence Fee payable immediately prior to the Review Date.

Executed as a deed

Licenser

Signed by **Josephus Johannes Henricus Mensink**
the **Manager, Procurement and Property of**
Water Corporation (a Level 1 Attorney)
and by **Domenico Papalia** the
Actubg Manager, Property Acquisitions of
Water Corporation (a Level 1 Attorney)
as the attorneys for Water Corporation
who state that they have no notice of
revocation of the **Power of Attorney**
No M115043 dated 19 November 2012
which they sign in the presence of

<i>sign here ►</i>	_____	_____
	Attorney	Attorney

<i>print name</i>	Josephus Johannes Henricus Mensink	Domenico Papalia
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Manager, Procurement and Property of Water Corporation	Acting Manager, Property Acquisitions of Water Corporation
Designated Post	Designated Post

in the presence of

<i>sign here ►</i>	_____	_____
	Witness	Witness

<i>print name</i>	_____	_____
-------------------	-------	-------

<i>address</i>	_____	_____
----------------	-------	-------

Occupation	Occupation
------------	------------



Licensee

The common seal of the Shire of Jerramungup
is affixed by authority of a resolution of Council
in the presence of:

sign here ► _____

print name _____

Designated Post

Designated Post



Annexure A

2002 Licence Area



