

ORDINARY MEETING OF COUNCIL TO BE  
HELD TUESDAY 24 JUNE 2014

CL01

DRAFT LICENCE AGREEMENT FOR  
OCCUPATION OF LAND – CITY PARK, BURLEY  
GRIFFIN COMMUNITY GARDENS, IOOF PARK  
& WILLOW PARK

ATTACHMENT

**MURRUMBIDGEE IRRIGATION LIMITED**

And

**GRIFFITH CITY COUNCIL**

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**LICENCE AGREEMENT FOR  
OCCUPATION OF LAND - CITY  
PARK, BURLEY GRIFFIN  
COMMUNITY GARDENS, IOOF  
PARK & WILLOW PARK**

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Licence No. 8201106

**AGREEMENT** dated

**BETWEEN** Murrumbidgee Irrigation Limited ABN 39 084 943 037

**AND** Griffith City Council ABN 81 274 100 792

**THE PARTIES AGREE AS FOLLOWS.**

## **INTRODUCTION**

- A. The Licensor owns the Licensed Area
- B. The Licensor has agreed to grant a Licence to the Licensee to occupy the Licensed Area on the terms and conditions contained in this agreement.

## **1 DEFINITIONS & INTERPRETATIONS**

### **DEFINITIONS**

In this Licence unless the contrary intention appears:

**Access Plan** means the drawing annexed to each Premises Appendix depicting the Premises and a description of the Enclosed Area.

**Base Annual Rent** means:

- (a) the Initial Rent where the rent has not been redetermined or adjusted in accordance with sub-clauses 13.4 or 13.5 ; or
- (b) in any other case - the Rent as last re-determined or adjusted in accordance with those provisions;

**Business Day** means any day which is not a Saturday, Sunday or Public Holiday in New South Wales;

**Commencement Date** means the date referred to in Column 2 of Item 16 of Schedule 1;

**Consumer Price Index Number** means in relation to a quarter the number for that quarter appearing in the Consumer Price Index (All Groups Index) for Sydney published by the Australian Statistician;

**Due Date** means the date for payment of Rent under this Licence as is specified in Column 2 of Item 6, of Schedule 1;

**Enclosed Area** means the area (which comprises the Premises and Third Party Exclusive Areas) described in each Premises Appendix as the Enclosed Area and shown on the Plan annexed to each Premises Appendix where land is, or is intended to be fenced;

**Environmental Law** means any law or state protection policy incorporated by reference to or being part of any Law relating to protection of the environment;

**Expiry Date** means the date referred to in Column 2 of Item 17 of Schedule 1;

Licence No. 8201106

**"GST", "taxable supply", "consideration", "tax invoice" and "GST amount"** have the meanings given to those terms in A New Tax System (Goods and Services Tax) Act 1999;

**Hazardous Substance** means a substance that because of its quality, concentration, acute or chronic toxic effects, carcinogenicity, teratogenicity, mutagenicity, corrosiveness, flammability, physical, chemical or infectious characteristics, may pose a hazard to property, human health or the environment when improperly treated, stored, disposed of or otherwise managed;

**Improvements** means any structure of a permanent nature attached to the land;

**Initial Rent** means the Rent payable under this Licence in respect of each Premises as is specified in Column 2 of Item 5 of Schedule 1;

**Law** includes the provisions of any statute, rule, regulation, proclamation, ordinance or by-law, present or future, whether state, federal or otherwise;

**Licence** means this licence including all Schedules and Annexures hereto;

**Licensee** means the licensee referred to in Column 2 of Item 2, of Schedule 1;

**Licensor** means the licensor referred to in Column 2 of Item 1 of Schedule 1.

**Market Rent** means the Rent as specified in Column 2 of Item 3, of Schedule 1 that would reasonably be expected to be paid for the site if it were offered for the same or a substantially similar use to which the site may be put under the Licence;

**Market Rent Review Date** means the date described as such in Column 2 of Item 8, of Schedule 1 and expressed as an absolute dollar or as a percent of the Market Rent;

**Party/Parties** means the parties to this Licence;

**Premises** means the land and/or the buildings described in the Premises Appendix and on the plan annexed thereto;

**Permitted Use** means the use shown in Column 2 of Item 15, of Schedule 1;

**Rent** means the Base Annual Rent calculated and payable upon each Due Date less any Rent Rebate granted to the Licensee together with all other payments due to be paid by the Licensee as Rent under this Licence;

**Rent Rebate** means such amount as specified in Column 2 of Item 4 of Schedule 1;

**Sub-Licensee** means a person who holds a sub-licence of any part of the Premises from the Licensee in accordance with the provisions of this Licence;

**Tenant Fixtures** means any plant or equipment, fittings or improvements in the nature of fixtures brought onto the Premises by, or on behalf of, or at the request of, the Licensee;

**Term** means the term of operation of this Licence in relation to the Premises;

**Term of Agreement** means the figure set out in Column 2 of Item 18, of Schedule 1;

**Third Party Exclusive Areas** means those areas that are exclusively for the use of third parties as shown on the Plan annexed to each Premises Appendix.

**Water Management Work** has the meaning given to that term in the Water Management Act 2000 (NSW)

## **2 CONSTRUCTION**

2.1 This Licence shall be constructed in accordance with this clause unless the context requires otherwise;

### **2.1.1 Plurals**

Words importing the singular include the plural and vice versa;

### **2.1.2 Gender**

Words importing any gender include the other gender;

### **2.1.3 Persons**

A reference to a person includes:

(a) an individual, a firm, unincorporated association, corporation and a government;

and

(b) the legal personal representatives, successors and assigns of that person;

### **2.1.4 Headings**

Headings (including any headings described as parts and sub-headings within clauses) wherever appearing shall be ignored in constructing this Licence;

### **2.1.5 Clauses and sub-clauses**

(a) A reference to a clause includes all sub-clauses, paragraphs, sub-paragraphs and other components which form part of the clause referred to;

(b) A reference to a sub-clause includes any sub-paragraphs and other components of the sub-clause referred to;

### **2.1.6 Time**

A reference to time is a reference to local Sydney time;

### **2.1.7 Money**

A reference to \$ or dollars is a reference to the lawful currency of Australia;

### 2.1.8 **Defined Terms**

If a word or phrase is defined cognate words and phrases have corresponding definitions. A defined term, unless inconsistent with the context of its use, is denoted by the appearance of that word using a capital letter at the beginning of that word;

### 2.1.9 **Writing**

A reference to writing includes any mode of representing or reproducing words in tangible and permanently visible form;

### 2.1.10 **Contra Preferentum**

No rules of construction shall apply to the disadvantage of any Party responsible for preparation of this Licence or any part of it;

### 2.1.11 **Statutes**

A reference to a Statute, Act, legislation, ordinance, code or other law includes regulations and other statutory instruments under it and consolidations, amendments, re-enactments or replacements of any of them made by any legislative authority;

### 2.1.12 **Licence**

A reference to this Licence shall include any extension or variation of this Licence;

### 2.1.13 **Priorities**

If an inconsistency occurs between the provisions of this Licence and the provisions of a licence granted in accordance with this Licence, the provisions of this Licence shall prevail.

## 3.2 **Warranties and Undertakings**

(a) The Licensee warrants that it:

- (i) has relied only on its own inquiries about this Licence; and
- (ii) has not relied on any representation or warranty by the Licensor or any person acting or seeming to act on the Licensor's behalf.

(b) The Licensee shall comply on time with undertakings given by or on behalf of the Licensee.

## 3.3 **Further Assurances**

Each Party must do everything necessary to give full effect to this Licence.

(a) Pursuant to clause 7, this Licence and any other agreement subsidiary to this Licence continue in full force and effect.

### **3.4 Relationship of Lessor and Licensee**

Nothing contained or implied in this Licence shall be deemed or construed to create the relationship of partnership or of principal and agent or of joint venture between the Lessor and the Licensee. Specifically, the Parties understand and agree that neither the method of computation of Rent, nor any other provision, nor any acts of the Licensee and the Lessor or either of them will be deemed to create any relationship between them other than the relationship of Lessor and Licensee upon the terms and conditions only as provided in this Licence.

### **3.5 Time to be of the Essence**

Where in any provision of this Licence a Party is given or allowed a specified time within which to undertake or do any act or thing or any power is conferred or any event occurs after the lapsing of a specified time, time shall be the essence of the contract in that regard.

## **4 SEVERABILITY**

Any provision of this Licence which is prohibited or unenforceable in any jurisdiction shall as to such jurisdiction be ineffective to the extent of such prohibition or inability to enforce without invalidating the remaining provisions of such provisions in any other jurisdiction.

## **5 ESSENTIAL CONDITIONS OF LICENCE**

The Lessor and the Licensee agree that the clauses specified in Column 2 of Item 19 of Schedule 1 are essential conditions of this Licence.

## **6 PERMITTED USE**

### **6.1 Grant of Licence**

The Lessor grants to the Licensee a right to occupy the area delineated on the plan annexed to the Premises Appendix [A] for the Permitted Use.

### **6.2 Permitted Use only**

The Licensee shall not:

- (a) use the Premises;
- (b) or allow them to be used (except pursuant to a Licence lawfully granted by the Lessor),

for any purpose other than the Permitted Use specified or referred to in Column 2 of Item 15 of Schedule 1.

### **6.3 No exclusive possession**

The Licensee acknowledges that this Licence does not confer exclusive possession of the Premises upon the Licensee.

## **7 COMMENCEMENT OF LICENCE AND TERM**

This Licence shall commence on the date (and where a time is specified or referred to at that time) specified or referred to in Column 2 of Item 16, of Schedule 1 and subject to clauses 10 shall continue in force until the Expiry Date (and where a time is specified or referred to at that time) specified or referred to in Column 2 of Item 17, of Schedule 1.

## **8 NO RIGHT TO PURCHASE OR TRANSFER OF LICENCE RIGHTS**

8.1 In respect of this Licence, and without limitation, the grant of this Licence does not confer upon the Licensee:

- (a) a right to purchase or lease any part of the Premises; or
- (b) any tenancy or other estate or interest in any part of the Premises other than contractual rights as Licensee under this Licence.

8.2 Subject to any other provisions of this Licence the Licensee shall not during the Term of this Licence, sub-licence, part with possession of the Premises, transfer or create any interest in the Licence or authorise or permit any person to occupy the Premises without the prior written consent of the Licensor.

## **9 LICENSEE TO YIELD UP**

9.1 The Licensee shall forthwith upon the termination of this Licence or any extension of it peaceably vacate the Premises at the Licensee's expense.

9.2 The Licensee shall:

- (a) remove all Licensee Fixture/s, signs, names, advertisements, notices or hoardings erected, painted, displayed, affixed or exhibited upon, to or within the Premises by or on behalf of the Licensee (other than a notice displayed by the Licensor); and
- (b) rehabilitate the Premises, (to the extent to which it has been altered or affected by the Licensee's occupation and use of the Premises) as nearly as practicable to the original condition before the installation of the Licensee's fixtures to the reasonable satisfaction of the Licensor; and
- (c) ensure that when it vacates the Premises in relation to its occupation of the Premises under this Licence, the Premises comply with any Environmental Law to the extent applicable at the time of granting of this Licence; and
- (d) leave the Premises in a clean and tidy condition.

9.3 Sub-clause 9.2 does not apply unless the Licensor permits the Licensee to carry out any works on the Premises reasonably required in order to comply with that clause.

## **10 TERMINATION OF LICENCE ON DEFAULT**

10.1 The Licensor may terminate this Licence in the manner set out below in the following circumstances:

- (a) if the Rent or any part of it or any moneys owing to the Licensor under the Licence is or are in arrears for one month, whether formally demanded or not;
- (b) if the Licensee breaches an obligation under this Licence or any rule or regulation made under this Licence;
- (c) if defects notified under a provision of this Licence are not remedied within the time specified in the notice;
- (d) if the Licensee is a corporation and an order is made or a resolution is passed for its winding up except for reconstruction or amalgamation
- (e) if the interest the Licensee has under this Licence is taken in execution;

10.2 In the circumstances set out in sub-clause 10.1 the Licensor may end this Licence by:

- (a) if the Licensee ceases to occupy the Licensed Area then this agreement will terminate;
- (b) notifying the Licensee that it is ending the Licence; or
- (c) re-entering the Premises, with force if necessary, and ejecting the Licensee and all other persons from the Premises and repossessing them; or
- (d) doing all.

10.3 If the Licensor ends this Licence under this clause, the Licensee shall not be released from liability for any prior breach of this Licence and other remedies available to the Licensor to recover arrears of Rent shall not be prejudiced.

10.4 If the Licensor ends this Licence under this clause, the Licensor may remove the Licensee's property and store it at the Licensee's expense without being liable to the Licensee for trespass, detinue, conversion or negligence. After storing it for at least one month, the Licensor may sell or dispose of the property by auction or private sale. It may apply any proceeds of the auction or sale towards any arrears of Rent or other moneys or towards any loss or damage or towards the payment of storage and other expenses.

## **11 ACCEPTANCE OF RENT NOT WAIVER**

Demand or acceptance of Rent or any other moneys due under this Licence by the Licensor after termination does not operate as a waiver of the termination.

## **12 HOLDING OVER BY LICENSEE**

- (a) At the end of the Term of Agreement as specified in Column 2 of Item 18 of Schedule 1, the Licensee shall be entitled with the consent of the Licensor to remain in possession of the Premises on the following terms and conditions:
  - (i) the Licensee shall become a monthly tenant of the Licensor at a monthly rental equivalent to one twelfth proportion of the annual Rent

payable at the time of expiration or sooner determination of this Licence;

- (ii) the Licensee shall comply with and be bound by the terms and conditions of this Licence insofar as the terms and conditions are applicable, provided that the Licensor may from time to time by notice in writing served on the Licensee direct that any particular condition not apply or be amended in the manner set out in the notice.
- (b) The Licensor and the Licensee expressly agree that where any provision of this Licence confers any right, duty, power or obligation on a Party upon the expiration or determination of this Licence or on the Expiry Date and the Licensee is authorised to remain in possession of the Premises pursuant to a consent granted under this clause the emergence of the right, duty, power or obligation shall be postponed until such time as the Licensee ceases to be entitled to possession pursuant to this clause.
- (c) The tenancy created by operation of this clause may be determined by the Licensor serving on the Licensee a notice to quit. The notice shall take effect at the expiration of the period of one month from the date of service of the notice or such further period as may be specified in the notice.
- (d) The tenancy created by operation of this clause may be determined by the Licensee serving on the Licensor a notice stating that as from a date specified in the notice the tenancy is surrendered.

### **13 LICENSEE'S RENT AND OUTGOINGS**

#### **13.1 Licensee to Pay Rent**

The Licensee covenants with the Licensor that the Licensee shall during the whole of the Term of Agreement and any extension of it pay the Rent to the Licensor in accordance with the provisions of this clause without demand free of exchange and without deduction whatsoever.

#### **13.2 Goods and Services Tax**

- (a) The Parties agree that all payments to be made and other consideration to be provided by the Licensee under the Licence are GST exclusive unless explicitly expressed otherwise. If any payment or consideration to be made or provided by the Licensee to the Licensor is for a taxable supply under the Licence on which the Licensor must pay GST and the Licensor gives the Licensee a tax invoice, the Licensee shall pay to the Licensor an amount equal to the GST payable ("the GST Amount") by the Licensor for that taxable supply upon receipt of that tax invoice.
- (b) The Parties agree that they are respectively liable to meet their own obligations under the GST Law. The GST Amount shall not include any amount incurred in respect of penalty or interest or any other amounts payable by the Licensor as a result of default by the Licensor in complying with the GST Law.

### 13.3 Rent and Adjusted Rent

The Licensee shall pay to the Licensor on the Commencement Date the Initial Rent and thereafter must pay on each Due Date, Rent in advance adjusted as provided in sub-clauses 13.4 and 13.5.

### 13.4 Calculation of Annual Rental Adjustment

- (a) On each anniversary of the Due Date the Rent will be adjusted in accordance with the following formula:

$$R = B \times \frac{C}{D}$$

where:

- R represents the Base Annual Rent following adjustment under this clause;
- B represents the Base Annual Rent before adjustment under this clause;
- C represents the Consumer Price Index Number for the last quarter for which such a number was published before the Due Date; and
- D represents the Consumer Price Index Number for the last quarter of the last adjustment of Rent for which such a number was published.

- (b) In the event that such index be discontinued or abolished the Minister may at his absolute discretion nominate another Index.
- (c) If the reference base for the Consumer Price Index is changed regard shall be had only to Index numbers published in terms of the new reference base or to Index numbers converted to the new reference base in accordance with an arithmetical conversion factor specified by the Australian Statistician.
- (d) Any Rent adjusted under this sub-clause shall be adjusted to the nearest whole dollar.
- (e) An adjustment of Rent made under this clause shall take effect on its Due Date, notwithstanding that any Rent notice to the Licensee is not issued until after that date specified or referred to in Column 2 of Item 6 of Schedule 1.

### 13.5 Market Rent Review

- (a) In addition to the Rent adjustment provided for in clause 13.4 the Rent may, subject to the following provisions of this clause, be redetermined to an amount that is the Market Rent on that date with effect on and from each Market Rent Review Date by the Licensor;
- (b) A redetermination of Rent for the purposes of sub-clause 13.5(a) shall be taken to have been made on the Market Rent Review Date if it is made at any time within the period of six months before and up to six months after that Market Rent Review Date specified or referred to in Column 2 of Item 8 of Schedule 1.
- (c) Where the Licensor does not redetermine the Rent as provided for in sub-clause 13.5(a) it may subsequently redetermine the Rent at any time before the next Market Rent Review Date. No succeeding Market Rent Review Date shall be postponed by reason of the operation of this clause.
- (d) A redetermination of Rent made under sub-clause 13.5(a) or 13.5(c) shall take effect and be due and payable on the next Due Date following the date of

issue of the notice of redetermination (or where the said Due Date and the date of issue of the notice of redetermination are the same, then that date) even if the Licensee wishes to dispute the redetermination.

#### **14 CONTINUING OBLIGATION**

The obligation of the Licensee to pay Rent is a continuing obligation during the Term of Agreement and any extension of it and shall not abate in whole or in part or be affected by any cause whatsoever.

#### **15 LICENSEE TO PAY OTHER CHARGES**

The Licensee shall pay all other fees, charges and impositions for which it may properly be liable which are imposed by an authorised third party and which are at any time during the Term of Agreement payable in respect of the Premises or on account of the use and occupation of the Premises by the Licensee.

#### **16 LICENSEE TO PAY FOR SERVICES**

The Licensee shall as and when the same become due for payment pay to the Licensor or to any other person or body authorised to supply the same all proper charges for gas, electricity, water or other services supplied to the Licensee or consumed in or on the Premises, by the Licensee.

#### **17 LICENSEE TO PAY COST OF WORK**

Whenever the Licensee is required under this Licence to do or effect any act, matter or thing then the doing of such act matter or thing shall unless this Licence otherwise provides be at the sole risk, cost and expense of the Licensee.

#### **18 COSTS PAYABLE BY LICENSEE TO LICENSOR**

Except when law limits costs being recovered from a Licensor by a Licensee, the Licensee shall pay in full the Licensor's reasonable legal costs, the fees of all consultants and all duties fees, charges and expenses incurred reasonably, properly and in good faith by the Licensor in consequence of or in connection with or incidental to:

- (a) the preparation and completion of this Licence;
- (b) any variation of this Licence made otherwise than at the request of the Licensor;
- (c) any application for the consent of the Licensor
- (d) any and every failure to comply breach or default by the Licensee under this Licence;
- (e) the exercise or attempted exercise of any right power privilege authority or remedy of the Licensor under or by virtue of this Licence;
- (f) the examination of plans, drawings and specifications of any improvement erected or constructed or to be erected or constructed on the Premises by the Licensee and the inspection of it, in this case the costs to be mutually agreed;

- (g) any entry, inspection, examination, consultation or the like which discloses a breach by the Licensee of any covenant of this Licence;
- (h) the Licensee requiring the Licensor to do any act, matter or thing under this Licence, unless otherwise provided for in this Licence.

## **19 COSTS PAYABLE BY LICENSOR**

The Licensor shall pay its own direct and external consultants costs in relation to any rental redetermination matter without reimbursement from the Licensee.

## **20 INTEREST ON OVERDUE MONEYS**

The Licensee shall pay interest to the Licensor on any moneys due and payable under this Licence or on any judgment in favour of the Licensor in an action arising from this Licence until all outstanding moneys including interest are paid in full. The rate of interest applicable is the rate set by the Licensor's Bank for the time being as its benchmark rates for overdrafts of one hundred thousand dollars (\$100,000.00) or more. Interest shall accrue and be calculated daily.

## **21 MANNER OF PAYMENT OF RENT AND OTHER MONEYS**

The Rent and other moneys payable in accordance with this Licence shall be paid to the address or bank account specified in Column 2 of Item 9, of Schedule 1 or to such other person or at such other address as the Licensor may from time to time direct by notice in writing served on the Licensee.

## **22 OBLIGATIONS AND RESTRICTIONS RELATING TO PREMISES**

### **22.1 Access**

Subject to the sub-clauses hereunder the Licensor confirms that the Licensee shall have unfettered and free access to and from, the Premises at all times, provided however that:

- (a) The Licensee shall strictly observe the reasonable directions and requirements of the Licensor at all times regarding the methods and routes of access to the Premises taken by the Licensee;
- (b) If the Licensee has shown the position of its intended access on the Access Plan and described the nature of the activity to be conducted on the land at those positions, then in respect of that access, the Licensor shall not require further notice;
- (c) The Licensee as far as is practicable, shall be required to use existing access tracks to, from, within and surrounding the Premises;

### **22.2 Additions and Alterations**

The Licensee shall not make any additions or alterations to the Premises without first obtaining the written consent of the Licensor and Griffith City Council in its role as the

statutory planning authority. Any additions or alterations consented to by the Licensor shall be carried out at the Licensee's expense.

### **22.3 Maintenance of Premises and Enclosed Areas**

The Licensee shall keep the Premises, and shall ensure that the Premises are kept clean and tidy and in good order and condition, having regard to the extent of the Licensee's occupation of the Premises under this Licence.

### **22.4 Licensee to erect barricades etc**

Where the Premises or any part of the Premises become to the knowledge of the Licensee (or which ought reasonably to be in the knowledge of the Licensee) unsafe, hazardous or dangerous the Licensee shall forthwith erect such warning signs, fences and barricades as may be necessary until the Premises are rendered safe.

### **22.5 No residence on Premises**

The Licensee shall not reside or permit any other person to reside on the Premises, unless Schedule 2, Special Conditions, permit otherwise.

### **22.6 Licensee not to remove material**

- (a) The Licensee shall not mine, remove, extract, dig up or excavate any sand, stone, gravel, clay, loam, shell or similar substance from, on or in the Premises or permit any other person to undertake such action without the prior consent in writing of the Licensor and subject to such conditions as the Licensor may determine.
- (b) Sub-clause 22.6(a) does not apply to any removal, digging up or excavation as may be necessary to construct or undertake any Improvement authorised by or under this Licence provided that any such removal, digging up or excavation is undertaken in accordance with the requirements of that authorisation.
- (c) A failure by the Licensee to comply with any condition imposed pursuant to sub-clause 22.6(a) constitutes a failure by the Licensee to comply with a provision or covenant of this Licence.

### **22.7 Licensee not to burn off**

The Licensee shall not carry out any burning off on the Premises except with the prior consent of the Licensor in writing, which consent shall not be unreasonably withheld, and after compliance with the requirements of the Rural Fires Act 1997. Any consent granted in accordance with this clause shall be subject to such reasonable conditions as the Licensor may impose.

### **22.8 Rodents and Vermin**

The Licensee shall take all reasonable precautions to keep the Premises free of rodents, vermin, insects and pests and shall in the event of failing to do so if required by the Licensor employ from time to time a duly certified pest exterminator at cost of the Licensee and as approved by the Licensor whose approval will not be unreasonably withheld. In performing its obligations pursuant to this clause the Licensee and any one

acting on the Licensee's behalf shall not use any substance or undertake any activity prohibited by any legislation.

## **23 ADVERTISING**

- (a) The Licensee shall not permit to be displayed or placed on the Premises or any part of them any sign, advertisement or other notice without first obtaining the Licensors written consent other than safety signs, in respect of which the Licensors consent shall not be required; and
- (b) The Licensors may at any time by notice in writing require the Licensee to discontinue to use any piece or mode of advertising to which the Licensors has granted consent under sub-clause 23(a) which in the opinion of the Licensors has ceased to be suitable or has become unsightly or objectionable and the Licensee on receipt of the notice shall comply accordingly.

## **24 NOTIFICATION OF ACCIDENT**

The Licensee shall give to the Licensors prompt notice in writing of any serious accident or serious defect at or in the Premises or any part of them unless the defect or accident is capable of being and is promptly remedied by the Licensee.

## **25 LICENSEE NOT TO COMMIT NUISANCE ETC**

The Licensee shall not:

- (a) carry on or permit to be carried on at the Premises any noxious, nuisance or offensive trade or business; or
- (b) carry on or permit to be carried on at the Premises any act, matter or thing which results in nuisance damage or disturbance to the Licensors or owners or occupiers of adjoining or neighbouring lands or buildings; or
- (c) use the Premises for any illegal activity.

## **26 HAZARDOUS SUBSTANCES**

The Licensee shall not keep any Hazardous Substance on the Premises without prior consent of the Licensors, which consent shall not be unreasonably withheld.

## **27 OWNERSHIP AND REMOVAL OF TENANT FIXTURES AND IMPROVEMENTS**

- (a) During the Term of Agreement and any extension of it, ownership of Tenant Fixtures vests in the Licensee. Notwithstanding anything contained in this Licence, so long as any Rent or other moneys are due by the Licensee to the Licensors or if the Licensee has committed any breach of this Licence which has not been made good or remedied and whether the Licensee is still in possession or not, the Licensee shall not be entitled to remove any of the Tenant Fixtures, fittings or equipment from the Licensed property.

## **28 GENERAL REQUIREMENT TO REPAIR**

Without prejudice to the specific obligations contained in this Licence the Licensee shall to the satisfaction of the Licensor at all times keep the Premises in good repair and properly maintained in all respects.

## **29 BREAKAGES**

The Licensee shall immediately at the Licensee's expense make good any breakage defect or damage to the Premises (including but not limited to broken glass) or to any adjoining premises or to any facility or appurtenance of the Licensor occasioned by want of care, misuse or abuse on the part of the Licensee or the Licensor's other Licensees occupants occupiers or other persons claiming through or under the Licensee or otherwise occasioned by any breach or default of the Licensee hereunder.

## **30 INDEMNITIES AND INSURANCE**

### **30.1 Indemnity for use of Premises**

- (a) The Licensee shall indemnify and keep indemnified the Licensor from and against all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses whatsoever to which the Licensor shall or may be or become liable for or in respect of the Licensee's occupation operation and use of the Premises or for or in respect of all losses, damages, accidents or injuries of whatsoever nature or kind and howsoever sustained or occasioned (and whether to any property or to any person or resulting in the destruction of any property or the death of any person or not) at or upon the Premises or originating on the Premises although occurring or sustained outside the same except to the extent that any such claims and demands:
  - (i) arise from or are contributed to by the negligence or wilful act or omission on the part of the Licensor; or
  - (ii) arise from the occupation, operation or use of the Premises by any other occupier, or the acts of any person who has access to the Premises with the consent of another occupier, and the Licensor is adequately indemnified by that other occupier in respect of the relevant claim or demand, and the Licensor shall use its reasonable endeavours to ensure that an indemnity in this form is contained in any agreement with any other occupier of the Premises.

### **30.2 Indemnity Continues After Expiration of Licence**

The obligations of the Licensee under this clause continue after the expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination for the period limited by the Statute of Limitations.

### **30.3 Exclusion of Consequential Loss**

Despite any other provision of this Licence, both Parties exclude, and agree that they shall have no rights against the other for liability for consequential or indirect loss arising out of this Licence including (without limitation) in respect of loss of profits or loss of business. This clause does not apply in respect of wilful acts by either Party.

### **31 INSURANCE - PUBLIC RISK**

The Licensee shall effect and maintain with a reputable and solvent insurer with respect to the Premises and the activities carried on in the Premises public risk insurance for an amount not less than the amount set out in Column 2 of Item 12, of Schedule 1 or such other amount as the Licensor may from time to time reasonably require as the amount payable in respect of liability arising out of any one single accident or event. The Licensor acknowledges that the Licensee may effect the public risk insurance pursuant to an insurance policy which is not specific as to the location of risk.

### **32 PROVISIONS RE POLICIES**

- (a) All insurance policies required to be effected by the Licensee pursuant to this Licence are specified in Schedule 2, Special Conditions and shall be in place prior to the Licensee occupying the Premises.
- (b) The Licensee shall produce to the Licensor, once per calendar year or once per period of insurance (whichever first occurs), a certificate of insurance and/or a certificate of currency in respect of the insurance policies required to be effected by the Licensee pursuant to this Licence.
- (c) The Licensee shall not at any time during the Term of Agreement do or bring upon the Premises anything which it ought reasonably believe may render void or voidable any policy of insurance. If the Licensee brings anything onto the Premises whereby the rate of premium on such insurance is liable to be increased, the Licensee shall obtain insurance cover for such increased risk and pay all additional premiums on the Premises required on account of the additional risk caused by the use to which the Premises are put by the Licensee.
- (d) The Licensee shall use all reasonable endeavours to ensure that full, true and particular information is given to the office or company with which the said insurances are effected of all matters and things the non-disclosure of which might in any way prejudice or affect any such policy or policies of insurance or the payment of all or any moneys there under.

### **33 INDEMNITY FOR NON-COMPLIANCE WITH LEGISLATION**

The Licensee shall indemnify and keep indemnified the Licensor from and against any and all actions, suits, claims, demands, proceedings, losses, damages, compensation, sums of money, costs, legal costs, charges and expenses whatsoever arising from the non-compliance by the Licensee with any New South Wales or Commonwealth legislation that may apply to the Licensee's use and occupation of the site and access thereto and the Licensee's operation of their business from the site and access thereto.

This clause shall not merge on the expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination.

### **34 INDEMNITY FOR BREACH OF ENVIRONMENTAL LAW**

Without prejudice to any other indemnity granted by this Licence, the Licensee shall indemnify and keep the Licensor indemnified against all claims whatsoever arising from

a breach by the Licensee of any Environmental Law which breach is in relation to the Premises. This clause shall not merge on expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination.

### **35 NO LIABILITY FOR FAILURE OF SERVICES**

The Licensor shall not be under any liability for any loss, injury or damage sustained by the Licensee or any other person at any time as a result of or arising in any way out of the failure of the electricity, telephones, gas, water supply, sewerage, drainage or any other services or facilities provided by the Licensor or enjoyed by the Licensee in conjunction with the Premises or this Licence provided that such failure is not due to the negligent or wilful act or omission of the Licensor its servants or agents.

### **36 LICENSEE NOT TO IMPOSE LIABILITY ON LICENSOR**

Subject to any other provision of this Licence, the Licensee shall not without the written consent of the Licensor by any act, matter or deed or by failure or omission cause or permit to be imposed on the Licensor any liability of the Licensee under or by virtue of this Licence even though the Licensee is entitled to do so under any law present or future or otherwise.

### **37 RELEASE OF LICENSOR FROM LIABILITY**

- (a) The Licensee shall occupy, use and keep the Premises at the risk of the Licensee and hereby releases to the full extent permitted by law the Licensor from all claims and demands of every kind resulting from any accident, damage or injury occurring therein but excluding such claims and demands to the extent that such claims and demands arise out of the negligent or wilful acts omissions or default of the Licensor and the Licensor shall have no responsibility or liability for any loss of or damage to fixtures and/or personal property of the Licensee or any agent or servant of the Licensee or of any member of the public whilst in or upon the Premises but excluding such loss or damage claims and demands to the extent that such loss or damage, claims and demands arise out of the negligent acts or wilful omissions or default of the Licensor.
- (b) The obligations of the Licensee under this clause shall continue after the expiration or other determination of this Licence in respect of any act, deed, matter or thing happening before such expiration or determination for which the Licensee is responsible. Such obligation is to be governed by the Statute of Limitations.

### **38 LICENSOR'S POWERS AND FUNCTIONS**

#### **38.1 Approval by Licensor**

- (a) In any case where pursuant to this Licence the doing or executing of any act, matter or thing by the Licensee is dependent upon the approval or consent of the Licensor such approval or consent shall not be effective unless given in writing and may be given or withheld (unless the context otherwise requires) by the Licensor and may be given subject to such conditions as the Licensor

may determine unless otherwise provided in this Licence provided such consent or approval is not unreasonably withheld or such terms and conditions are not unreasonable.

- (b) Any failure by the Licensee to comply with a condition imposed by the Licensor pursuant to sub-clause 38.1(a) constitutes a failure by the Licensee to comply with a condition of this Licence.

### **39 APPLICATION OF CERTAIN STATE AND COMMONWEALTH LAWS**

#### **39.1 Licensee to Comply with all Commonwealth and NSW State Laws**

- (a) The Licensee shall comply with the requirements of all Statutes, regulations or by-laws and requirements of all relevant public and local authorities in so far as they apply in relation to the use and occupation of the Premises to the extent to which the Licensee is bound at law to comply with the same and nothing in this Licence affects this obligation.
- (b) The Licensee shall forthwith on being served with a notice by the Licensor comply with any notice or direction served on the Licensor by a competent authority relating to the destruction of noxious animals or plants or pests or the carrying out of repairs alterations or works on or to the Premises.

#### **39.2 Licensee to Comply with Environmental Laws**

In relation to its use of the Premises, the Licensee shall, during the Term of Agreement, and in relation to the Premises:

- (a) comply with relevant Environmental Law;
- (b) use its best endeavours to prevent a breach of any Environmental Law;
- (c) report any breach even if accidental; and
- (d) provide to the Licensor as soon as reasonably practicable details of notices received by or proceedings commenced against the Licensee pursuant to an Environmental Law:
  - (i) relating to a breach or alleged breach by the Licensee of an Environmental Law; or
  - (ii) requiring the Licensee to carry out works to decrease the affectation of the Premises by any Hazardous Substance.

#### **39.3 Licensee's Failure to Comply with Statutory Requirements**

Where the Licensee breaches any law in relation to its use of the Premises it is taken to breach a condition of the Licence, provided that:

- (a) the Licensee has been found guilty of the breach, and
- (b) the Licensor determines that the breach warrants the termination of the Licence.

## **40 NOTICES**

### **40.1 Method of Service**

Any notice to be given under this Licence by one of the parties to the other must be in writing and is given for all purposes by delivery in person, by pre-paid post or by facsimile or by email addressed to the receiving party at the address specified in Column 2 Item 10 or Column 2 Item 11 of Schedule 1.

### **40.2 Time of Service**

Any notice given in accordance with this Licence will be deemed to have been duly served in the case of posting at the expiration of two Business days after the date of posting and in the case of facsimile, on the first Business Day after the date of transmission (providing the sending party received a facsimile machine verification report indicating that the notice has been transmitted).

## **41 PROCEDURE - DISPUTE RESOLUTION**

- (a) In the event that the Licensor and the Licensee are in dispute regarding any matter relating to or arising under this Licence or in respect of any approvals or consents to be granted by the Licensor (except those approvals or consents where the Licensor has an obligation to act reasonably) to the Licensee hereunder or where it is acting in its statutory capacity, then either the Licensor or the Licensee may give notice and particulars of such dispute to the other Party.
- (b) Where a notice of dispute is served pursuant to this clause the Parties agree to enter into informal negotiations to try and resolve the dispute in good faith and in an amicable manner.
- (c) If the dispute is not resolved informally within 21 days of service of written notification, the Parties may confer with a mutually agreed third party whose role will be to assist in the resolution of the dispute by mediation or expert appraisal of the dispute. The Parties agree to provide all information and assistance reasonably requested by such third party, including access to any accounting or other business records relating to or arising out of the Licence.
- (d) A third party appointed in accordance with this clause may decide in which proportions any fees will be borne by the respective Parties. In the absence of any such decision by the third party fees shall be borne equally by the Parties.
- (e) Neither Party shall be entitled to commence or maintain any proceedings in any court or tribunal until negotiations or mediations have taken place pursuant to this clause except where either Party seeks urgent interlocutory relief.
- (f) Either Party may at any time bring negotiations or mediation to an end by serving upon the other Party written notice stating that the dispute has failed to be resolved. Upon service of such notice both Parties shall be entitled to pursue any legal remedies available to them in relation to the dispute. This sub-clause does not in any way limit a mediator's power to apportion fees under sub-clause 41(d).

- (g) Notwithstanding the existence of a dispute under this or any other clause of this Licence the Parties must, unless acting in accordance with an express provision of this Licence, continue to perform their obligations under this Licence.

## **MISCELLANEOUS**

### **42 NO MORATORIUM**

Any present or future legislation which operates to vary obligations between the Licensee and the Licensor, except to the extent that such legislation is expressly accepted to apply to this Licence or that its exclusion is prohibited, is excluded from this Licence.

### **43 NO WAIVER**

No waiver by a Party of any breach of any covenant obligation or provision in this Licence either express or implied shall operate as a waiver of another breach of the same or of any other covenant obligation or provision in this Licence contained or implied. None of the provisions of this Licence shall be taken either at law or in equity to have been varied waived discharged or released by a Party unless by express consent in writing.

### **44 NO MERGER**

Nothing in this Licence merges, postpones, extinguishes lessens or otherwise prejudicially affects the rights and remedies of the Parties under this Licence or under any other agreement.

### **45 COUNTERPARTS**

- (a) A Party may execute this Licence by signing any counterpart.
- (b) All counterparts constitute one document when taken together.

### **46 CONTACT PERSON**

The Licensor and the Licensee each must nominate a person to contact about matters arising under this Licence. The person so nominated is the person referred to in Column 2 of Items 13 and 14, of Schedule 1 or such other person as the Licensor nominates in writing to the Licensee and the Licensee nominates in writing to the Licensor from time to time.

### **47 APPLICABLE LAW**

This Licence shall be construed and interpreted in accordance with the law of New South Wales.

**48 NO HOLDING OUT**

The Licensee shall not in connection with the Premises or otherwise directly or indirectly hold out or not permit to be held out to any member of the public any statement, act, deed, matter or thing indicating that the Premises or the business conducted or operated thereon or any parts or parts thereof are or is being carried on or managed or supervised by the Licensor nor shall the Licensee act as or represent itself to be the servant or agent of the Licensor.

**49 WHOLE AGREEMENT**

- (a) The provisions contained in this Licence expressly or by statutory implication cover and comprise the whole of the agreement between the Parties.
- (b) No further or other provisions whether in respect of the Premises or otherwise shall be deemed to be implied in this Licence or to arise between the Parties hereto by way of collateral or other agreement by reason or any promise representation warranty or undertaking given or made by any Party hereto to another on or prior to the execution of this Licence.
- (c) The existence of any such implication or collateral or other agreement is hereby negated.

**50 SPECIAL CONDITIONS**

The Special Conditions set out in Schedule 2 apply and form part of this Licence.

**SCHEDULE 1**

Item	Clause	Column 1	Column 2
1	1	<b>Licensor</b>	Murrumbidgee Irrigation Limited
2	1	<b>Licensee</b>	Griffith City Council
3	1	<b>Market Rent</b>	N/A
4	1	<b>Rent Rebate</b>	N/A
5	1	<b>Initial Rent</b>	\$Nil
6	1	<b>Due Date</b>	( <b>INSERT DATE</b> ) and each anniversary of this date in each year of the Term of Agreement and any holding over period. Day usage fees are to be paid quarterly.
7	13.4	<b>Annual Rental Adjustment</b>	12 months from commencement and annually thereafter
8	13.5	<b>Market Rent Review Date</b>	3 years from Commencement Date of Licence and every 3 years.
9	21	<b>Address for Payment of Rent</b>	Murrumbidgee Irrigation Limited Locked Bag 6010 Griffith NSW 2680
10	40.1	<b>Licensee's address for Service of Notices</b>	Griffith City Council Attention: The General Manager PO Box 485 Griffith NSW 2680 Phone: 02 6962 8100 Facsimile: 02 6962 7161 Email: admin@griffith.nsw.gov.au
11	40.1	<b>Licensor's address for Service of Notices</b>	Murrumbidgee Irrigation Attention: The General Manager Locked Bag 6010 Griffith NSW 2680 Phone: 02 6962 0200 Facsimile: 02 6962 0209 Email: info@mirrigation.com.au
12	31	<b>Public Risk Insurance amount</b>	<b>\$20 Million</b>
13	46	<b>Licensor's Contact Person</b>	Mr Geoff Pigram
14	46	<b>Licensee's Contact Person</b>	Mrs Daphne Bruce
15	6	<b>Permitted Use</b>	Passive recreation, public gathering, food and merchandise vending, fitness activity, grassed areas, trees, small native shrub plantings and infrastructure in accordance with the plans.
16	7	<b>Commencement Date</b>	<b>INSERT DATE</b>
17	7	<b>Expiry Date</b>	
18	1	<b>Term of Agreement</b>	
19	5	<b>Essential Conditions of Licence</b>	Clauses 6.2, 6.3, 8, 14, 28, 31, 32, 33, 39.1, 39.2, 39.3

End of Schedule 1

## **Schedule 2 Special Conditions**

### **51. Signs and Warnings**

The Licensor may erect signs in and around the Licensed Area. The Licensor shall be solely responsible for the repair and maintenance of their signs on or within the Licenced Area as at the date of this Deed and any sign subsequently installed on or in the Licenced Area by the Licensor.

The Licensee may erect signs in and around the Licensed Area. The Licensee shall be solely responsible for the repair and maintenance of their signs on or within the Licensed Area as at the date of this Deed and any sign subsequently installed on or in the Licenced Area by the Licensee.

### **52. Public Risk Policy**

The public risk insurance required by clause 31 hereto shall list Murrumbidgee Irrigation Limited as an interested party.

### **53. Fencing**

The Licensee must maintain the existing fence shown in the attached plan in respect of Area 1 of the Licensed Area.

If the Licensee must or wishes to install new fences after the date of this Licence in order to exclude persons from the Licensor's Water Management Works, the Licensee must request the Licensor's approval to install the new fences, and must not install the new fences without the Licensor's approval.

### **54. Trees**

The Licensee must not fell or lop trees in the Licensed Area without first obtaining the written consent of the Licensor.

### **55. Excavate**

Should the Licensor require to excavate the Premises to access their Water Management Works, the Licensor shall fill and level any such excavation but shall not be obligated to repair or replace any garden beds or footpaths.

### **56. No residence on Premises**

With reference to Clause 22.5, the Licensee shall not reside or permit any other person to reside on the Premises unless the Licensees signage permits otherwise the limited occupation of the Licenced Area.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2014

**SIGNED ON BEHALF OF THE  
LICENSOR THE MURRUMBIDGEE  
IRRIGATION LIMITED**

**SIGNED ON BEHALF OF THE  
LICENSEE THE COUNCIL OF  
THE CITY OF GRIFFITH**

**Signature**

**Signature**

## Print Name

## Print Name

### Office Held

### Office Held

## PREMISES APPENDIX

THIS IS A PREMISES APPENDIX REFERRED TO AND DEFINED IN THE LICENCE AGREEMENT BETWEEN THE GRIFFITH CITY COUNCIL AND MURRUMBIDGEE IRRIGATION LIMITED. IN ACCORDANCE WITH THE PERMITTED USE (PASSIVE RECREATION, PUBLIC GATHERING, FOOD AND MERCHANDISE VENDING, FITNESS ACTIVITY, GRASSED AREAS, TREES, SMALL NATIVE SHRUB PLANTINGS AND INFRASTRUCTURE IN ACCORDANCE WITH THE PLANS), THIS PREMISES APPENDIX VARIES AND FORMS PART OF THE LICENCE AND ITS TERMS ARE INCORPORATED IN THEIR ENTIRETY INTO THE LICENCE

### Descriptions of Land

Parish	<i>Jondaryan</i>
County	<i>Cooper</i>
Locality	<i>Part Murrumbidgee Irrigation land adjoining City Park - 16-32 Kookora Street, Burley Griffin Community Gardens – 75-85 &amp; 87-101 Coolah Street, IOOF – 34-52 Kookora Street, Part Willow Park – Kookora Street, Griffith</i>
Deposited Plan	<i>Part Murrumbidgee Irrigation land adjoining Lot 7033 DP1095129, Lots 7034 &amp; 7035 DP1095125, Lot 1 DP 585929, Lot 7038 DP1095127, Lot 7037 DP 1108751</i>
Commencement Date	<i>INSERT DATE</i>
Expiry Date	
Initial Rent	<i>\$ NIL</i>
Plan	Plan attached and marked as “A”
Third Party Exclusive Area	<i>Not Applicable</i>
Enclosed Area	<i>Not Applicable</i>

# KOOKORA STREET PARKS AND LAND OWNERSHIP

Area 1 = 6 307 m<sup>2</sup>  
Area 2 = 7 210 m<sup>2</sup>  
Area 3 = 10 863 m<sup>2</sup>  
Area 4 = 9 250 m<sup>2</sup>

## Legend

- Rubbish Bins
- Gates
- Food Forest Garden Edge
- Food Forest Path
- Footpath
- Fence
- Road Reserve
- Roundabouts
- Cadastre
- MI Land
- Main Canal
- WillowParkStructures



0 50 100 m

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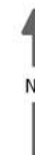
Prepared by GCC GIS  
02/09/2013 - JB

KOOKORA STREET  
PARKS AND  
LAND OWNERSHIP  
IOOF Sector

Area 1 = 6 307 m<sup>2</sup>  
Area 2 = 7 210 m<sup>2</sup>  
Area 3 = 10 863 m<sup>2</sup>  
Area 4 = 9 250 m<sup>2</sup>

Legend

- Rubbish Bins
- Footpath
- Fence
- Road Reserve
- Roundabouts
- Cadastre
- MI Land
- Main Canal



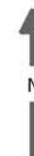
# KOOKORA STREET PARKS AND LAND OWNERSHIP

City Park Sector

Area 1 = 6 307 m<sup>2</sup>  
Area 2 = 7 210 m<sup>2</sup>  
Area 3 = 10 863 m<sup>2</sup>  
Area 4 = 9 250 m<sup>2</sup>

## Legend

- Garbage Bins
- Gates
- Fence
- Footpath
- Food Forest Garden Edge
- Food Forest Path
- Road Reserve
- Roundabouts
- Cadastre
- MI Land
- Main Canal



0 25 50 m

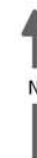
# KOOKORA STREET PARKS AND LAND OWNERSHIP

Willow Park Sector

Area 1 = 6 307 m<sup>2</sup>  
Area 2 = 7 210 m<sup>2</sup>  
Area 3 = 10 863 m<sup>2</sup>  
Area 4 = 9 250 m<sup>2</sup>

## Legend

- Rubbish Bins
- Footpath
- Road Reserve
- Roundabouts
- Cadastre
- MI Land
- Main Canal
- bbq
- picnic table
- stage
- toilet



0 25 50 m