

**DRAFT**

[DISCUSSION PURPOSES ONLY]

**DATED**

**DAY OF**

**2023**

## **CONSTRUCTION LICENCE**

**BETWEEN**

**THE CORPORATION OF CITY OF ADELAIDE**

**("Council")**

**-AND-**

**MINISTER FOR INFRASTRUCTURE AND TRANSPORT**

**("Minister")**



**Government  
of South Australia**

**CROWN SOLICITOR**

**Level 9, 45 Pirie Street, Adelaide SA 5000**

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## **CONSTRUCTION LICENCE**

**AGREEMENT** dated

**BETWEEN:**

**THE CORPORATION OF THE CITY OF ADELAIDE** of Colonel Light Centre, 25 Pirie Street, Adelaide, South Australia, 5000 ("**Council**")

**AND**

**MINISTER FOR INFRASTRUCTURE AND TRANSPORT** a body corporate pursuant to the *Administrative Arrangements Act, 1994* of 136 North Terrace, Adelaide, 5000, South Australia ("**Minister**")

### **BACKGROUND**

- A. The Council has care, control and management of certain parts of the Park Lands.
- B. The Council has agreed to grant a licence to the Minister to enter upon, occupy and use the Licensed Area for the Permitted Purpose.
- C. The Council has agreed that the Minister may grant a sublicense of the Licensed Area for the Permitted Purpose to the Minister's contractors, and their subcontractors.
- D. The licence is granted upon the terms and conditions contained in this Licence.

### **THE PARTIES AGREE AS FOLLOWS.**

#### **1. DEFINITIONS**

In this Licence, subject to any contrary intention, the following terms or expressions are stipulated as having the following meanings.

- 1.1 "**Access Areas**" means those areas of the Park Lands marked [#] on the plan attached in Schedule 1.
  - 1.2 "**Claim**" means any claim, demand, action, cause of action, proceedings, judgment, order, relief, remedy, right, entitlement, damage, loss,
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compensation, reimbursement, cost, expense or liability incurred, suffered, brought, made or recovered of whatever nature.

- 1.3 **"Commencement Date"** means [#].
- 1.4 **"Development"** means "development" as defined in the *Development Act 1993* and **"Develop"** has a corresponding meaning.
- 1.5 **"Expiry Date"** means [#].
- 1.6 **"Governmental Agency"** means any Minister, government department, authority, commission, tribunal, agency, utility or entity, any semi-governmental authority, instrumentality or corporation, whether of a local, State or Federal government, or any council or other municipal body but not the Council in its capacity as the licensor of the Licensed Area.
- 1.7 **"Laws"** shall mean and include all present and future legislation (both State and Federal) and all amendments to them and re-enactments of them and all regulations, by-laws and orders made pursuant to them.
- 1.8 **"Legislation"** means any statute, regulation, proclamation, by-law, ordinance or any notice or order made or given pursuant to any of the foregoing.
- 1.9 **"Licence"** means this licence and includes all schedules.
- 1.10 **"Licence Term"** means the term commencing on the Commencement Date and expiring on the Expiry Date.
- 1.11 **"Licensed Area"** means initially that portion of the Park Lands marked in [##] on the plan attached in Schedule 1.
- 1.12 **"Minister's Property"** means all improvements constructed by the Minister, the Minister's trade fixtures and fittings, equipment, fittings or other property installed or affixed by the Minister on or to the Park Lands.
- 1.13 **"Park Lands"** means the Adelaide Park Lands as defined in the *Adelaide Park Lands Act 2005 (SA)*.
- 1.14 **"Permitted Purpose"** means the purpose of constructing and undertaking the Works.
- 1.15 **"Works"** means all works in connection with and required for the [## insert description] including:
  - 1.15.1 any Development of, or any other alteration, addition or improvement to, the Licensed Area;
  - 1.15.2 any other fixture, fitting, improvement or structure to be annexed to or constructed or erected on or under the land, whether to be permanently annexed to the land or otherwise,whether undertaken by the Minister, on behalf of the Minister, or with the consent of the Minister, or otherwise.

## **2. INTERPRETATION**

In this Licence, unless a contrary intention is evident:

- 2.1 a reference to this Licence is a reference to this Licence as amended, varied, novated or substituted from time to time;
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- 2.2 a reference to any legislation or to any provision of any legislation includes:
  - 2.2.1 all legislation, regulations, proclamations, ordinances, by-laws and instruments issued under that legislation or provision; and
  - 2.2.2 any modification, consolidation, amendment, re-enactment or substitution of that legislation or provision;
- 2.3 a word importing:
  - 2.3.1 the singular includes the plural;
  - 2.3.2 the plural includes the singular; and
  - 2.3.3 a gender includes every other gender;
- 2.4 words denoting individuals include corporations, unincorporated associations, partnerships, trusts and joint ventures;
- 2.5 a reference to a party includes that party's administrators, successors and permitted assigns;
- 2.6 if any act pursuant to this Licence would otherwise be required to be done on a day which is not a Business Day then that act may be done on the next Business Day;
- 2.7 where a word or phrase is given a defined meaning, any other part of speech or grammatical form in respect of that word or phrase has a corresponding meaning;
- 2.8 a reference to two or more persons is a reference to those persons jointly and severally;
- 2.9 a reference to a clause or schedule is a reference to a clause of, or a schedule to, this Licence;
- 2.10 a reference to a clause number is a reference to all of its sub-clauses;
- 2.11 a reference to dollars is to Australian dollars;
- 2.12 where general words are associated with specific words which define a class, the general words are not limited by reference to that class;
- 2.13 the clause headings are for convenient reference only and they do not form part of this Licence; and
- 2.14 the word "or" is not exclusive.

### **3. LICENCE TERM**

This Deed applies for the Licence Term.

### **4. GRANT OF THE LICENCE**

- 4.1 The Council grants to the Minister a non-exclusive licence to enter on, occupy and use the Licensed Area for the Permitted Purpose, for the Licence Term, on the terms and conditions set out in this Licence, and for no monetary consideration.
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- 4.2 The rights granted by the Council in this Licence are contractual only and shall not create or confer upon the Minister any tenancy, estate or interest in the Licensed Area.

**5. OCCUPATION OF THE LICENSED AREA**

- 5.1 The Minister must use the Licensed Area only for the Permitted Purpose.
- 5.2 The Minister, the Minister's contractors and their subcontractors, may undertake the Works on the Licensed Area on and from the Commencement Date.
- 5.3 Without limiting clause 8, the Minister, the Minister's contractors and their subcontractors must at all times comply with Council's reasonable works policies with respect to undertaking the Works including in respect of:
- 5.3.1 hoarding requirements;
  - 5.3.2 traffic controls;
  - 5.3.3 waste management and removal; and
  - 5.3.4 stormwater management.

**6. PERMITTED USE**

- 6.1 The Minister shall at its own expense obtain and maintain during the Licence Term all approvals necessary for the Permitted Purpose.
- 6.2 The Lessee acknowledges that the Licensed Area is, and is situated within, Park Lands.
- 6.3 As a consequence, the Lessee shall use its best endeavours at all times to minimise disturbance to users of the land adjoining the Licensed Area.

**7. DEVELOPMENT**

- 7.1 Subject to clause 10, the Minister may, only for the Permitted Purpose, undertake, or procure to be undertaken the construction of any Works on the Licensed Area.
- 7.2 The Minister may, in accordance with this Licence, remove or replace any fixture, improvement or other structure erected or constructed in or on the Licensed Area or any portion of the Licensed Area, whether of a capital or structural nature or otherwise.
- 7.3 The Minister shall, in undertaking or constructing any Works on or to the Licensed Area observe and comply with the following:
- 7.3.1 any necessary consent, approval, authority, licence or permission;
  - 7.3.2 the *Development Act 1993* (SA) or any other applicable Legislation; and
  - 7.3.3 the requirements of any Governmental Agency having jurisdiction by law.
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**8. STATUTORY COMPLIANCE**

The Minister shall, at all times during the Licence Term, comply with:

- 8.1 the requirements of all Legislation, regulations, by-laws, ordinances, rules or other forms of statutory instruments or delegated legislation applicable to the Permitted Use or to the use of the Licensed Area by the Minister; and
- 8.2 the requirements of all notices, orders or requirements lawfully given or made by any Governmental Agency in respect of the Licensed Area or the use of the Licensed Area by the Minister.

**9. ASSIGNMENT**

- 9.1 Subject to clauses 9.2 and 9.3, the Minister shall not assign, transfer, sub-let or sub-licence or otherwise part with possession of the Licensed Area without the prior written consent of the Council..
- 9.2 The Minister may, without the prior written consent of the Council, grant a sub-licence of the Licensed Area for the Permitted Purpose to any contractor engaged by the Minister for the Permitted Purpose and their respective employees, agents and contractors.
- 9.3 The Minister may assign or sub-licence to another Minister, agency or instrumentality of the Crown in the right of the State of South Australia, without the Council's prior written consent.

**10. REPAIR AND MAKE GOOD**

If, in the exercise of rights under this Licence, any damage is caused to the Park Lands the Minister must take reasonable measures to make good the damage to the satisfaction of the Council (acting reasonably).

**11. ACCESS RIGHTS**

- 11.1 The Minister, the Minister's contractors and their subcontractors may, subject at all times to the reasonable directions and requirements of the Council and at all reasonable times during the Term, in common with the Council and other persons authorised from time to time by the Council, use the Access Areas for access ingress and egress to and from the Licensed Area with or without vehicles but only for the Permitted Purpose.
  - 11.2 Without limiting any other term of this Licence, the Minister's obligations under this Licence apply (as the case may be) to the rights under clause 11.1 to the Access Areas including the obligations in clauses 10 (Repair and Make Good), clause 11 (Insurance), clause 14 (Release) and clause 15 (Indemnity).
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**12. INSURANCE**

The Minister shall ensure that, throughout the Term, the Works are insured either through the Minister's self insurance or by procuring another party to insure the Works to the extent that the Minister may consider prudent and appropriate in relation to the risks to be insured against and the levels of insurance to be effected.

**13. EXPIRY OF LICENCE**

13.1 Unless otherwise agreed in writing between the parties, this Licence shall terminate upon:

13.1.1 the commencement of a lease of the Licensed Area granted by the Council to the Minister;

13.1.2 a termination of this Licence pursuant to clause 17.

**14. RELEASE**

14.1 The Minister shall occupy and use the Licensed Area at his own risk in all things.

14.2 The Minister releases and discharges, to the extent permitted by law, the Council, in its capacity as the person with care, control and management of the Licensed Area, from any Claim in relation to the Permitted Purpose and the undertaking of the Works and the occupation or use by the Minister of the Licensed Area, that the Minister may have or be entitled to bring, exercise or enforce against the Council including in relation or incidental to any of the following:

14.2.1 the state, condition, use of the Licensed Area, including any contamination of the Licensed Area caused by the Minister;

14.2.2 the purpose for which the Licensed Area may or may not be used;

14.2.3 any limitation or restriction in respect of the state or condition of the Licensed Area; or

14.2.4 any Claim of any nature in respect of any accident or damage to property or death of or injury to any person or in respect of destruction of or damage to the real or personal property of any person,

except to the extent that any such Claim is caused, or contributed to, by the intentional, reckless, negligent or unlawful act or omission of the Council.

**15. INDEMNITY**

15.1 The Minister shall indemnify and keep indemnified the Council, in its capacity as the person with care, control and management of the Licensed Area, from any Claim which the Council may suffer or incur to the Minister or any other person caused by or as a consequence of or in connection with:



15.1.1 the Permitted Purpose and the use or occupation of the Licensed Area;

15.1.2 any contamination of the Licensed Area caused by the Minister; or

15.1.3 the undertaking of any Works or with any act, matter or thing done or performed, by the Minister or his employees, agents, contractors, invitees, visitors or other persons using or upon the Licensed Area or any omission of the said persons,

except to the extent that any such Claim is caused, or contributed to, by the intentional, reckless, negligent or unlawful act or omission of the Council.

15.2 The obligations of the Minister under this clause 15 (to the extent applicable) survive the expiration or earlier termination of this Licence.

## **16. DEFECTS AND WARRANTIES**

The Minister warrants that any agreements to be entered into between the Minister and the Minister's contractors for the Works will contain, in accordance with South Australian Government standard contracting terms for design and construction contracts, suitable provisions in relation to defect rectification and construction warranties having regard to the nature and extent of the Works.

## **17. TERMINATION**

17.1 The Council may only terminate this Licence by giving 14 days' written notice to the Minister and re-enter and take possession of the Licensed Area, if the Minister fails to remedy a material and non-trivial breach by the Minister of this Licence within the reasonable time specified in a written notice from the Council requiring any such breach to be remedied.

17.2 Termination of this Licence by the Council shall be without prejudice to any rights, remedies or actions that the Council may have or has against the Minister in respect of any antecedent breach by the Minister of the terms and conditions contained in this Licence.

## **18. SEVERANCE**

18.1 Each word, phrase, sentence, paragraph and clause of this Licence is severable.

18.2 If a court determines that a part of this Licence is unenforceable, invalid, illegal or void that court may sever that part.

18.3 Severance of a part of this Licence will not affect any other part of this Licence.

## **19. MODIFICATION**

Any modification of this Licence must be in writing and signed by each party.

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**20. WAIVER**

- 20.1 A waiver of any provision of this Licence must both be in writing and be signed by the parties or by a person duly authorised to sign such a document on a party's behalf.
- 20.2 No waiver by a party of a breach of a term or condition contained in this Licence shall operate as a waiver of any breach of the same or any other term or condition contained in this Licence.
- 20.3 No forbearance, delay or indulgence by any party in enforcing the provisions of this Licence shall prejudice or restrict the rights of that party.

**21. NOTICES**

- 21.1 A "notice" means:
  - 21.1.1 a notice in writing; or
  - 21.1.2 a consent, approval or other communication required to be in writing under this Licence.
- 21.2 A notice must be signed by or on behalf of the sender addressed to the recipient and:
  - 21.2.1 delivered to the recipient's address;
  - 21.2.2 sent by pre-paid mail to the recipient's address; or
  - 21.2.3 transmitted by facsimile to the recipient's address.
- 21.3 A notice given to a person in accordance with this clause is treated as having been given and received:
  - 21.3.1 on the day of delivery if delivered before 5.00 pm on a Business Day, otherwise on the next Business Day;
  - 21.3.2 if sent by pre-paid mail, on the third Business Day after posting; or
  - 21.3.3 if transmitted by facsimile and a correct and complete transmission report is received on the day of transmission: on that day if the report states that transmission was completed before 5.00 pm on a Business Day, otherwise on the next Business Day, provided that:
  - 21.3.4 if the recipient receives by facsimile transmission a notice that is illegible, the recipient must notify the sender immediately and the sender must continue to retransmit the notice until the recipient confirms that it has received a legible notice. The rules in relation to transmission reports as stated above apply.
- 21.4 A person may from time to time notify its change of address or facsimile number by written notice to the other party.

**22. COSTS AND STAMP DUTY**

- 22.1 Each party shall bear its own costs incurred in respect of the preparation, perusal, negotiation and execution of this Licence.
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22.2 The Minister shall pay the stamp duty (if any) assessed or charged in respect of this Licence.

**EXECUTED as an AGREEMENT**

**THE COMMON SEAL** of )  
**MINISTER FOR INFRASTRUCTURE AND** )  
**TRANSPORT** was hereunto affixed by )  
authority of the Minister in the presence of: )

.....  
Witness

**THE COMMON SEAL** of **THE CORPORATION** )  
**OF THE CITY OF ADELAIDE** was )  
hereunto affixed in the presence of: )

.....  
Lord Mayor

.....  
Chief Executive Officer

**SCHEDULE 1**

**PLAN OF LICENSED AREA**

DRAFT