

**SALT RIVER PROJECT
LICENSE**

Salt River Project License No.: 02801-0
Salt River Project File No.: 1433.1209
Effective Date: March 1, 2012
Agent: AD

1. License Granted

WHEREAS, it is understood by the parties hereto that Licensor and the Salt River Valley Water Users' Association (Association) manage the Licensed Property pursuant to contracts with the United States of America (USA), which assign to Licensor the responsibility and authority for the care, operation, maintenance and management of the Salt River Reclamation Project ("Reclamation Project"), of which the Licensed Property is a part, and;

WHEREAS, Licensor is willing to consent to Licensee's use of the Licensed Property in a manner that does not in any way compromise the contractual obligation or authority of Licensor to manage the Reclamation Project.

The **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**, an agricultural improvement district organized and existing under the laws of the State of Arizona ("Licensor"), grants **CITY OF TEMPE**, an Arizona municipal corporation ("Licensee"), a revocable License conveying the nonexclusive right and privilege to enter upon and use certain real property, the Licensed Property, under the following terms and conditions.

2. Purpose

Licensee shall use the Licensed Property only for landscaping. Licensee shall not use the Licensed Property for any other purpose without the prior written approval of Licensor. Licensee acknowledges that, but for this License, it has no rights to use or occupy the Licensed Property, and represents that it makes no claim to such rights.

3. Licensed Property

The Licensed Property shall mean: that portion of the West bank of the Tempe Canal located in the North half of Section 19, Township 1 North, Range 5 East, Maricopa County, Arizona, Gila and Salt River Base and Meridian, further described by 'Exhibit A' attached hereto and made a part hereof.

4. Compensation

4.1 As consideration for granting this License, Licensee shall pay Licensor an annual license fee ("License Fee") in the sum of One Thousand Dollars (\$1,000.00) per License Year (as defined below), subject to adjustments as set forth below. The license fee shall be waived per reciprocal agreement between SRP and City of Tempe dated June 11, 1998.

4.2 Licensee shall reimburse Licensor, for all federal, state and local excise, sales, privilege, gross receipts and other similar taxes lawfully imposed on and paid by Licensor as a result of the consideration received by Licensor under this License; provided, however, that this Section shall not apply to income taxes. Licensee shall pay all property taxes, if any, levied on the Licensed Property.

4.3 All amounts paid by Licensee to Licensor as a result of damages, costs, expenses and sums incurred by Licensor hereunder as a result of Licensee's default shall be deemed to be additional License Fees.

4.4 Any payment due and unpaid under this License that is not paid within 30 days of its due date shall bear interest from the date such payment was due at the rate of eighteen percent (18%) per annum. Licensor shall have all the rights and remedies provided herein and by law for Licensee's failure to pay any of the compensation specified in this Section 4.

4.5 Within 30 days of Licensor's delivery of an invoice therefore, Licensee shall pay any incremental increase in Licensor's operation and maintenance costs on the Licensed Property resulting from Licensee's exercise of its rights hereunder; Licensor shall incur no liability for any costs of repairing or replacing Licensee's improvements within the Licensed Property, damaged as a result of Licensor's operation and maintenance of its facilities, unless due to negligent or willful acts or omissions of Licensor or its agents or employees.

5. Term

The term of this license shall be from March 1, 2012 (the "Effective Date") through February 28, 2022, or until terminated subject to Section 8 hereof.

6. Rights of the United States of America

This License is subject to the paramount rights of the USA in and to the Licensed Property, federal reclamation law, and all agreements existing and to be made between and among the USA, the Association, and Licensor regarding the management, care, operation and maintenance of the Reclamation Project.

7. Successors and Assigns

The privileges granted to Licensee herein shall not inure to or benefit any person or entity other than Licensee, either through assignment or sublicense. Any attempt by Licensee to so assign

or sublicense all or any portion of the Licensed Property for any purpose whatsoever shall void this License.

8. Termination of the License

8.1 If a party ("Defaulting Party") fails (i) to make payment required herein by its due date or (ii) perform an obligation under this License within 30 days after written notice is given to the Defaulting Party of its failure to perform such obligation on the date when such performance was due (or, if such default cannot reasonably be cured within 30 days, then within such longer period as is determined by the non-defaulting party to be necessary to cure such default, provided the Defaulting Party commences to cure such default within the 30 day period), then, upon the expiration of the applicable cure period, if any, the non-defaulting party may terminate this License upon not less than 30 days prior written notice to the Defaulting Party.

8.2 Either party may terminate this License without cause upon not less than thirty (30) days written notice.

8.3 In the event either party terminates this License, or upon expiration of the License term, Licensee's rights to use and occupy the Licensed Property hereunder shall cease at the date of termination; provided however, Licensee may enter upon the Licensed Property for a period of sixty (60) days thereafter, for the sole purpose of removing Licensee's improvements and restoring the Licensed Property to the condition that existed prior to its improvements thereon. If Licensee has failed to remove any of its improvements or restore the Licensed Property within such sixty (60) day period, Licensee shall reimburse Licensor for the reasonable costs incurred by Licensor for the removal or storage of Licensee's improvements and restoration of the Licensed Property. Licensee shall release and indemnify against all claims, Licensor, Association, and USA from all damages resulting to Licensee as a result of such removal, storage, or restoration. The provisions of this Section 8.3 shall survive termination of this License.

9. Maintenance of Licensed Property & Interface with Licensor's Use of Licensed Property

9.1 Licensee, at its own expense, shall maintain all of the Licensed Property in reasonably good, sanitary and safe condition. Subject to the conditions set forth herein, Licensor reserves to itself, Association and the USA, a right of access to the Licensed Property for the construction, use, operation, maintenance, relocation and removal of any existing and future electric or water distribution or transmission facilities. Any such construction, use, operation, maintenance, relocation or removal shall be performed in a manner designed to avoid, to the extent feasible, disturbance to Licensee's improvements and Licensee's use and enjoyment of the Licensed Property. Licensor shall give Licensee at least ninety (90) days prior written notice of any such construction, use, operation, maintenance, relocation or removal that will materially disrupt Licensee's use and enjoyment of the Licensed Property or the Licensee's improvements; provided, however, that such notice may be given in such shorter period as Licensor determines to be reasonable under prevailing circumstances, or with no notice in the event of an emergency where no notice is feasible. Nothing in this License shall be construed to deny or lessen the powers and privileges granted Licensor by

the laws of the State of Arizona and the USA. Licensors shall not be liable to Licensee for any damage to Licensee's improvements located upon the Licensed Property, unless due to negligent or willful acts or omissions of Licensors or its agents or employees.

9.2 If Licensee defaults in the performance of the obligations set forth in Section 9.1, and Licensors gives notice of the default, Licensee shall correct such default to the reasonable satisfaction of Licensors within the required period of time set forth in the notice of default (the "Correction Period"), which period of time shall be reasonable under the circumstances. If Licensee fails to correct the default within the Correction Period, Licensors may take any action reasonably determined by Licensors to be necessary to correct such default, including without limitation making any repair or modification to or removing any of Licensee's improvements. Licensee shall reimburse Licensors for the reasonable costs it incurs to correct such default within thirty (30) calendar days after Licensors presents Licensee with a statement of such costs. Licensee shall release Licensors, Association and USA from all damages resulting to Licensee from the correction of such default, including, without limitation, those damages arising from all repairs or modifications to or removal of any of Licensee's improvements.

10. Nonexclusive Rights

This License is nonexclusive and nothing herein shall be construed to prevent or restrict Licensors from granting other privileges to use the Licensed Property in a manner not inconsistent with Licensee's use of the Licensed Property in accordance with this License.

11. Existing Easements and Licenses

This License is subject to all existing encumbrances of record, including easements and licenses. It shall be Licensee's obligation and responsibility to ascertain the rights of all third parties in the Licensed Property. Licensors consents only to the use of the Licensed Property for the purposes described herein, in its capacity as manager of the Licensed Property and on behalf of the USA. Nothing in this License shall be construed as Licensors's representation, warranty, approval or consent regarding rights in the Licensed Property held by other parties. Licensee shall indemnify and hold Licensors, the USA and the Association harmless from any liability arising out of any dispute or claim regarding actual or alleged interests in the Licensed Property, affecting Licensee's interests created herein, and shall release Licensors, the USA and the Association from any such claims on its own behalf.

12. Indemnification

To the extent not prohibited by law or expressly excepted herein, Licensee, its successors and assigns ("Indemnitors"), shall indemnify, release, and hold harmless Licensors, Association and the United States of America ("Indemnitees") and the directors, officers, employees, agents, successors and assigns thereof, against and from any damage, loss or liability caused in whole or in part by Licensee, regardless of whether caused in part by Indemnitees or any of them, and suffered by Indemnitees as a result of any claim, demand, lawsuit or action of any kind, whether such damage or loss is to person or property, arising out of, resulting from or caused by: (a) the acts or

omissions of Licensee, its agents, contractors, officers, directors, or employees; (b) Licensee's use or occupancy of the Licensed Property for the purposes contemplated by this License, including but not limited to claims by third parties who are invited or permitted onto the Licensed Property, either expressly or impliedly, by Licensee or by the nature of Licensee's improvement or other use of the Licensed Property pursuant to this License; (c) Licensee's failure to comply with or fulfill its obligations established by this License or by law. Such obligation to indemnify shall extend to and encompass all costs incurred by Licensor in defending against such claims, demands, lawsuits or actions, including but not limited to attorney, witness and expert witness fees, and any other litigation related expenses. Indemnitors' obligation pursuant to this Section shall not extend to any damage, loss or liability as a result of any claim, demand, lawsuit or action of any kind, whether such damage, loss or liability is to person or property arising out of, resulting from or caused by the sole, exclusive acts or omissions of Indemnitees, their contractors, directors, officers, employees, agents, successors or assigns for which Licensor shall indemnify, release and hold harmless Indemnitors. Licensor's obligation to indemnify Indemnitors shall extend to and encompass all costs incurred by Indemnitors in defending against such claims, demands, lawsuits or actions, including but not limited to attorney, witness and expert witness fees, and any other litigation related expenses. The provisions of this Section shall survive termination of this License.

13. Insurance

Without limiting any liabilities or any other obligations of Licensee, Licensee shall provide and maintain, with forms and insurers acceptable to Licensor, and until all obligations under the License are satisfied, the minimum insurance coverages, as follows:

13.1 Worker's compensation insurance to cover obligations imposed by applicable federal and state statutes and employer's liability insurance with a minimum limit of One Million and No/100 Dollars (\$1,000,000.00).

13.2 Commercial general liability insurance with a minimum combined single limit of Two Million and No/100 Dollars (\$2,000,000.00) each occurrence. The policy shall include coverage for bodily injury liability, property damage liability, personal injury liability, and contractual liability for liability assumed under this License. The policy shall contain a severability of interests provision.

13.3 If applicable, comprehensive automobile liability insurance with a combined single limit for bodily injury and property damage of not less than Two Million and No/100 Dollars (\$2,000,000.00) each occurrence with respect to Licensee's vehicle, whether owned, hired or non-owned, assigned to or used in the performance of the work.

13.4 The policies required by Sections 13.2 and 13.3 hereof shall be endorsed to include Licensor, members of its governing bodies, its officers, agents and employees as additional insureds and shall stipulate that the insurance afforded for Licensor, members of its governing bodies, its officers, agents and employees shall be primary insurance and that any insurance carried by Licensor, members of its governing bodies, its officers, agents or employees shall be excess and not contributory insurance.

13.5 Licensee shall waive their rights of recovery and require its insurers providing the required coverages to waive all rights of subrogation against Licensor and members of its governing bodies, its officers, agents and employees for matters arising out of this License.

13.6 Upon execution of this License, Licensee shall furnish Licensor with Certificates of Insurance as evidence that policies providing the required coverages, conditions and limits are in full force and effect. Such certificates shall provide that not less than thirty (30) days advance notice of cancellation, termination, or alteration shall be sent directly to Licensor addressed as follows:

Manager, Land Rights Management, PAB348
Salt River Project
P.O. Box 52025
Phoenix, Arizona 85072-2025

13.7 The insurance policies may provide coverages that include deductibles or self-insured retentions. Licensee shall be solely responsible for deductibles and/or self-insured retentions, and SRP, at its option, may require Licensee to secure the payment of such deductibles or self-insured retentions by a surety bond or an irrevocable and unconditional letter of credit.

14. Construction

14.1 Prior to making any improvements on the Licensed Property, Licensee shall submit to Licensor for its approval final construction documents and plan showing the location of any such improvements. Licensor shall approve or disapprove such documents and plans within 30 days. If applicable, Licensee shall obtain a Construction License from Water Engineering (*Susana Ortega 602-236-5799*) prior to the start of construction. Construction on the Licensed Property shall be performed only in accordance with approved construction documents and plan. At least ten (10) days prior to the beginning of any construction on the Licensed Property, Licensee shall give Licensor notice of the date that construction will begin and a schedule listing all construction activities and the dates when such construction activities will be performed. Licensee shall give Licensor written notice of all changes in the schedule and delays in construction immediately upon it being reasonably foreseeable that such change or delay will occur.

14.2 Licensee's improvements constructed, installed, operated and maintained on the Licensed Property shall not interfere with Licensor's use of Licensor's existing or any future irrigation or electric facilities on or adjacent to the Licensed Property.

14.3 Licensor may request Licensee to alter the scheduling of construction undertaken pursuant to Section 14.1 but only when and to the extent necessary to prevent any material interference with Licensor's use of the Licensed Property, and if such improvements do interfere with Licensor's use, Licensor may request Licensee to relocate Licensee's material, facilities and improvements as deemed necessary by Licensor.

14.4 If relocation of Licensee's materials, facilities, or improvements is necessitated by Licensor's use of existing facilities or the construction of improvements by or on behalf of Licensor, Licensee shall bear the entire actual cost of relocating said materials, facilities and improvements.

14.5 Licensor shall not exercise its right to require relocation of Licensee's facilities, materials, and improvements in an unreasonable or arbitrary manner.

15. Permits, Statutes and Codes

Licensee shall comply with all requirements of all statutes, acts, ordinances, regulations, codes, and standards of legally constituted authorities with jurisdiction, applicable to Licensee's use of the Licensed Property. Licensee shall obtain or cause to be obtained at its expense, all permits, approvals and authorizations required by Licensee's actions pursuant to this License.

16. Licensor's Right to Inspect

16.1 Licensor, Association or the USA may enter any part of the Licensed Property at all reasonable times to make an inspection thereof. During any construction by Licensee, Licensor may inspect all trenching, backfilling and other related construction activity that potentially affects Licensor's facilities, and require conformance with all Licensor's requirements and specifications related thereto.

16.2 Licensee shall release Licensor, Association and the USA from any claims for damages arising out of any delay caused by Licensor in permitting or inspecting any work on the Licensed Premises. The provisions of this Section shall survive termination of this License.

17. Service of Notice

All notices, demands and invoices required or permitted by this License shall be in writing and shall be considered to have been properly delivered: (i) if mailed, three (3) business days after deposit in the U.S. mail, postage prepaid, return receipt requested, addressed as follows; (ii) if sent by overnight delivery service, on the next business day after deposit with such service, addressed as follows; or (iii) if personally delivered, on the date of delivery service to:

Mail

Notices to Licensor

Attn: Manager, PAB348
SALT RIVER PROJECT
Land Rights Management
P.O. Box 52025
Phoenix, AZ 85072-2025

Notices to Licensee

Attn: Gregg Kent
CITY OF TEMPE
Engineering Division
P.O. Box 5002
31 East Fifth Street
Tempe, AZ 85280

Hand /Certified Delivery

Notices to Licensor

Attn: Manager, PAB348
SALT RIVER PROJECT
Land Rights Management
2727 E. Washington Street
Phoenix, AZ 85034-1422

Notices to Licensee

Attn: Gregg Kent
CITY OF TEMPE
Engineering Division
P.O. Box 5002
31 East Fifth Street
Tempe, AZ 85280

Either party may change its address or the designated person to receive notification hereunder by giving notice of such change in the manner provided above.

18. Waiver

This License may not be modified or any provision waived except by written agreement executed by both Licensor and Licensee. The waiver by either party of any breach or failure to provide full performance under any of the terms and conditions of this License, or the failure of a party to exercise, or any delay in exercising, any rights or remedies provided herein or by law, or the failure of a party to notify the other properly in the event of a breach hereunder shall not be construed as a waiver of any other term of condition herein, or of any subsequent or continuing breach of the same or any other term or condition.

19. Attorneys' Fees Upon Default

If either party brings or defends any legal action, suit or proceeding based on rights or obligations arising from this License, the successful party shall be entitled to recover reasonable litigation expenses, court costs and reasonable attorneys' fees, as determined by a court, in any such action, suit or proceeding. The foregoing shall not in any way limit or restrict any other right or remedy at law or equity otherwise available to such party.

20. Force Majeure

If either party is rendered unable, wholly or in part, by force majeure to carry out its obligations under this License, other than the obligation of Licensee to make payments of amounts due hereunder, then the obligations of both Licensee and Licensor, so far as they are affected by such force majeure, shall be suspended during the continuance of any inability so caused, but for no longer period, and such cause shall so far as possible be remedied within a reasonable time. The term "force majeure" as used herein shall mean acts of God, strikes, lockouts, or other industrial disturbances, acts of public enemies, wars, blockades, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, storms, floods, washouts, interruptions by government not due to the fault of the parties, civil disturbances, explosions, or unforeseeable action or nonaction by governmental bodies in approving the applications for approvals or permits or any material change in circumstances arising out of legislation, regulation or litigation. Nothing in this Section shall require Licensor to settle a strike.

21. Entire Agreement; Changes After Execution

This License, including its specified addenda and exhibits, if any, constitutes the entire agreement between the parties, and any amendment hereto must be in writing, signed by both parties.

22. Governing Law, Venue and Waiver of Trial by Jury

This License shall be interpreted, governed by, and constructed in accordance with the substantive and procedural laws of the State of Arizona, without regard to conflicts of law principles. Licensor and Licensee agree that any action, suit, or proceeding arising out of, or in any way connected with this License, shall be initiated and prosecuted in a state or federal court of competent jurisdiction located in Maricopa County, Arizona, and the parties irrevocably submit to the jurisdiction and venue of such court. To the fullest extent permitted by law, each party hereby irrevocably waives any and all rights to a trial by jury and covenants and agrees that it will not request a trial by jury with respect to any legal proceeding arising out of or in any way connected with this License.

23. Water Damage

Except when the result of the negligent or willful act or omission of Licensor or Association or their directors, officers, employees, agents or assigns, neither Licensor, Association or the USA shall be liable for any loss sustained by Licensee, its officers, employees, agents or invitees on the Licensed Property because of water damage resulting from any source whatsoever, including, but not limited to, flood, drainage or run-off, irrespective of any prior knowledge by Licensor of the possibility of such flood, drainage or run-off, arising from or in connection with the operation or maintenance of any Reclamation Project dam, canal or other facility.

24. Transactional Conflict of Interest

Notice is hereby given of A.R.S. § 38-511.

25. Approvals

Each party agrees that if any consent or approval shall be required of such party, such consent or approval shall not be unreasonably withheld.

26. Reservation of Remedies

Unless otherwise provided herein, each party shall have available to it, all remedies provided by law or equity.

27. Archaeological and Environmental Compliance

27.1 Licensee shall obtain a cultural resource clearance from the Environmental

Department of the Arizona Projects Office of the Bureau of Reclamation prior to construction on the Licensed Property whenever required by the National Historic Preservation Act, Section 106, and ensuing 36 CFR 800 regulations. A copy of the Bureau of Reclamation archaeological clearance shall be provided to Licensor's staff archaeologist prior to any construction activity on the Licensed Property.

Licensee shall notify Licensor's staff archaeologist should any cultural resources or human remains be found on the Licensed Property, and when appropriate, shall be responsible for other notifications and legal requirements as required by the Archeological Resource Protection Act and the Native American Graves Protection and Repatriation Act and ensuing 43 CFR 10 regulations. All costs are the responsibility of the Licensee.

27.2 Licensee hereby assumes and accepts all liability and responsibility for initiation and completion of response, cleanup, and corrective and remedial action, and the cost thereof, required on the Licensed Property and any other affected premises, due to any action taken by licensee or its contractors, subcontractors, agents, or representatives during use of the Licensed Property that results in release or threatened release of any hazardous substance within the meaning of the Federal Comprehensive Environmental Response, Compensation and Liability Act -- 42 U.S.C. § 9601 et seq., or the Arizona Environmental Quality Act -- A.R.S. § 49-101 et seq., as such laws have been or are amended from time to time, or regulated substance within the meaning of Subtitle I of the Federal Resource Conservation and Recovery Act (Underground Storage Tanks) -- 42 U.S.C. § 6991a et seq., or the Arizona Underground Storage Tank Law -- A.R.S. § 49-1001 et seq., as such laws have been or are amended from time to time. This Section 27.2 shall survive termination of this License.

28. Motor Vehicle Use – Special Conditions

When operating a motor vehicle on the Licensed Property, Licensees must at all times:

28.1 Enter onto and exit from the Licensed Property at the point of reasonable access closest to the component of Licensee's facilities requiring maintenance;

28.2 Maintain a speed not to exceed five (5) miles per hour;

28.3 Ensure safe and reasonable passage through and around Licensee's vehicle and other repair facilities to all recreational users of the Licensed Property;

28.4 Ensure that no site of ongoing maintenance of Licensee's facilities is left unattended; and,

28.5 Refrain from accessing the Licensed Property with a motor vehicle except when necessary to effectuate maintenance of Licensees facilities.

IN WITNESS WHEREOF, the parties hereto have executed this License this ____ day of _____, 2012.

LICENSOR:

**SALT RIVER PROJECT AGRICULTURAL
IMPROVEMENT AND POWER DISTRICT**

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

On this ____ day of _____, 2012, the foregoing instrument was acknowledged before me by Aaron Dick a Land Agent of the Land Department, **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT DISTRICT**, an agricultural improvement district organized and existing under the laws of the State of Arizona ("SRP"), on behalf of SRP.

My Commission Expires:

Notary Public

