

**SALT RIVER PROJECT  
LICENSE**

Salt River Project License No.: 02273-0  
Salt River Project File No.: 1596.2273  
Effective Date: **June 1, 2004**  
Agent: **dah**

**1. License Granted**

WHEREAS, it is understood by the parties hereto that Licensor manages the Licensed Property pursuant to contracts with the United States, 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 **GARDENS AT SOUTH MOUNTAIN COMMUNITY ASSOCIATION** ("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 be permitted to paint the exterior wall of Licensor's Bartlett Substation using Dunn Edwards paint subject to the approval, instructions, and inspection by Licensor's Facilities Maintenance Department. Licensee shall not use the Licensed Property for any other purpose without the prior written approval of Licensor.

**3. Licensed Property**

The Licensed Property shall be described as the South 6 feet and the West 6 feet of the North 165 feet of the East 264 feet of the Southeast Quarter of the Southeast Quarter of Section 36, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona.

#### 4. Compensation

4.1 As consideration for granting this License, Licensee shall pay Licensor a one time fee ("License Fee") in the sum of One Thousand Five Hundred and NO/100 Dollars (\$1,500.00) for the term of this License.

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 unpaid under this License shall bear interest from the date payment is 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 receipt 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.

4.6 Licensee shall reimburse Licensor for any administrative costs at Two Hundred Fifty and NO/100 Dollars (\$250.00) for each occurrence. Administrative costs shall include, but not be limited to the following:

- a) any failure to maintain a current Certificate of Insurance as specified in Section 13.6 of this License.
- b) any improvements on the Licensed Property requiring Licensor's review of documents, approvals after the initial request, or maintenance of the landscaping by the Licensor.
- c) any enforcement by Licensor due to a violation of the terms and conditions of this License.

5. **Term**

The term of this license shall be from June 1, 2004 (the "Effective Date") through May 31, 2014, 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 United States of America ("U.S.A.") in and to the Licensed Property, federal reclamation law, and all agreements existing and to be made between and among the U.S.A., the Salt River Valley Water Users' Association ("Association") and Licensor regarding the management, care, operation and maintenance of the Reclamation Project.

7. **Assignment and Sub-Licensing**

Licensee shall neither assign this License nor sub-license all or any portion of the Licensed Property.

8. **Termination of the License**

8.1 If a party ("Defaulting Party") fails to make payment required herein or perform a material 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, the non-defaulting party may terminate this License upon not less than 30 days prior written notice to the Defaulting Party (such notice of termination must be in addition to the notice of default).

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, Licensee shall, unless Licensor otherwise provides, remove, at Licensee's own cost, within ninety (90) calendar days after written notice from Licensor, any improvements placed on the Licensed Property by Licensee, its directors, officers, employees, or agents, and restore the Licensed Property to the condition in which it existed on the date this License was executed, subject to improvements to the Licensed Property made by parties other than Licensee. If Licensee has failed to remove any of the improvements that it is required to move, or fails to restore the Licensed Property within such ninety (90) 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 Licensor, Association and U.S.A. 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 U.S.A., 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 U.S.A. Licensor 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 Licensor or its agents or employees.

9.2 If Licensee defaults in the performance of the obligations set forth in Section 9.1, and Licensor gives notice of the default, Licensee shall correct such default to the reasonable satisfaction of Licensor 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, Licensor may take any action reasonably determined by Licensor 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 Licensor for the reasonable costs it incurs to correct such default within thirty (30) calendar days after Licensor presents Licensee with a statement of such costs. Licensee shall release Licensor, Association and U.S.A. 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 Licensor 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. Licensor consents only to the use of the Licensed Property for the

purposes described herein. Nothing in this License shall be construed as Licensor's representation, warranty, approval or consent regarding rights in the Licensed Property held by other parties. Licensee shall indemnify and hold Licensor 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.

## **12. Indemnification**

To the extent not prohibited by law, Licensee, its successors and assigns, shall indemnify, release, and hold harmless Licensor, Association and the United States of America, and the directors, officers, employees, agents, successors and assigns thereof, against and from any damage claim, demand, lawsuit or action of any kind for damages or loss, whether such damage or loss is to person or property, arising in whole or in part out of: (a) negligent or otherwise wrongful 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; or (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. Licensee's obligation pursuant to this Section 12 shall not extend to claims, demands, lawsuits or actions for liability attributable to the sole exclusive negligence or willful action of Licensor, its directors, officers, employees, agents, successors or assigns. 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:

Supervisor, Property Management, PAB348  
Salt River Project  
P.O. Box 52025  
Phoenix, Arizona 85072-2025

#### **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 (*Bob Maurer 236-2962, or Susana Ortega 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.

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 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 U.S.A. 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 and demands required or permitted by this License shall be in writing and shall be deemed to have been given properly when (i) sent by certified mail (postage fully prepaid) to the respective address below or to such other address furnished by either party to the other pursuant to this Section; or (ii) delivered personally to either party hereto.

**Notices to Licensor**

Attn: Supervisor, PAB348  
SALT RIVER PROJECT  
Property Management Division  
P.O. Box 52025  
Phoenix, AZ 85072-2025

**Notices to Licensee**

Attn: Robert M. Frank  
1819 E. Morton Avenue, Suite 180  
Phoenix, AZ 85020-4661  
frankdev@aol.com  
(602) 870-1045

18. **Waiver**

No waiver by either party of any breach of any of the covenants or conditions of this License which are to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or any other covenant or conditions.

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. **Water Damage**

Except when the result of the negligent or willful act or omission of Licensor or its directors, officers, employees, agents or assigns, neither Licensor, Association nor the U.S.A. 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.



**23. Reservation of Remedies**

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

**24. Archaeological and Environmental Compliance**

24.1 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.

24.2 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 during use of the Licensed Property that results in 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 24.2 shall survive termination of this License.

**25. Licensee's Representations and Warranties**

The individual executing this License Agreement on behalf of Licensee represents and warrants: (i) that he or she is authorized to do so; (ii) that he or she has full legal power and authority to bind Licensee and its successors in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority (whether from any partner, owner, spouse, shareholder, director, member, manager, creditor, investor, developer, governmental authority, judicial or administrative body, association, or other person or entity); and (iii) that the execution, delivery, and performance by Licensee of this License Agreement and all other related documents will not constitute a default under any agreement to which Licensee is a party.

26. **Miscellaneous**

26.1 Licensee shall bluestake the Licensed Property prior to any construction.

26.2 Licensee shall not install any fencing within 6 feet of Licensor's Bartlett Substation wall .

26.3 Licensee shall build and maintain swales within the Licensed Property as approved by Licensor's Substation & System Planning Design group and Substation Facilities Maintenance group.

26.4 Licensee shall use ¾ inch screened decomposed granite on the Licensed Property.

26.5 Licensee shall immediately remove without demand or notice from the Licensor any landscaping that becomes climbable on the Licensed Property.

26.6 Licensee shall comply with the following landscaping guidelines, including, but limited to future guidelines or guidelines changes when installing trees near underground electrical facilities. (1) Trees maturing up to 9 inches in diameter, 5 feet clearance from the edge of a duct bank or other buried facilities to the mature tree drip line. (2) Trees maturing 10 to 14 inches in diameter, 10 feet clearance from the edge of a duct bank or other buried facilities to the mature drip line. (3) Trees maturing 15 to 19 inches in diameter, 12 feet clearance from the edge of a duct bank or other buried facilities to mature drip line. (4) Trees maturing greater than 19 inches in diameter, 15 feet clearance from the edge of a duct bank or other buried facilities to the mature tree drip line.

IN WITNESS WHEREOF, the parties hereto have executed this License this 30<sup>th</sup> day of JULY, 2004.

**LICENSOR:**

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

By: *Gena Trimble*

Its: Manager, Land Department

STATE OF ARIZONA     )  
  ) ss.  
County of Maricopa     )

On this 30<sup>th</sup> day of JULY, 2004, the foregoing instrument was acknowledged before me by Gena P. Trimble, a Manager 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:



*Don Handke*  
Notary Public

