

**LICENSE AGREEMENT FOR CONSTRUCTION AND MAINTENANCE  
OF INFRASTRUCTURE IMPROVEMENTS WITHIN CITY RIGHT OF WAY  
INSIDE THE BRIDGES PLANNED AREA DEVELOPMENT**

This License and Maintenance Agreement (the "Agreement") is made and entered into by and between the CITY OF TUCSON, an Arizona municipal corporation (the "City") and THE BRIDGES PROPERTY OWNERS ASSOCIATION, an Arizona non-profit corporation (the "**Bridges Association**"). The City and the Bridges Association may be referred to herein individually as a "Party" and collectively as the "Parties."

**Recitals**

A. On March 27, 2007, pursuant to City of Tucson Ordinance No. 10383, the City adopted the Bridges Planned Area Development (the "Bridges PAD"). Pursuant to the terms of the Bridges PAD, the owners of the property within the Bridges PAD (the "Project Property") are responsible for (i) implementing a common design theme for non-city standard infrastructure elements, including non-city standard public streetscape, non-city standard paving materials, non-city standard street furniture, non-city standard landscaping, non-city standard lighting, non-city standard signage and non-city standard art/sculpture (collectively, the "Enhanced Infrastructure"), (ii) constructing such Enhanced Infrastructure, and (iii) forming a master association for the purpose of perpetually maintaining, repairing, restoring and/or replacing all portions of the Enhanced Infrastructure constructed within the Project Property that are required to be maintained by the association in accordance with the terms and conditions of the Bridges PAD.

B. In accordance with the requirements of the Bridges PAD, the owners of the Project Property have formed the Bridges Association, a nonprofit association of owners that will, among other things, operate, manage, maintain and repair the portions of the Enhanced Infrastructure, which are designated in the Bridges PAD to be maintained by the association, and to administer and enforce the covenants and restrictions set forth in that certain Master Declaration of Covenants for Maintenance of Enhanced Infrastructure Improvements recorded at Docket 13708, Page 1871, Pima County Records (the "Declaration").

C. The majority of the Project Property is located within the Final Block Plat for the Bridges (Case No. S08-100), recorded in Book 65 at Page 2 of Pima County Records, lying within Section 30, Township 14 South, Range 14 East, of the Gila and Salt River Meridian, Pima County (the "Block Plat"). Certain rights-of-way as shown on the Block Plat were dedicated to the public (the "Public Rights-Of-Way").

D. The Parties hereby desire to establish a license from the City granting the Bridges Association, and its members, employees, representatives, authorized agents, and contractors a right to enter upon the Public Rights-Of-Way for the purpose of constructing, operating, maintaining and repairing the Enhanced Infrastructure.

## Agreement

NOW, THEREFORE, in consideration of the covenants set forth below, it is agreed as follows:

1. Recitals. The recitals are an integral part of this Agreement and are incorporated herein by reference.

2. Grant of License. The City hereby grants to the Bridges Association, and its members, agents, employees, representatives, and contractors:

(a) A perpetual license over, across, under and along the Public Rights-Of-Way for the purpose of constructing, operating, maintaining, and repairing the Enhanced Infrastructure consistent with concepts as contained within the Bridges PAD.

(b) A perpetual license, over, across, under and along the Public Rights-Of-Way for private underground utilities owned, operated and maintained by the Bridges Association, including, without limitation, potable water, irrigation and reclaimed water, storm drainage, sewer, electric, telephone, gas and cable television lines and related facilities. The specific locations and uses of these utilities either have been or will be approved by the City prior to construction and installation and shall comply with all applicable laws pertaining to occupancy of public right of way particularly but not limited to Title 40 of the Arizona Revised Statutes. By acceptance of this license the Bridges Association, and its members, agents, employees, representatives, contractors, successors and assigns, agree to (i) work with due care in the exercise of the rights granted herein and obtain all appropriate permits for work in the right of way; (ii) restore the right of way to reasonably the same or better condition than that which existed before the work was performed; (iii) install facilities and lines in schedule 80 sleeves (said sleeves shall extend beyond the right of way onto private property, unless otherwise approved by the Tucson Department Of Transportation); (iv) install facilities and sleeve(s) at a minimum 18 inch depth; (v) install proper marking tape to alert future workers of the presence of the Grantee's facilities; (vi) mark/stamp and/or place a placard on curb providing notice of buried private facilities; and (vii) pay any and all damages that are caused by the exercise of the rights herein granted.

3. Maintenance Responsibilities. After completion of the Enhanced Infrastructure, the Bridges Association, at its sole expense, shall maintain in good condition and state of repair all Enhanced Infrastructure listed as the Bridges Association's responsibility in **Exhibit A**, attached hereto.

4. Release from Liability. The City shall have no liability or responsibility to the Bridges Association, and/or its members, guests, invitees and/or others using the Enhanced Infrastructure within the Project Property for death, injury, damage, destruction or loss arising out of the installation, maintenance and use of the Enhanced Infrastructure.

5. Running of Benefits and Burdens. All provisions of this Agreement, including the benefits and burdens, are both personal and shall run with the land and are binding upon and shall inure to the benefit of the successors and assigns of the parties hereto.

6. Annual Fee. No fee shall be charged for this License.

7. Compliance With Highway Safety. The Enhanced Infrastructure shall not interfere with the safety of the traveling public or the authorized public use of right-of-way (including pedestrian use), and may not otherwise interfere with the general health, safety and welfare of the citizens of the City. The Enhanced Infrastructure shall be maintained so as not to interfere with safe sight distance or safe travel along the right-of-way.

8. Attorneys' Fees. In the event of any action to enforce the provisions of this Agreement, the substantially prevailing party shall be entitled to recover from the non-prevailing party its costs and reasonable attorneys' fees.

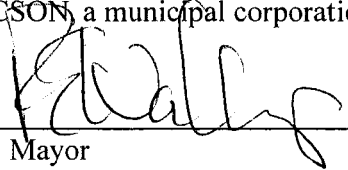
9. Amendments. This Agreement may be amended, cancelled in part, or terminated by the written agreement of the Parties.

10. Counterparts. This Agreement may be executed in one or more identical counterparts, all of which taken together shall constitute one and the same original instrument.

11. Construction. This Agreement shall be construed in accordance with the laws of the State of Arizona. The rule of strict construction shall not apply to this instrument. This Agreement shall be given a reasonable construction so that the intention of the parties to confer a usable right of enjoyment upon the Bridges Association is implemented.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the 30<sup>th</sup> day of June, 2011.

CITY OF TUCSON, a municipal corporation

By:   
Mayor

ATTEST:

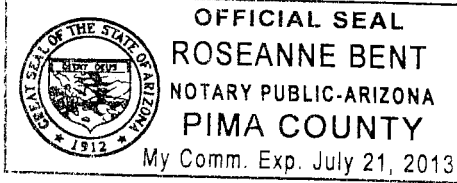
By:   
City Clerk

APPROVED AS TO FORM:

By:  6/16/11  
Principal Assistant City Attorney

STATE OF ARIZONA )  
 )ss.  
COUNTY OF PIMA )

This instrument was acknowledged before me this 30th day of June, 2011, by \_\_\_\_\_  
Robert E. Walkup, as Mayor, and Roger W. Randolph, as  
City Clerk of the City of Tucson, a municipal corporation, as the Act of said municipal  
corporation.



Roseanne Bent  
Notary Public

**ACCEPTANCE:**

The above License, together with all conditions, reservations, restrictions and covenants therein  
contained, is accepted and approved by the undersigned.

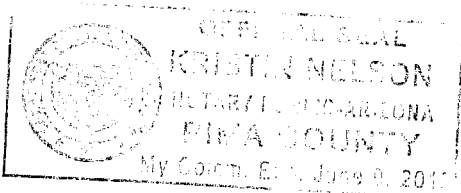
DATED this 2nd day of June, 2011.

**The Bridges Property Owners  
Association, an Arizona non-profit  
corporation**

By: \_\_\_\_\_  
Name: P. ERIC DAVIS  
Title: PRESIDENT

STATE OF ARIZONA )  
 )ss.  
COUNTY OF PIMA )

This instrument was acknowledged before me this 2nd day of June, 2011, by P. Eric  
Davis, who acknowledged himself to be the President of The Bridges Property Owners  
Association, an Arizona non-profit corporation.



Kristin Nelson  
Notary Public

## EXHIBIT A

### **Bridges Association, City of Tucson, and Pima County Regional Flood Control District Respective Responsibilities**

#### Dedicated Public Streets

The following maintenance responsibilities apply to **Tucson Marketplace Boulevard, Nobel Way, and Park Avenue (I-10 to 36<sup>th</sup> Street)**:

##### Bridges Association Responsibilities

- Decorative walls, seatwalls
- Any specialized (i.e. non-City-standard) street furniture
- Any specialty paving or specialty cross-walks
- Decorative (i.e. non City standard) light poles/fixtures
- All non-city standard landscaping and irrigation related thereto within r.o.w. and medians
- Irrigation supply for all non-city standard landscaping within r.o.w. and medians
- Any specialty/decorative street signs
- All Bridges-specific signage, monuments, way-finding elements, and project imaging elements
- The culvert beneath the faux bridge w/in Tucson Marketplace Blvd.
- All specialized “bridge” elements (e.g. columns, accent lighting, decorative railings, decorative walls) on the faux bridge w/in Tucson Marketplace Blvd.

##### City of Tucson Responsibilities (upon formal acceptance of improvements)

- Any City-standard street signs
- Any City-standard paving, curbing (includes subgrade responsibility)
- All travel lanes, bike lanes, and striping
- Any City-standard light poles/fixtures
- Any City-standard sidewalks
- Electric power supply for operation of all street lighting
- All drainage appurtenances (storm drains, surface provisions, etc.)
- Pedestrian crossings (including “hawks”), if not utilizing specialty paving

The following maintenance responsibilities apply to **36<sup>th</sup> Street (Park Avenue to Kino Parkway)**:

##### Bridges Association Responsibilities

- Any specialized (i.e. non-City-standard) street furniture
- Any specialty paving or specialty cross-walks
- Decorative (i.e. non City standard) light poles/fixtures
- All non-city standard landscaping and irrigation related thereto within the r.o.w. and medians
- Irrigation supply for all non-city standard landscaping
- Any specialty/decorative street signs
- All Bridges-specific signage, monuments, way-finding elements, and project imaging elements

### City of Tucson Responsibilities

- Any City-standard street signs
- Any City-standard paving, curbing (includes subgrade responsibility)
- All travel lanes, bike lanes, and striping
- Any City-standard light poles/fixtures
- Any City-standard sidewalks
- Electric power supply for operation of all street lighting
- All drainage appurtenances (storm drains, surface provisions, etc.)

### Central Park

#### Bridges Association Responsibilities

- Decorative light poles/fixtures
- Any ground/accent lighting
- Power supply for all lighted elements
- All landscaping and irrigation
- Irrigation supply for all landscaping (reclaimed water is in place)
- All play equipment, ramadas, and surface treatments (e.g. decomposed granite, sandpits, etc.)
- Restrooms, if provided
- Athletic fields and turf areas
- All trails and walking paths
- All Bridges-specific signage, way-finding, and project imaging elements

#### Pima County Regional Flood Control District Responsibilities

- All drainage infrastructure, both surface and sub-surface (including grates inlets, channels, etc.), i.e. everything necessary to insure functionality