

Unofficial Document

**REVOCABLE PERMIT
CITY OF PHOENIX, ARIZONA REVOCABLE PERMIT NO. RP-09029-03**

CITY OF PHOENIX CLERK FILE NO. 127873

Pursuant to Phoenix City Code Section 31-80 et seq., as amended, the City of Phoenix Street Transportation Department, as authorized by the City Council, hereby issues a revocable permit to RED CityScape Development, L.L.C., a Delaware limited liability company, (herein called Permittee) for the construction, use and maintenance of signage and shade canopies within the public right-of-way. The signage and shade canopies (herein called "Encroachments") as authorized by this permit, are as shown on the attached Exhibit "A".

I. ADJOINING REAL PROPERTY:

The Encroachment adjoins real property described as follows:

Lot 1 of Replat of Replat of Block 22 as recorded with Maricopa County Recorder's Office in Book 1037 of Maps, Page 15, and, Lot 1 of Replat of Block 77 as recorded with Maricopa County Recorder's Office in Book 1037 of Maps, Page 16. Located within the center of the north half of Section 8, Township 1 North, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona. Further described by the addresses of 1 E. Washington Street, 2 E. Jefferson Street, 50 W. Jefferson Street and 11 W. Washington Street.

THIS PERMIT IS SUBJECT TO THE FOLLOWING CONDITIONS:

II. GENERAL CONDITIONS:

- 2.1 Prior Approval of Encroachments. The Encroachments allowed by this revocable permit are as shown in the exhibit attached. Any modifications or additions to the Encroachments within the City of Phoenix right-of-way must be approved by the City of Phoenix. All work by Permittee within the right-of-way requires a construction permit issued by the City of Phoenix.

2.2 **City Retains Full Rights.** This revocable permit is not a construction permit. This permit is limited to the installation of the Encroachments and for maintenance and use of the Encroachments. The City of Phoenix retains full rights to the public right-of-way.

2.3 **Insurance.** Permittee shall procure and maintain for the duration of this revocable permit insurance against claims for injuries to persons or damages to property which may arise from or in connection with this revocable permit by the Permittee, its agents, representatives, employees or contractors. The insurance requirements herein are minimum requirements for this permit and in no way limit the indemnity covenants contained in this permit. The City of Phoenix in no way warrants that the minimum limits contained herein are sufficient to protect the Permittee from liabilities that might arise out of this revocable permit for the Permittee, its agents, representatives, employees or contractors, and Permittee is free to purchase such additional insurance as may be determined necessary.

(a) **Minimum Coverage Requirements.** The Permittee shall provide coverage at least as broad and within limits of liability not less than those stated below:

Commercial General Liability - Occurrence Form
(Form CG001, ed. 10/93 or any replacements thereof)

(i)	General Aggregate/for this permit	\$2,000,000
(ii)	Products-Completed Operations Aggregate	\$1,000,000
(iii)	Personal and Advertising Injury.....	\$1,000,000
(iv)	Each occurrence	\$1,000,000
(v)	Fire damage (any one fire).....	\$100,000

(b) **Policy Provisions.** The insurance policies furnished by Permittee are to contain, or be endorsed to contain, the following provisions: (i) The City of Phoenix, its officers, officials, agents, employees and volunteers are to be named as additional insureds with respect to liability arising out of the use and/or occupancy of the Encroachments subject to this permit and activities performed by or on behalf of the Permittee; (ii) commercial general liability insurance shall include broad form contractual liability coverage; (iii) the Permittee's insurance coverage shall be primary insurance with respect to the City, its officers, officials, agents, employees and volunteers; (iv) the Permittee's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with

respect to the limits of the insurers liability; (v) coverage provided by the Permittee shall not be limited to the liability assumed under the indemnification provisions of this permit; (vi) the policy shall contain a waiver against subrogation against the City, its officers, officials, agents, employees, and volunteers for losses arising from Permittee's operations, occupancy and use of the public right-of-way and/or other actions covered by Permittee's insurance.

- (c) **Prior Notice and Certificate of Insurance Required.** Each insurance policy required by the insurance provisions of this permit shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice has been sent to the City of Phoenix, Street Transportation Department as set forth herein. Such notice shall be sent by certified mail, return receipt requested. Insurance is to be placed with insurers duly licensed or approved unlicensed companies in the State of Arizona and with a "Best's" rating of not less than A-VII. The City of Phoenix in no way warrants that the above-required minimum ^{insured} Unofficial Document rating is sufficient to protect the Permittee from potential insurer insolvency. Permittee shall furnish the City of Phoenix with certificates of insurance (ACORD form or equivalent approved by the City) and with original endorsements affecting coverage as required by this permit. The certificates and endorsements for each insurance policy are to be signed by a person authorized by the insurer to bind coverage on its behalf. Any policy endorsements that restrict or limit coverage shall be clearly noted on the certificate of insurance. All certificates and endorsements shall be received and approved by the City prior to issuance of this permit. Each insurance policy required by this permit must be in effect at or prior to issuance of this permit and remain in effect for the duration of the permit. Failure to maintain the insurance policies required by this permit or to provide evidence of renewal shall be grounds for immediate revocation of this permit. All certificates of insurance required by this permit shall be sent directly to the City of Phoenix at the address set forth herein. The City of Phoenix revocable permit number and description number shall be provided on the certificate of insurance. The City of Phoenix reserves the right to require complete certified copies of valid insurance policies required by this permit at any time.

- (d) Any modification or variation from the insurance requirements in this permit shall be approved by the Street Transportation Department and Risk Management Department of the City of Phoenix, whose decision shall be final.

- 2.4 **Indemnification.** Permittee agrees to indemnify, defend, save and hold harmless, the City of Phoenix, any jurisdiction or agency issuing permits for any work included within this revocable permit, and its elected or appointed officials, agents, boards, commissions, employees and volunteers (hereinafter referred to as "Indemnatee") from and against any and all suits, claims, demands, actions, liabilities, damages, losses, or expenses of any nature or kind whatsoever, including court costs, attorneys' fees, and costs of claim processing, investigation and litigation (hereinafter collectively referred to as "Claims") for personal injury (including death) or property damage caused, or alleged to be caused in whole or in part, by the negligence or willful acts or omissions of Permittee or any of Permittee's directors, officers, agents, employees, or volunteers. This indemnity includes any claims or amount arising or recovered under the Worker's Compensation Laws or arising out of the failure of Permittee to conform to any federal, state or City of Phoenix law, statute, ordinance, rule, regulation, or court decree. It is the specific intention of the Permittee and the City of Phoenix that the Indemnatee shall, in all instances, except for Claims arising from the sole negligence of the Indemnatee, be indemnified by Permittee from and against any and all Claims. It is agreed that Permittee will be responsible for primary loss, investigation, defense, and judgment costs where this indemnification is applicable.
- 2.5 **No Transfer of Privileges.** The privilege granted by this revocable permit shall not be assigned, leased, sold or transferred either in whole or in part.
- 2.6 **Notice of Change of Address.** The Permittee shall notify the City of Phoenix Street Transportation Department at the address set forth herein within 30 days of any change in Permittee's mailing address, proposed lease, assignment, sale or transfer of this revocable permit or Adjoining Real Property described herein.
- 2.7 **No Interest in Real Property.** This revocable permit shall not be deemed to be a franchise, an easement, a covenant running with the land, interest in real property, nor a lease. This permit strictly allows the Encroachments within the public right-of-way for an indefinite period of time.

- 2.8 **Permit Revocable at Will.** This revocable permit is, pursuant to the City Charter and Ordinances adopted thereunder, subject to revocation at any time in the discretion of the City Council or by the City Manager or the Street Transportation Director with ratification by the Council. Such discretion shall be controlled solely by consideration of the best interests of the City of Phoenix, which may include but are not limited to violation or breach of any federal, state or City of Phoenix law, ordinance, code, rule, regulation, court decree or any condition of this permit.
- 2.9 **Removal of Encroachments.** Upon revocation of this permit, the Encroachments shall be removed to the satisfaction of the Street Transportation Director at no cost to City of Phoenix within 90 calendar days of written notice to vacate the right-of-way. Final notice will be given to Permittee within 15 calendar days for realignments of streets or construction in streets by the City or by its contractors, or upon notice in an emergency. In the event that the Encroachments are not removed from the right-of-way after notice by the City of Phoenix, the City reserves the right to remove said Encroachments and Permittee shall be responsible for and shall pay all Unofficial Document costs related to the removal of the Encroachments. If Permittee fails to pay the costs for the City's removal of the Encroachments within ninety (90) calendar days of written request for payment, Permittee hereby agrees that the City of Phoenix may recover from Permittee all of the City's costs of removal of the Encroachments, including attorneys' fees and collection costs, as afforded by Arizona law.
- 2.10 **No Recourse.** The Permittee shall have no recourse whatsoever against the City of Phoenix or its officials, boards, agents or employees for any loss, costs, expenses or damage arising out of any of the conditions or provisions of this revocable permit or because of any defects in this revocable permit, or should the Permittee in accordance with the terms hereof be lawfully deprived of the use and possession of the Encroachments.
- 2.11 **Annual Fee.** The annual fee for this permit is waived per Phoenix City Code Article VII, § 31-81.
- 2.12 **Permit Subject to Ordinances, As Amended.** This revocable permit is subject to general ordinance provisions now in effect as amended from time to time. Except as specifically provided herein, nothing in this revocable permit shall be deemed to waive the requirement of the various codes and ordinances of the City of Phoenix regarding permits or manner of construction in the City of

Phoenix right-of-way. This revocable permit is subject to and the Permittee shall comply with any future ordinances that may be adopted by the City Council pertaining to the location and relocation of the Encroachments in the right-of-way.

2.13 **Records.** The Permittee shall keep as-built records of all Encroachments and Permittee shall furnish a copy of the as-built records to the City of Phoenix Street Transportation Department. Where Encroachments are underground facilities in the public right-of-way, Permittee shall participate as a member in Blue Stake Center and shall comply with A.R.S. § 40-360.21 et seq. regarding underground facilities. A copy of this agreement or proof of participation shall be submitted to the Street Transportation Department.

2.14 **Maintenance and Disturbance of Public Right-of-Way.**

- (a) The Permittee shall maintain the Encroachments in a manner satisfactory to the Street Transportation Director. Failure to provide satisfactory maintenance can result in Unofficial Document revocation of this permit pursuant to Section 2.8 of the General Conditions. Permittee shall submit proof of ability to repair water line by a licensed contractor within 24 hours of notice. The licensed contractor shall perform work in the public right-of-way that satisfies all City and Maricopa County requirements for street closures, permits, plumbing codes, health, environmental protection standards, and any other regulations that may apply.
- (b) Whenever the Permittee disturbs a public right-of-way, alley, public highway, street easement, or public utility easement for any reason as a result of construction or due to failure of any of its facilities or subsequent right-of-way restoration work, the Permittee shall restore the same to the satisfaction of the City of Phoenix Street Transportation Director and shall obtain all appropriate construction permits.
- (c) The City of Phoenix may in its own discretion remedy Permittee's failure to maintain said Encroachments or disturbance. The cost thereof, including the cost of inspection and supervision, shall be paid by the Permittee. If Permittee fails to pay the City's costs for maintenance of the Encroachments within ninety (90) calendar days of written request for payment, Permittee hereby agrees that the City may seek to recover all of the City's costs for maintenance of the Encroachments, including

attorneys' fees and all costs of collection, as afforded by Arizona law. All excavations in the public right-of-way made by the Permittee shall be maintained by Permittee or his agents and contractors in a safe manner. Any barricading by Permittee shall be in accordance to the City of Phoenix latest Traffic Barricade Manual.

- (d) Maintenance contracts for the Encroachments, if any, with another party shall be filed with the Street Transportation Department. Permittee or his maintenance contractor shall obtain insurance; and Workers' Compensation insurance as provided herein; and perform work in a satisfactory manner and according to plans as approved by the City of Phoenix Street Transportation Department.
- (e) The City of Phoenix shall not assume any maintenance responsibility for maintenance of the Encroachments and shall not assure protection of the Encroachments from damage by others permitted in the right-of-way over or under the Encroachments herein permitted. The City of Phoenix does not warrant, represent or ^{Unofficial Document} guarantee that the Encroachments shall not be damaged from underground seepages, failure of soil materials and or soil movements.
- (f) The City of Phoenix shall retain the right of access to the Encroachments at all reasonable times for inspection, for maintenance or for repairs.

2.15 Emergency Work by Permittee. Emergency work by Permittee in the public right-of-way shall be barricaded according to the City of Phoenix latest Traffic Barricade Manual. Barricading shall be followed immediately by contacting all affected utility companies and the Street Transportation Department. Permittee shall also obtain a construction permit from the City of Phoenix Development Services Department before Permittee, its contractors or its agents restore the right-of-way to original conditions as approved by the City of Phoenix. Permittee shall follow emergency procedures set forth by Street Transportation Department.

2.16 User Conflicts. Nothing in the revocable permit shall be construed to prevent the City of Phoenix or its Permittees from constructing facilities, grading, paving, and/or altering any facilities, street, alley, or constructing any other public work or private facility permitted by the City of Phoenix in the public right-of-way. If any Encroachment of the Permittee herein shall interfere with the construction,

alteration, or repair of any facility, street, alley, or easement, the Permittee and any of his assigns shall relocate, remove, or replace the Encroachment at Permittee's expense according to plans submitted to and approved by the City of Phoenix.

- 2.17 **Entire Agreement; Amendment; Waivers.** This revocable permit constitutes the entire agreement between the City of Phoenix and Permittee with respect to the transactions contemplated herein and supersedes all prior negotiations, communications, discussions and correspondence, whether written or oral, concerning this subject matter. No supplement, modification, or amendment of any term of this revocable permit shall be deemed binding or effective unless executed in writing by all the parties. No waiver of any of the provisions of this revocable permit shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
- 2.18 **Rights of Parties.** Nothing in this Unofficial Document revocable permit, whether express or implied, is intended to confer any rights or remedies under or by reason of this permit on any persons other than the parties to this permit and their respective successors and permitted assigns, nor is anything in this permit intended to relieve or discharge any obligation or liability of any person who is not a party to this permit, nor shall any provision hereof give any persons not a party to this permit any right of subrogation or action over or against any party to this permit.
- 2.19 **Construction.** This permit is the result of negotiations between the parties, none of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions of this permit shall be construed in accordance with their usual and customary meanings. The parties hereby waive the application of any rule of law that otherwise would be applicable in connection with the construction of this permit that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed permit or any earlier draft of the same. Unless the context of the permit otherwise clearly requires, references to the plural include the singular and the singular the plural. The words "hereof", "herein", "hereunder" and similar terms in this permit refer to this permit as a whole and not to any particular provision of this permit. All references to "Sections" herein shall refer to the sections and paragraphs of this permit unless specifically stated otherwise. The section and other headings contained in this