

BY AUTHORITY

RESOLUTION NO. CR13-
SERIES OF 2013

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

A RESOLUTION

Granting a revocable permit to Auraria Higher Education Center, to encroach into the right-of-way with various items on 7th Street between vacated Larimer and Lawrence Streets.

BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. The City and County of Denver hereby grants to the State of Colorado, acting by and through the Board of Directors of the Auraria Higher Education Center, a body corporate and agency of the State of Colorado, and its successors and assigns ("Permittee"), a revocable permit to encroach into the right-of-way with electrical and telecommunications duct banks, vault structures and manhole covers ("Encroachments") on 7th Street between vacated Lawrence and Larimer Streets in the following described area ("Encroachment Area"):

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2 **Section 2.** The revocable permit ("Permit") granted by this Resolution is expressly
3 granted upon and subject to each and all of the following terms and conditions:

4 (a) Permittee shall obtain a street occupancy permit from Public Works Permit
5 Operations at 2000 West 3rd Avenue, 303-446-3759, prior to commencing construction.

6 (b) Permittee shall be responsible for obtaining all other permits and shall pay all costs
7 that are necessary for installation and construction of items permitted herein.

8 (c) If the Permittee intends to install any underground facilities in or near a public road,
9 street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification
10 Association of Owners and Operators of Underground Facilities by contacting the Utility
11 Notification Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado
12 80215, at 303-232-1991. Further, Permittee shall contact the Utility Notification Center at 1-800-
13 922-1987 to locate underground facilities prior to commencing any work under this permit.

14 (d) Permittee is fully responsible for any and all damages incurred to facilities of the
15 Water Department and/or drainage facilities for storm water and sanitary sewage of the City and
16 County of Denver due to activities authorized by the Permit. Should the relocation or replacement
17 of any drainage facilities for storm water and sanitary sewage of the City and County of Denver
18 become necessary as reasonably determined by the Manager of Public Works, Permittee shall
19 pay all cost and expense of the portion of the facility affected by the permitted structure. The
20 extent of the affected portion to be replaced or relocated by Permittee shall be reasonably
21 determined by the Manager of Public Works. Any and all replacement or repair of facilities of the
22 Water Department and/or drainage facilities for water and sewage of the City and County of
23 Denver attributed to the Permittee shall be made by the Water Department and/or the City and
24 County of Denver at the sole expense of the Permittee. In the event Permittee's facilities are
25 damaged or destroyed due to the Water Department's or the City and County of Denver's
26 reasonable, usual and customary repair, replacement and/or operation of its facilities, in its
27 ordinary course of business, repairs will be made by the Permittee at its sole expense. The City
28 and County of Denver and the Water Department shall give the Permittee notice of any non-
29 emergency repair or maintenance work to be performed on their facilities above or adjacent to the
30 Encroachments at least two (2) weeks prior to the start of the work. Permittee agrees, to the
31 extent it legally may, and specifically subject to the Constitution of the State of Colorado and the
32 Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as may be amended, to repair

1 or pay for the repair of any and all damages to said sanitary sewer, or those damages resulting
2 from the failure of the sewer to properly function as a result of the permitted structure.

3 (e) Permittee shall comply with all requirements of affected utility companies located
4 within the Encroachment Area and pay for all costs of removal, relocation, replacement or
5 rearrangement of utility company facilities. Existing telephone facilities shall not be utilized,
6 obstructed or disturbed.

7 (f) All construction in, under, on or over the Encroachment Area shall be accomplished
8 in accordance with the Building Code of the City and County of Denver. Plans and Specifications
9 governing the construction of the Encroachments shall be approved by the Manager of Public
10 Works and the Director of Building Inspection Division prior to construction. Upon completion, a
11 reproducible copy of the exact location and dimensions of the Encroachments shall be filed with
12 the Manager of Public Works.

13 (g) Permittee shall pay all costs of construction and maintenance of the Encroachments.
14 Upon revocation or Permittee's election to abandon or release the Permit, Permittee shall pay all
15 costs of removing the Encroachments from the Encroachment Area and return the Encroachment
16 Area to its original condition under the supervision of the City Engineer.

17 (i) Permittee shall remove and replace any and all street/alley paving, sidewalks, and
18 curb and gutter, both inside the Encroachment Area and in the rights-of-way adjacent thereto, that
19 become broken, damaged or unsightly during the course of construction of the Encroachments. In
20 the future, Permittee shall also remove, replace or repair any street/alley paving, sidewalks, plaza
21 areas and curb and gutter that become broken or damaged when, in the opinion of the City
22 Engineer, the damage has been caused by the activity of the Permittee within the Encroachment
23 Area. All repair work shall be accomplished without cost to the City and under the supervision of
24 the City Engineer.

25 (j) The City reserves the right to make an inspection of the Encroachments contained
26 within the Encroachment Area. An annual fee, subject to change, of Two Hundred Dollars
27 (\$200.00) shall be assessed.

28 (k) This revocable permit shall not operate or be construed to abridge, limit or restrict
29 the City and County of Denver in exercising its right to make full reasonable use of the
30 Encroachment Area and adjacent rights-of-way as public thoroughfares nor shall it operate to
31 restrict the utility companies in exercising their rights to construct, remove, operate and maintain
32 their facilities within the Encroachment Area and adjacent rights-of-way, subject to Permittee's
33 reasonable consent to such utility companies' rights that impact the Encroachments.

(l) During the existence of the Encroachments and this permit, Permittee, its successors and assigns, at its expense, and without cost to the City and County of Denver, shall procure and maintain a Commercial General Liability insurance policy with a limit of not less than Two Million Dollars (\$2,000,000.00), or evidence satisfactory to the City of self insurance. All coverages are to be arranged on an occurrence basis and include coverage for those hazards normally identified as X.C.U. during construction. The insurance coverage required herein constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or lessen the liability of the Permittee, its successors or assigns, under the terms of this permit. All insurance coverage required herein shall be written in a form and by a company or companies approved by the Risk Manager of the City and County of Denver and authorized to do business in the State of Colorado. A certified copy of all such insurance policies shall be filed with the Manager of Public Works, and each such policy shall contain a statement therein or endorsement thereon that it will not be canceled or materially changed without written notice, by registered mail, to the Manager of Public Works at least thirty (30) days prior to the effective date of the cancellation or material change. All such insurance policies shall be specifically endorsed to include all liability assumed by the Permittee hereunder and shall name the City and County of Denver as an additional insured.

(m) The right to revoke this Permit is expressly reserved to the City and County of Denver.

(o) Permittee shall, to the extent it legally may, and specifically subject to the Constitution of the State of Colorado and the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as may be amended, agree to be solely responsible for all costs, claims or damages arising, either directly or indirectly, out of the rights and privileges granted by this Permit. Permittee shall require its contractors, for the work allowed under this permit, to indemnify and always save the City and County of Denver harmless from all costs, claims or damages arising, either directly or indirectly, out of the rights and privileges granted by this Permit.

Section 3. That the Permit hereby granted shall be revocable at any time that the Council of the City and County of Denver determines that such revocation is deemed to be necessary to facilitate the movement of traffic; to provide for public safety; or to provide for the public safety, convenience or necessity in use of the Encroachment Area, and the right to revoke the same is hereby expressly reserved to the City and County of Denver; provided however, at a reasonable time prior to Council action upon such revocation or proposed revocation, opportunity shall be afforded to Permittee, its successors and assigns, to correct any issues arising under this

1 Permit and to be present at a hearing to be conducted by the Council upon such matters and
2 thereat to present its views and opinions thereof and to present for consideration action or actions
3 alternative to the revocation of such Permit.

4 COMMITTEE APPROVAL DATE: May 23, 2013 [by consent]

5 MAYOR-COUNCIL DATE: May 28, 2013

6 PASSED BY THE COUNCIL: _____, 2013

7 _____ - PRESIDENT

8 ATTEST: _____ - CLERK AND RECORDER,
9 EX-OFFICIO CLERK OF THE
10 CITY AND COUNTY OF DENVER
11

12 PREPARED BY: Brent A. Eisen, Assistant City Attorney DATE: May 30, 2013
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14 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of
15 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
16 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §
17 3.2.6 of the Charter.
18

19 Douglas J. Friednash, Denver City Attorney

20 BY: _____, Assistant City Attorney DATE: _____, 2013