

1 BY AUTHORITY

2 RESOLUTION NO. 10-0858
3 SERIES OF 2010

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 A RESOLUTION

5 **Granting a revocable permit to Sawaya, Rose, Kaplan, Wilkinson & McClure, P.C.**
6 **to encroach into the right-of-way with various items in the alley at 16th Ave. and at**
7 **16th Ave. between Ogden St. and Emerson St.**

8
9 **BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:**

10 **Section 1.** The City and County of Denver hereby grants to Sawaya, Rose, Kaplan,
11 Wilkinson & McClure, P.C. and its successors and assigns (“Permittee”), a revocable permit to
12 encroach into the right-of-way with three ground boxes and fiber optic lines located in the alley at 16th
13 Avenue and 16th Avenue between Ogden Street and Emerson Street, (“Encroachments”) in the
14 following described area (“Encroachment Area”):

A PARCEL OF LAND, BEING A PORTION OF 16TH AVENUE RIGHT-OF-WAY AND PART OF A 16 FOOT ALLEY LOCATED IN BLOCK 23, PARK AVENUE ADDITION TO DENVER, A SUBDIVISION PLAT RECORDED IN BOOK 1, PAGE 66 IN THE OFFICE OF THE CLERK AND RECORDER OF ARAPAHOE COUNTY, COLORADO ON OCTOBER 19, 1874, LOCATED IN THE SOUTHWEST QUARTER OF SECTION 35, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, IN THE CITY AND COUNTY OF DENVER, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF LOT 19, BLOCK 23, OF SAID SUBDIVISION, WHENCE THE SOUTH BOUNDARY OF SAID LOT 19 BEARS NORTH 90°00'00" EAST WITH ALL BEARINGS HEREON REFERENCED THERETO;

THENCE ALONG SAID SOUTH BOUNDARY AND THE NORTH RIGHT-OF-WAY OF 16TH AVENUE, NORTH 90°00'00" EAST, A DISTANCE OF 145.00 FEET;

THENCE CONTINUING ALONG THE EXTENSION OF SAID SOUTH BOUNDARY AND SAID NORTH RIGHT-OF-WAY, NORTH 90°00'00" EAST, A DISTANCE OF 70.00 FEET TO THE WEST BOUNDARY OF LOT 20, BLOCK 24 OF SAID SUBDIVISION AND THE EAST RIGHT-OF-WAY OF OGDEN STREET;

THENCE ALONG SAID WEST BOUNDARY AND SAID EAST RIGHT-OF-WAY, SOUTH 00°05'00" EAST, A DISTANCE OF 0.50 FEET TO THE SOUTHWEST CORNER OF SAID LOT 20 AND THE NORTHERLY RIGHT-OF-WAY OF 16TH AVENUE;

THENCE ALONG THE SOUTH BOUNDARY OF SAID LOT 20 AND SAID NORTH RIGHT-OF-WAY, NORTH 90°00'00" EAST, A DISTANCE OF 70.60 FEET;

THENCE DEPARTING SAID SOUTH BOUNDARY AND SAID NORTH RIGHT-OF-WAY, SOUTH 00°00'00" EAST, A DISTANCE OF 10.00 FEET TO A LINE PARALLEL WITH AND 10.00 FEET SOUTHERLY FROM SAID SOUTH BOUNDARY AND SAID NORTH RIGHT-OF-WAY;

THENCE ALONG SAID PARALLEL LINE, SOUTH 90°00'00" WEST, A DISTANCE OF 70.59 FEET;

THENCE DEPARTING SAID PARALLEL LINE, NORTH 00°05'00" WEST, A DISTANCE OF 0.50 FEET TO A LINE PARALLEL WITH AND 10.00 FEET SOUTHERLY OF THE EXTENSION OF THE SOUTH BOUNDARY OF SAID LOT 19 AND SAID THE NORTH RIGHT-OF-WAY OF 16TH AVENUE;

THENCE ALONG SAID PARALLEL LINE, SOUTH 90°00'00" WEST, A DISTANCE OF 231.00 FEET;

THENCE DEPARTING SAID PARALLEL LINE, NORTH 00°05'00" WEST, A DISTANCE OF 10.00 FEET TO THE SOUTHEAST CORNER OF LOT 20, BLOCK 23 OF SAID SUBDIVISION AND THE WEST BOUNDARY OF THAT CERTAIN 16 FOOT ALLEY, BLOCK 23 OF SAID SUBDIVISION;

1 THENCE ALONG SAID WEST BOUNDARY, NORTH 00°05'00" WEST, A DISTANCE OF 268.66 FEET;

THENCE DEPARTING SAID WEST BOUNDARY, NORTH 89°55'00" EAST, A DISTANCE OF 16.00 FEET TO THE EAST BOUNDARY OF SAID ALLEY;

THENCE ALONG SAID EAST BOUNDARY, SOUTH 00°05'00" EAST, A DISTANCE OF 268.68 FEET TO THE **POINT OF BEGINNING**.

2 CONTAINING 0.168 ACRES (7,315 SQ. FT.), MORE OR LESS.

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

5 (a) Permittee shall obtain a street occupancy permit from Public Works Permit Operations at
6 2000 West 3rd Avenue, 303-446-3759, prior to commencing construction.

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

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

15 (d) Permittee is fully responsible for any and all damages incurred to facilities of the Water
16 Department and/or drainage facilities for water and sewage of the City and County of Denver due to
17 activities authorized by the permit. Should the relocation or replacement of any drainage facilities for
18 water and sewage of the City and County of Denver become necessary as determined by the
19 Manager of Public Works, in the Manager's sole and absolute discretion, Permittee shall pay all cost
20 and expense of the portion of the sewer affected by the permitted structure. The extent of the affected
21 portion to be replaced or relocated by Permittee shall be determined by the Manager of Public Works.

22 Any and all replacement or repair of facilities of the Water Department and/or drainage facilities for
23 water and sewage of the City and County of Denver attributed to the Permittee shall be made by the
24 Water Department and/or the City and County of Denver at the sole expense of the Permittee. In the
25 event Permittee's facilities are damaged or destroyed due to the Water Department's or the City and
26 County of Denver's repair, replacement and/or operation of its facilities, repairs will be made by the

1 Permittee at its sole expense. Permittee agrees to defend, indemnify and save the City harmless and
2 to repair or pay for the repair of any and all damages to said sanitary sewer, or those damages
3 resulting from the failure of the sewer to properly function as a result of the permitted structure.

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

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

13 (g) The sidewalk and street/alley over the Encroachment Area shall be capable of
14 withstanding an HS-20 loading in accordance with the latest AASHTO Specifications. The
15 installations within the Encroachment Area shall be constructed so that the paved section of the
16 street/alley can be widened without requiring additional structural modifications. The sidewalk shall be
17 constructed so that it can be removed and replaced without affecting structures within the
18 Encroachment Area.

19 (h) Permittee shall pay all costs of construction and maintenance of the Encroachments.
20 Upon revocation of the permit or upon abandonment, Permittee shall pay all costs of removing the
21 Encroachments from the Encroachment Area and return the Encroachment Area to its original
22 condition under the supervision of the City Engineer.

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

30 (j) The City reserves the right to make an inspection of the Encroachments contained within
31 the Encroachment Area. An annual fee, subject to change, of \$200.00 shall be assessed.

32 (k) This revocable permit shall not operate or be construed to abridge, limit or restrict the
33 City and County of Denver in exercising its right to make full use of the Encroachment Area and
34 adjacent rights-of-way as public thoroughfares nor shall it operate to restrict the utility companies in

1 exercising their rights to construct, remove, operate and maintain their facilities within the
2 Encroachment Area and adjacent rights-of-way.

3 (l) During the existence of the Encroachments and this permit, Permittee, its successors
4 and assigns, at its expense, and without cost to the City and County of Denver, shall procure and
5 maintain a single limit comprehensive general liability insurance policy with a limit of not less than
6 \$500,000.00. All coverages are to be arranged on an occurrence basis and include coverage for
7 those hazards normally identified as X.C.U. during construction. The insurance coverage required
8 herein constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or
9 lessen the liability of the Permittee, its successors or assigns, under the terms of this permit. All
10 insurance coverage required herein shall be written in a form and by a company or companies
11 approved by the Risk Manager of the City and County of Denver and authorized to do business in the
12 State of Colorado. A certified copy of all such insurance policies shall be filed with the Manager of
13 Public Works, and each such policy shall contain a statement therein or endorsement thereon that it
14 will not be canceled or materially changed without written notice, by registered mail, to the Manager of
15 Public Works at least thirty (30) days prior to the effective date of the cancellation or material change.
16 All such insurance policies shall be specifically endorsed to include all liability assumed by the
17 Permittee hereunder and shall name the City and County of Denver as an additional insured.

18 (m) Permittee shall comply with the provisions of Article IV (Prohibition of Discrimination in
19 Employment, Housing and Commercial Space, Public Accommodations, Educational Institutions and
20 Health and Welfare Services) of Chapter 28 (Human Rights) of the Revised Municipal Code of the City
21 and County of Denver. The failure to comply with any such provision shall be a proper basis for
22 revocation of this permit.

23 (n) The right to revoke this permit is expressly reserved to the City and County of Denver.

24 (o) Permittee shall agree to indemnify and always save the City and County of Denver
25 harmless from all costs, claims or damages arising, either directly or indirectly, out of the rights and
26 privileges granted by this permit.

27 **Section 3.** That the Permit hereby granted shall be revocable at any time that the Council of
28 the City and County of Denver shall determine that the public convenience and necessity or the public
29 health, safety or general welfare require such revocation, and the right to revoke the same is hereby
30 expressly reserved to the City and County of Denver; provided however, at a reasonable time prior to
31 Council action upon such revocation or proposed revocation, opportunity shall be afforded to
32 Permittee, its successors and assigns, to be present at a hearing to be conducted by the Council upon
33 such matters and thereat to present its views and opinions thereof and to present for consideration
34 action or actions alternative to the revocation of such Permit.

1 COMMITTEE APPROVAL DATE: October 7, 2010 by consent.
2 MAYOR-COUNCIL DATE: October 12, 2010
3 PASSED BY THE COUNCIL: _____, 2010
4 _____ - PRESIDENT
5 ATTEST: _____ - CLERK AND RECORDER,
6 EX-OFFICIO CLERK OF THE
7 CITY AND COUNTY OF DENVER
8 PREPARED BY: KAREN A. AVILES, Assistant City Attorney DATE: October 13, 2010
9 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of the
10 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
11 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §
12 3.2.6 of the Charter.
13 David R. Fine, City Attorney
14 BY: _____, Assistant City Attorney DATE: _____, 2010