

1 **BY AUTHORITY**

2 RESOLUTION NO. CR24-0797
3 SERIES OF 2024

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to CP VII Wynkoop, LLC, to encroach into the right-**
6 **of-way at 39th Street and Wynkoop Street.**

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

8 **Section 1.** The City and County of Denver (“City”) hereby grants to CP VII Wynkoop, LLC,
9 the owner of the Benefitted Property, and their successors and assigns (“Permittee”), a revocable
10 permit to encroach into the right-of-way with a private storm sewer main, including approximately
11 125 feet of 18 inch RCP pipe, a 4 foot diameter manhole, and a 6 foot diameter manhole
12 (“Encroachment(s)”), at 39th Street and Wynkoop Street in the following described area
13 (“Encroachment Area”):

14 **PARCEL DESCRIPTION ROW NO. 2023-ENCROACHMENT-0000171-002:**

15 A PARCEL OF LAND BEING A PORTION OF 39TH STREET LYING BETWEEN WYNKOOP
16 STREET AND BRIGHTON BOULEVARD, SITUATED IN THE SOUTHWEST QUARTER OF
17 SECTION 23, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
18 CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY
19 DESCRIBED AS FOLLOWS:

20
21 **BASIS OF BEARINGS:** BEARINGS ARE BASED ON THE 20-FOOT RANGE LINE IN
22 WYNKOOP STREET BETWEEN 39TH STREET AND 40TH STREET, ASSUMED AS
23 BEARING SOUTH 45°00'00" WEST. SAID LINE BEING MONUMENTED AT 39TH STREET BY
24 A 2" ALUMINUM CAP STAMPED “CCD RANGE POINT, PLS 38189” IN A RANGE BOX, AND
25 MONUMENTED AT 40TH STREET BY A 1" AXLE IN A RANGE BOX.

26
27 **COMMENCING** AT THE EAST CORNER OF BLOCK 39, ST. VINCENTS ADDITION SECOND
28 FILING;

29
30 THENCE NORTH 44°45'40" WEST ALONG THE NORTHEAST LINE OF SAID BLOCK 39, A
31 DISTANCE OF 91.14 FEET TO THE **POINT OF BEGINNING**;

32
33 THENCE CONTINUING NORTH 44°45'40" WEST ALONG SAID NORTHEAST LINE, A
34 DISTANCE OF 20.00 FEET;

35
36 THENCE DEPARTING THE SAID NORTHEAST LINE NORTH 45°03'41" EAST, A DISTANCE
37 OF 54.78 FEET;

38
39 THENCE SOUTH 44°43'07" EAST, A DISTANCE OF 89.83 FEET;

1
2 THENCE SOUTH 45°16'53" WEST, A DISTANCE OF 20.00 FEET;
3
4 THENCE NORTH 44°43'07" WEST, A DISTANCE OF 69.75 FEET;
5 THENCE SOUTH 45°03'41" WEST, A DISTANCE OF 34.76 FEET TO THE **POINT OF**
6 **BEGINNING**.

7
8 SAID PARCEL CONTAINS 2,491 SQUARE FEET OR 0.06 ACRES, MORE OR LESS
9 and benefitting the following described parcel of property ("Benefitted Property"):

10 **PARCEL DESCRIPTION ROW NO. 2023-ENCROACHMENT-0000171-001:**

11 A PARCEL OF LAND BEING A PORTION OF BLOCK 39, ST. VINCENTS ADDITION SECOND
12 FILING, AND A PORTION OF BLOCK 8, IRONTON, TOGETHER WITH VACATED ALLEY IN SAID
13 BLOCKS PER ORDINANCE NO. 189, SERIES OF 1947 RECORDED JANUARY 2, 1948, AT
14 RECEPTION NO. 451672, SITUATED IN THE SOUTHWEST QUARTER OF SECTION 23,
15 TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND
16 COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS
17 FOLLOWS:

18
19 **BEGINNING** AT THE EAST CORNER OF SAID BLOCK 39;

20
21 THENCE SOUTH 45°04'03" WEST ALONG THE SOUTHEAST LINES OF SAID BLOCK 39 AND
22 BLOCK 8, A DISTANCE OF 217.18 FEET TO THE SOUTH CORNER OF LOT 21, SAID BLOCK 8;
23 THENCE NORTH 44°58'01" WEST ALONG THE SOUTHWEST LINE OF SAID LOT 21, A
24 DISTANCE OF 128.69 FEET TO THE LINE BETWEEN SAID ST. VINCENTS ADDITION SECOND
25 FILING AND SAID IRONTON;
26 THENCE NORTH 89°46'19" WEST ALONG SAID DIVISION LINE, A DISTANCE OF 6.13 FEET
27 TO THE CENTER LINE OF SAID VACATED ALLEY;
28 THENCE SOUTH 45°03'20" WEST ALONG SAID CENTER LINE, A DISTANCE OF 90.71 FEET
29 TO THE NORTHEAST LINE OF THAT PARCEL DEEDED TO THE CITY AND COUNTY OF
30 DENVER AT RECEPTION NO. 2024005429;
31 THENCE NORTH 44°58'48" WEST ALONG SAID NORTHEAST LINE, A DISTANCE OF 115.02
32 FEET TO THE SOUTHEAST LINE OF PARCEL 61 DESCRIBED AT RECEPTION NO.
33 2016075222;
34 THENCE NORTH 45°02'39" EAST ALONG SAID SOUTHEAST LINE, A DISTANCE OF 313.13
35 FEET TO THE NORTHEAST LINE OF SAID BLOCK 39;
36 THENCE SOUTH 44°45'40" EAST ALONG SAID NORTHEAST LINE, A DISTANCE OF 248.17
37 FEET TO THE **POINT OF BEGINNING**.

38
39 SAID PARCEL CONTAINS 64,940 SQUARE FEET OR 1.49 ACRES, MORE OR LESS.

40
41 **BASIS OF BEARINGS:** BEARINGS ARE BASED ON THE 20 FOOT RANGE LINE IN WYNKOOP
42 STREET BETWEEN 39TH AVENUE AND 40TH AVENUE, MONUMENTED IN THE NORTHEAST
43 BY A 1" AXLE IN A RANGE BOX AND IN THE SOUTHWEST BY A 2" ALUMINUM CAP STAMPED
44 "CCD RANGE POINT, PLS 38189" IN A RANGE BOX, ASSUMED TO BEAR SOUTH 45°00'00'
45 WEST.

1 **Section 2.** The revocable permit (“Permit”) granted by this Resolution is expressly granted
2 upon and subject to each and all of the following terms and conditions (terms not defined herein are
3 defined in the Rules and Regulations Governing Encroachments & Encumbrances in the Public Right
4 of Way):

5 (a) Permittee shall obtain a street occupancy permit, street cut permit, and/or ROW
6 construction permit from the City’s Department of Transportation and Infrastructure (“DOTI”) Permit
7 Operations through www.denvergov.org/dotipermits prior to commencing construction.

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

10 (c) If the Permittee intends to install any underground facilities in or near a Public road,
11 street, alley, ROW or utility easement, the Permittee shall join the Statewide Notification Association
12 of Owners and Operators of Underground Facilities by contacting the Utility Notification Center of
13 Colorado (Colorado 811) through <https://colorado811.org/> or at 303-232-1991, 16361 Table
14 Mountain Pkwy, Golden, Colorado, 80403. Further, Permittee shall contact the Utility Notification
15 Center (Colorado 811) at <https://colorado811.org/> or 303-232-1991 to request locates for existing
16 underground facilities prior to commencing excavation.

17 (d) Permittee is fully responsible for any and all damages incurred to facilities of Denver
18 Water and any other Utility Company, and/or drainage facilities for water and sewage of the City and
19 County of Denver due to activities authorized by the Permit. Should the relocation or replacement of
20 any drainage facilities for water and sewage of the City and County of Denver become necessary as
21 determined by the City’s Executive Director of DOTI (“Executive Director”), in the Executive
22 Director’s sole and absolute discretion, Permittee shall pay all cost and expense of the portion of the
23 water and/or sewer facilities affected by the Encroachment(s). The extent of the affected portion to
24 be replaced and relocated by Permittee shall be determined by the Executive Director. Any and all
25 replacement or repair of facilities of Denver Water and any other Utility Company, and/or drainage
26 facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be
27 made by Denver Water, Utility Company, and/or the City and County of Denver at the sole expense
28 of the Permittee. In the event the Permittee’s facilities are damaged or destroyed due to Denver
29 Water’s, Utility Company’s, or the City and County of Denver’s repair, replacement and/or operation
30 of its facilities, repairs will be made by Permittee at its sole expense. Permittee agrees to defend,
31 indemnify and hold the City harmless and to repair or pay for the repair of any and all damages to
32 said water, storm, sanitary sewer facilities or other Utility Company facilities, or those damages
33 resulting from the failure of the water, storm, sanitary sewer facilities or other Utility Company

1 facilities to properly function because of the Encroachment(s).

2 (e) Permittee shall comply with all requirements of affected Utility Companies and pay for
3 all costs of removal, relocation, replacement or rearrangement of Utility Company facilities. Existing
4 utility facilities shall not be utilized, obstructed or disturbed.

5 (f) All construction in, under, on or over the Encroachment Area shall be accomplished in
6 accordance with the Building Code and City and County of Denver Department of Transportation &
7 Infrastructure Transportation Standards and Details for the Engineering Division.

8 (g) Permittee shall observe and comply with all Federal, State and local laws, regulations,
9 ordinances, and public safety requests regarding the use of the Encroachment Area.

10 (h) Plans and Specifications governing the construction of the Encroachment(s) shall be
11 approved by DOTI prior to construction.

12 (i) Permittee shall pay all costs of construction and maintenance of the Encroachment(s).
13 Upon revocation of the Permit or upon abandonment, Permittee shall pay all costs of removing the
14 Encroachment(s) from the Encroachment Area and restore the Encroachment Area to a condition in
15 accordance with City and County of Denver Department of Transportation & Infrastructure
16 Transportation Standards and Details for the Engineering Division under the supervision of DOTI.

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

25 (k) The City reserves the right to make an inspection of the Encroachment(s) and the
26 Encroachment Area.

27 (l) During the existence of the Encroachment(s) and the Permit, Permittee, its successors
28 and assigns, at its expense, and without cost to the City, shall procure and maintain Commercial
29 General Liability insurance policy with a limit of not less than \$1,000,000 per occurrence. All
30 coverages are to be arranged on an occurrence basis and include coverage for those hazards
31 normally identified as X.C.U. during construction. The insurance coverage required herein
32 constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or
33 lessen the liability of the Permittee, its successors or assigns, under the terms of this Permit. All

1 insurance coverage required herein shall be written in a form and by a company or companies
2 approved by the Risk Manager of the City and authorized to do business in the State of Colorado. A
3 certified copy of all such insurance policies shall be filed with the Executive Director, and each such
4 policy shall contain a statement therein or endorsement thereon that it will not be canceled or
5 materially changed without written notice, by registered mail, to the Executive Director at least thirty
6 (30) days prior to the effective date of the cancellation or material change. The City and County of
7 Denver, its Elected and Appointed Officials, Employees and Volunteers shall be included as
8 Additional Insured.

9 (m) In addition to the requirement herein to comply with all laws, Permittee shall comply
10 with the provisions of Article IV (Prohibition of Discrimination in Employment, Housing and
11 Commercial Space, Public Accommodations, Educational Institutions and Health and Welfare
12 Services) of Chapter 28 (Human Rights) of the DRMC. The failure to comply with any such provision
13 shall be a proper basis for revocation of the Encroachment(s).

14 (n) The right to revoke the Permit at any time for any reason and require the removal of
15 the Encroachment(s) is expressly reserved to the City.

16 (o) By Permittee's use of this Permit and the Encroachment Area, Permittee agrees to the
17 following:

18 i. Permittee agrees to defend, indemnify, reimburse and hold harmless City, its
19 appointed and elected officials, agents and employees for, from and against all liabilities, claims,
20 judgments, suits or demands for damages to persons or property arising out of, resulting from, or
21 relating to this Permit and the Encroachment(s) ("Claims"). This indemnity shall be interpreted in the
22 broadest possible manner to indemnify City for any acts or omissions of Permittee or its agents either
23 passive or active, irrespective of fault, including City's negligence whether active or passive.

24 ii. Permittee's duty to defend and indemnify City shall arise at the time written notice
25 of the Claim is first provided to City regardless of whether claimant has filed suit on the Claim.
26 Permittee's duty to defend and indemnify City shall arise even if City is the only party sued by
27 claimant and/or claimant alleges that City's negligence or willful misconduct was the sole cause of
28 claimant's damages.

29 iii. Permittee will defend any and all Claims which may be brought or threatened
30 against City and will pay on behalf of City any expenses incurred by reason of such Claims including,
31 but not limited to, court costs and attorney fees incurred in defending and investigating such Claims
32 or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition
33 to any other legal remedies available to City and shall not be considered City's exclusive remedy.

1 iv. Insurance coverage requirements specified in this Encroachment Permit shall in no
2 way lessen or limit the liability of Permittee under the terms of this indemnification obligation.
3 Permittee shall obtain, at its own expense, any additional insurance that it deems necessary for the
4 City's protection.

5 v. This defense and indemnification obligation shall survive the expiration or
6 termination of this Permit.

7 (p) Pursuant to Chapter 49 of the DRMC, DOTI is authorized to remove or to order the
8 removal of any article, vehicle, object or thing whatsoever encroaching into any street, alley,
9 Sidewalk, or other public way or place.

10 (q) No third party, person or agency, except for an authorized Special District, may place
11 the Encroachment(s) in front of a property without written permission of the adjacent property owner.

12 (r) Permittee's use of the ROW for placement of the Encroachment(s) does not create a
13 property right or ownership interest of any kind in the Encroachment Area to the Permittee.

14 (s) All Encroachment(s) in Amenity Zones containing existing Public Trees and/or with the
15 potential to impact tree roots or tree canopy must be pre-approved by the Office of the City Forester
16 (OCF), by contacting them at forestry@denvergov.org or 720-913-0651. Encroachment(s) cannot
17 be attached to or damage any Public Tree, and any damage shall be reported to the OCF
18 immediately for mitigation. All trenching, excavation and grading activities within the Dripline of any
19 Public Tree must be pre-approved by the OCF. City permits are required for the planting or removal
20 of any Public Trees and can be obtained by emailing forestry@denvergov.org.

21 (t) All disturbances associated with construction of the Encroachment(s) shall be
22 managed as required by City standards for erosion control which may require standard notes or
23 CASDP permitting depending on location and scope of project.

24 (u) Encroachment(s) proposed adjacent to a designated park or within a dedicated
25 parkway shall require the City's Department of Parks and Recreation approval prior to installation.

26 (v) Encroachment(s) attached to a building may require building and/or zoning permits
27 from the City's Department of Community Planning and Development.

28 (w) Encroachment(s) in the regulatory floodplain shall require a SUDP and comply with
29 Chapter 4 Floodplain Regulations of the "Storm Drainage Design and Technical Criteria", Chapter
30 12 Floodplain Management of the "DOTI Rules and Regulations Governing Sewerage Charges and
31 Fees and Management of Wastewater" and the City Floodplain Ordinance in DRMC Section 56-200
32 through 56-206. Above ground Encroachment(s) in a Floodway require a No-Rise Certification
33 sealed and signed by a Professional Engineer licensed in the State of Colorado. If there is any rise

1 in Base Flood Elevations, a Conditional Letter of Map Revision (CLOMR) and LOMR will be required.
2 (x) Only clean soil may be brought onto an Encroachment Area. Verification of soil quality
3 must be provided if requested. Material removed from an Encroachment Area must be properly
4 disposed and is the responsibility of the Permittee.

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

13 COMMITTEE APPROVAL DATE: June 18, 2024 by Consent

14 MAYOR-COUNCIL DATE: June 25, 2024

15 PASSED BY THE COUNCIL: _____

16 _____ - PRESIDENT

17 ATTEST: _____ - CLERK AND RECORDER,
18 EX-OFFICIO CLERK OF THE
19 CITY AND COUNTY OF DENVER

20 PREPARED BY: Martin A. Plate, Assistant City Attorney DATE: June 27, 2024

21 Pursuant to section 13-9, D.R.M.C., this proposed resolution has been reviewed by the Office of the
22 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
23 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to
24 § 3.2.6 of the Charter.

25
26 Kerry Tipper, Denver City Attorney

27
28 BY: _____, Assistant City Attorney DATE: _____