

1 **BY AUTHORITY**

2 RESOLUTION NO. CR23-0417
3 SERIES OF 2023

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to Loretto Heights Metropolitan District No. 1, to**
6 **encroach into the right-of-way at 3001 South Federal Boulevard.**

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 Loretto Heights
9 Metropolitan District No. 1, the owner of the Benefitted Property, and their successors and assigns
10 (“Permittee”), a revocable permit to encroach into the right-of-way with an approximately 103 linear
11 foot private sanitary sewer (“Encroachment(s)”) at 3001 South Federal Boulevard in the following
12 described area (“Encroachment Area”):

13 **PARCEL DESCRIPTION ROW NO. 2023-ENCROACHMENT-0000003-002:**

14 A PARCEL OF LAND BEING A PORTION OF THE S. FEDERAL BLVD. RIGHT-OF-WAY
15 SITUATED IN THE NORTH HALF OF SECTION 32, TOWNSHIP 4 SOUTH, RANGE 68 WEST
16 OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF
17 COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

18
19 **COMMENCING** AT THE CENTER QUARTER CORNER OF SAID SECTION 32;

20
21 THENCE NORTH 05°49'19" EAST, A DISTANCE OF 395.65 FEET TO THE EAST RIGHT-OF-
22 WAY LINE OF SAID S. FEDERAL BLVD. AS DESCRIBED IN BOOK 9274 AT PAGE 231 AND
23 **THE POINT OF BEGINNING;**

24
25 THENCE NORTH 89°45'36" WEST, A DISTANCE OF 103.12 FEET TO THE WEST LINE OF THE
26 S. FEDERAL BLVD. RIGHT-OF-WAY DEDICATED BY LORETTO HEIGHTS FILING NO. 1
27 RECORDED AT RECEPTION NO. 2021179359;

28 THENCE NORTH 04°45'49" EAST ALONG SAID WEST LINE, A DISTANCE OF 10.03 FEET;
29 THENCE SOUTH 89°45'36" EAST, A DISTANCE OF 102.30 FEET TO THE EAST RIGHT-OF-
30 WAY LINE OF SAID S. FEDERAL BLVD;

31 THENCE SOUTH 00°01'10" WEST ALONG SAID EAST LINE, A DISTANCE OF 10.00 FEET TO
32 **THE POINT OF BEGINNING.**

33
34 SAID PARCEL CONTAINS 1,027 SQUARE FEET OR 0.02 ACRES, MORE OR LESS.

35
36 BASIS OF BEARINGS: BEARINGS ARE BASED ON THE EAST LINE OF THE SOUTHWEST
37 QUARTER OF SECTION 32, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL
38 MERIDIAN, PER THE PLAT OF LORETTO HEIGHTS FILING NO. 1 AS BEARING SOUTH
39 00°05'27 WEST BEING MONUMENTED AT BOTH ENDS BY A 3.5" ALUMINUM CAP STAMPED
40 "CDOT PLS 28666" IN RANGE BOX

1 and benefitting the following described parcel of property (“Benefitted Property”):

2 TRACT J, LORETTO HEIGHTS FILING NO. 1, LOCATED IN THE WEST ONE HALF OF
3 SECTION 32, TOWNSHIP 4 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN,
4 CITY AND COUNTY OF DENVER, STATE OF COLORADO.

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

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

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

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

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

1 of its facilities, repairs will be made by Permittee at its sole expense. Permittee agrees to defend,
2 indemnify and hold the City harmless and to repair or pay for the repair of any and all damages to
3 said water, storm, sanitary sewer facilities or other Utility Company facilities, or those damages
4 resulting from the failure of the water, storm, sanitary sewer facilities or other Utility Company
5 facilities to properly function because of the Encroachment(s).

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

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

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

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

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

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

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

31 (l) During the existence of the Encroachment(s) and the Permit, Permittee, its successors
32 and assigns, at its expense, and without cost to the City, shall procure and maintain Commercial
33 General Liability insurance policy with a limit of not less than \$1,000,000 per occurrence. All

1 coverages are to be arranged on an occurrence basis and include coverage for those hazards
2 normally identified as X.C.U. during construction. The insurance coverage required herein
3 constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or
4 lessen the liability of the Permittee, its successors or assigns, under the terms of this Permit. All
5 insurance coverage required herein shall be written in a form and by a company or companies
6 approved by the Risk Manager of the City and authorized to do business in the State of Colorado. A
7 certified copy of all such insurance policies shall be filed with the Executive Director, and each such
8 policy shall contain a statement therein or endorsement thereon that it will not be canceled or
9 materially changed without written notice, by registered mail, to the Executive Director at least thirty
10 (30) days prior to the effective date of the cancellation or material change. The City and County of
11 Denver, its Elected and Appointed Officials, Employees and Volunteers shall be included as
12 Additional Insured.

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

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

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

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

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

33 iii. Permittee will defend any and all Claims which may be brought or threatened

1 against City and will pay on behalf of City any expenses incurred by reason of such Claims including,
2 but not limited to, court costs and attorney fees incurred in defending and investigating such Claims
3 or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition
4 to any other legal remedies available to City and shall not be considered City's exclusive remedy.

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

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

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

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

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

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

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

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

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

32 (w) Encroachment(s) in the regulatory floodplain shall require a SUDP and comply with
33 Chapter 4 Floodplain Regulations of the "Storm Drainage Design and Technical Criteria", Chapter

1 12 Floodplain Management of the “DOTI Rules and Regulations Governing Sewerage Charges and
2 Fees and Management of Wastewater” and the City Floodplain Ordinance in DRMC Section 56-200
3 through 56-206. Above ground Encroachment(s) in a Floodway require a No-Rise Certification
4 sealed and signed by a Professional Engineer licensed in the State of Colorado. If there is any rise
5 in Base Flood Elevations, a Conditional Letter of Map Revision (CLOMR) and LOMR will be required.

6 (x) Only clean soil may be brought onto an Encroachment Area. Verification of soil quality
7 must be provided if requested. Material removed from an Encroachment Area must be properly
8 disposed and is the responsibility of the Permittee.

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

17 COMMITTEE APPROVAL DATE: April 18, 2023 by Consent

18 MAYOR-COUNCIL DATE: April 25, 2023

19 PASSED BY THE COUNCIL: _____

20 _____ - PRESIDENT

21 ATTEST: _____ - CLERK AND RECORDER,
22 EX-OFFICIO CLERK OF THE
23 CITY AND COUNTY OF DENVER

24 PREPARED BY: Martin A. Plate, Assistant City Attorney DATE: April 27, 2023

25 Pursuant to section 13-9, D.R.M.C., this proposed resolution has been reviewed by the Office of the
26 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
27 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to
28 § 3.2.6 of the Charter.

29 Kerry Tipper, Denver City Attorney

30 BY: *Anshul Bagga*, Assistant City Attorney DATE: Apr 27, 2023
31 _____
32 _____