

BY AUTHORITY

RESOLUTION NO. CR13-0550
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 on 7th Street near vacated Larimer Street.

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 near vacated Larimer Street in the following described area ("Encroachment Area"):

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PW Legal Description No. 2013-0136-05-001

A PARCEL OF LAND LOCATED WITHIN THE RIGHT-OF-WAY OF 7TH STREET, SITUATED IN THE SOUTHWEST QUARTER OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE INTERSECTION OF THE NORTHWESTERLY RIGHT-OF-WAY LINE OF VACATED LARIMER STREET (80 FEET IN WIDTH, VACATED PER ORD. NO. 179 SERIES OF 1989) AND THE SOUTHWESTERLY RIGHT-OF-WAY LINE OF 7TH STREET (80 FEET IN WIDTH); THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF 7TH STREET S30°31'25"E, A DISTANCE OF 7.74 FEET TO THE POINT OF BEGINNING; THENCE LEAVING SAID RIGHT-OF-WAY LINE N59°14'54"E, A DISTANCE OF 18.64 FEET; THENCE S30°45'06"E, A DISTANCE OF 322.00 FEET; THENCE S59°14'54"W, A DISTANCE OF 15.24 FEET TO A POINT ON SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF 7TH STREET; THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF 7TH STREET N30°31'08"W, A DISTANCE OF 5.00 FEET; THENCE LEAVING SAID RIGHT-OF-WAY LINE N59°14'54"E, A DISTANCE OF 3.22 FEET; THENCE N30°45'06"W, A DISTANCE OF 298.50 FEET; THENCE S59°14'54"W, A DISTANCE OF 6.72 FEET TO A POINT ON SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF 7TH STREET; THENCE ALONG SAID SOUTHWESTERLY RIGHT-OF-WAY LINE OF 7TH STREET N30°31'25"W, A DISTANCE OF 18.50 FEET TO THE POINT OF BEGINNING;

PARCEL CONTAINS 4,004 SQUARE FEET, 0.092 ACRE, MORE OR LESS.

BEARINGS ARE BASED ON THE SOUTHEAST LINE OF VACATED LARIMER STREET. ASSUMED TO BEAR S59°35'12"W.

ALL LINEAL DISTANCES ARE REPRESENTED IN U.S. SURVEY FEET.

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

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

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

(c) If the Permittee intends to install any underground facilities in or near a public road, street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification Association of Owners and Operators of Underground Facilities by contacting the Utility Notification Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado

80215, at 303-232-1991. Further, Permittee shall contact the Utility Notification Center at 1-800-922-1987 to locate underground facilities prior to commencing any work under this permit.

(d) Permittee is fully responsible for any and all damages incurred to facilities of the Water Department and/or drainage facilities for storm water and sanitary sewage of the City and County of Denver due to activities authorized by the Permit. Should the relocation or replacement of any drainage facilities for storm water and sanitary sewage of the City and County of Denver become necessary as reasonably determined by the Manager of Public Works, Permittee shall pay all cost and expense of the portion of the facility affected by the permitted structure. The extent of the affected portion to be replaced or relocated by Permittee shall be reasonably determined by the Manager of Public Works. Any and all replacement or repair of facilities of the Water Department and/or drainage facilities for water and sewage of the City and County of Denver attributed to the Permittee shall be made by the Water Department and/or the City and County of Denver at the sole expense of the Permittee. In the event Permittee's facilities are damaged or destroyed due to the Water Department's or the City and County of Denver's reasonable, usual and customary repair, replacement and/or operation of its facilities, in its ordinary course of business, repairs will be made by the Permittee at its sole expense. The City and County of Denver and the Water Department shall give the Permittee notice of any non-emergency repair or maintenance work to be performed on their facilities above or adjacent to the Encroachments at least two (2) weeks prior to the start of the work. Permittee agrees, 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, to repair or pay for the repair of any and all damages to said sanitary sewer, or those damages resulting from the failure of the sewer to properly function as a result of the permitted structure.

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

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

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

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

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

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

(k) 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

1 thereon that it will not be canceled or materially changed without written notice, by registered mail,
2 to the Manager of Public Works at least thirty (30) days prior to the effective date of the
3 cancellation or material change. All such insurance policies shall be specifically endorsed to
4 include all liability assumed by the Permittee hereunder and shall name the City and County of
5 Denver as an additional insured.

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

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

15 **Section 3.** That the Permit hereby granted shall be revocable at any time that the
16 Council of the City and County of Denver determines that such revocation is deemed to be
17 necessary to facilitate the movement of traffic; to provide for public safety; or to provide for the
18 public safety, convenience or necessity in use of the Encroachment Area, and the right to revoke
19 the same is hereby expressly reserved to the City and County of Denver; provided however, at a
20 reasonable time prior to Council action upon such revocation or proposed revocation, opportunity
21 shall be afforded to Permittee, its successors and assigns, to correct any issues arising under this
22 Permit and to be present at a hearing to be conducted by the Council upon such matters and
23 thereat to present its views and opinions thereof and to present for consideration action or actions
24 alternative to the revocation of such Permit.

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1 COMMITTEE APPROVAL DATE: August 15, 2013 [by consent]
2 MAYOR-COUNCIL DATE: August 20, 2013
3 PASSED BY THE COUNCIL: _____, 2013
4 _____ - PRESIDENT
5 ATTEST: _____ - CLERK AND RECORDER,
6 EX-OFFICIO CLERK OF THE
7 CITY AND COUNTY OF DENVER
8
9 PREPARED BY: Brent A. Eisen, Assistant City Attorney DATE: August 22, 2013
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11 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of
12 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
13 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §
14 3.2.6 of the Charter.
15
16 Douglas J. Friednash, Denver City Attorney
17 BY: _____, Assistant City Attorney DATE: _____, 2013