

1 BY AUTHORITY

2 RESOLUTION NO. 10-0769
3 SERIES OF 2010

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 A RESOLUTION

5 **Granting a revocable permit to 471 Milwaukee, LLC to encroach into the right-of-**
6 **way with various items at 471 Milwaukee St.**

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

9 **Section 1.** The City and County of Denver hereby grants to 471 Milwaukee, LLC, and its
10 successors and assigns ("Permittee"), a revocable permit to encroach into the right-of-way with a
11 Ground Water Discharge sump and associated underground storm sewer line at 471 Milwaukee St.
12 ("Encroachments") in the following described area ("Encroachment Area"):

LEGAL DESCRIPTION OF MAJOR ENCUMBRANCE:
BEING A PART OF THE NORTH ½ SECTION 12 TOWNSHIP 4 SOUTH RANGE 68 WEST;
BEGINNING AT THE NORTHWEST CORNER OF THE SOUTH ½ OF LOT 6 BLOCK 27
HARMANS SUBDIVISION;
PROCEEDING S 0°3'0" E A DISTANCE OF 20.00 FEET TO THE POINT OF BEGINNING
IN THE ALLEY RIGHT OF WAY BETWEEN FILLMORE STREET AND MILWAUKEE STREET
AND BETWEEN 4TH AVENUE AND 5TH AVENUE;
THENCE S 0°3'0" E A DISTANCE OF 10.00 FEET;
THENCE N 90°0'0" W A DISTANCE OF 4.50 FEET;
THENCE N 0°3'0" W A DISTANCE OF 80.00 FEET TO THE EDGE OF 5TH AVENUE RIGHT
OF WAY AND SAID ALLEY RIGHT OF WAY;
THENCE N 0°3'0" W A DISTANCE OF 39.00 FEET;
THENCE N 90°0'0" E A DISTANCE OF 3.00 FEET;
THENCE S 0°3'0" E A DISTANCE OF 39.00 FEET TO A POINT ON THE EDGE OF 5TH
AVENUE RIGHT OF WAY AND SAID ALLEY RIGHT OF WAY;
THENCE S 0°3'0" E A DISTANCE OF 70.00 FEET;
THENCE N 90°0'0" E A DISTANCE OF 1.50 FEET TO THE POINT OF BEGINNING.

13
14 **Section 2.** The revocable permit ("Permit") granted by this resolution is expressly granted
15 upon and subject to each and all of the following terms and conditions:

16 (a) Permittee shall obtain a street occupancy permit from Public Works Permit Operations at
17 2000 West 3rd Avenue, 303-446-3759, prior to commencing construction.

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

20 (c) If the Permittee intends to install any underground facilities in or near a public road,
21 street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification
22 Association of Owners and Operators of Underground Facilities by contacting the Utility Notification
23 Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado 80215, at 303-

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

3 (d) Permittee is fully responsible for any and all damages incurred to facilities of the Water
4 Department and/or drainage facilities for water and sewage of the City and County of Denver due to
5 activities authorized by the permit. Should the relocation or replacement of any drainage facilities for
6 water and sewage of the City and County of Denver become necessary as determined by the
7 Manager of Public Works, in the Manager's sole and absolute discretion, Permittee shall pay all cost
8 and expense of the portion of the sewer affected by the permitted structure. The extent of the affected
9 portion to be replaced or relocated by Permittee shall be determined by the Manager of Public Works.
10 Any and all replacement or repair of facilities of the Water Department and/or drainage facilities for
11 water and sewage of the City and County of Denver attributed to the Permittee shall be made by the
12 Water Department and/or the City and County of Denver at the sole expense of the Permittee. In the
13 event Permittee's facilities are damaged or destroyed due to the Water Department's or the City and
14 County of Denver's repair, replacement and/or operation of its facilities, repairs will be made by the
15 Permittee at its sole expense. Permittee agrees to defend, indemnify and save the City harmless and
16 to repair or pay for the repair of any and all damages to said sanitary sewer, or those damages
17 resulting from the failure of the sewer to properly function as a result of the permitted structure.

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

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

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

33 (h) Permittee shall pay all costs of construction and maintenance of the Encroachments.
34 Upon revocation of the permit or upon abandonment, Permittee shall pay all costs of removing the

1 Encroachments from the Encroachment Area and return the Encroachment Area to its original
2 condition under the supervision of the City Engineer.

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

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

12 (k) This revocable permit shall not operate or be construed to abridge, limit or restrict the
13 City and County of Denver in exercising its right to make full use of the Encroachment Area and
14 adjacent rights-of-way as public thoroughfares nor shall it operate to restrict the utility companies in
15 exercising their rights to construct, remove, operate and maintain their facilities within the
16 Encroachment Area and adjacent rights-of-way.

17 (l) During the existence of the Encroachments and this permit, Permittee, its successors
18 and assigns, at its expense, and without cost to the City and County of Denver, shall procure and
19 maintain a single limit comprehensive general liability insurance policy with a limit of not less than
20 \$500,000.00. All coverages are to be arranged on an occurrence basis and include coverage for
21 those hazards normally identified as X.C.U. during construction. The insurance coverage required
22 herein constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or
23 lessen the liability of the Permittee, its successors or assigns, under the terms of this permit. All
24 insurance coverage required herein shall be written in a form and by a company or companies
25 approved by the Risk Manager of the City and County of Denver and authorized to do business in the
26 State of Colorado. A certified copy of all such insurance policies shall be filed with the Manager of
27 Public Works, and each such policy shall contain a statement therein or endorsement thereon that it
28 will not be canceled or materially changed without written notice, by registered mail, to the Manager of
29 Public Works at least thirty (30) days prior to the effective date of the cancellation or material change.
30 All such insurance policies shall be specifically endorsed to include all liability assumed by the
31 Permittee hereunder and shall name the City and County of Denver as an additional insured.

32 (m) Permittee shall comply with the provisions of Article IV (Prohibition of Discrimination in
33 Employment, Housing and Commercial Space, Public Accommodations, Educational Institutions and
34 Health and Welfare Services) of Chapter 28 (Human Rights) of the Revised Municipal Code of the City

1 and County of Denver. The failure to comply with any such provision shall be a proper basis for
2 revocation of this permit.

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

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

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

15 COMMITTEE APPROVAL DATE: September 9, 2010 by consent.

16 MAYOR-COUNCIL DATE: September 14, 2010

17 PASSED BY THE COUNCIL: _____, 2010

18 _____ - PRESIDENT

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

22 PREPARED BY: KAREN A. AVILES, Assistant City Attorney DATE: September 15, 2010

23 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of the
24 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
25 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §
26 3.2.6 of the Charter.

27 David R. Fine, City Attorney

28 BY: _____, Assistant City Attorney DATE: _____, 2010