

1 **BY AUTHORITY**

2 RESOLUTION NO. CR16-0977  
3 SERIES OF 2016

COMMITTEE OF REFERENCE:  
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to Regional Transportation District, to encroach**  
6 **into the right-of-way at Colorado Boulevard, East 40<sup>th</sup> Street, Albion Street,**  
7 **Smith Road, Steele Street and East 43<sup>rd</sup> Avenue.**

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

10 **Section 1.** The City and County of Denver ("City") hereby grants to Regional  
11 Transportation District and its successors and assigns ("Permittee"), a revocable permit to  
12 encroach into the right-of-way with three (3) structural retaining walls. The first wall is 6 feet x 850  
13 feet at the east side of Colorado Boulevard and the south side of East 40<sup>th</sup> Street and Albion Street;  
14 the second wall is 8 feet x 181 feet at Albion Street and Smith Road, east of Colorado Boulevard;  
15 and, the third wall is 5 feet x 124 feet at Steele Street and East 43<sup>rd</sup> Avenue, northwest of the  
16 railroad. ("Encroachments") in the following described areas ("Encroachment Areas"):  
17

18 **PARCEL DESCRIPTION ROW NO. 2016-ENCROACHMENT-0000016-001:**

19 A portion of a tract of land described at Reception No. 2013129915, recorded on September 3, 2013 and a  
20 tract of land described at Reception No. 2013172674 recorded December 2, 2013, in the City and County of  
21 Denver Clerk and Recorder's Office, located in the Southwest Quarter of Section 19, Township 3 South,  
22 Range 67 West of the Sixth Principal Meridian, City and County of Denver, Colorado, being more  
23 particularly described as follows:  
24

25 COMMENCING at the South Sixteenth Corner common with said Section 19 and Section 24, Township 3  
26 South, Range 68 West of the Sixth Principal Meridian, (a found 3-1/4" aluminum cap in range box stamped  
27 "COLO DEPT OF HIGHWAYS S1/16 S24 S19 R68W R67W T3S 1990 PLS 11434"); WHENCE the  
28 Southwest Corner of said Section 19, (a found 3-1/4" aluminum cap in range box stamped "COLO DEPT  
29 OF HIGHWAYS T3S S24 S19 S25 S30 1990 PLS 11434") bears S00°03'52"W (Basis of Bearing-  
30 Assumed), a distance of 1322.58 feet;

31 THENCE N31°26'55"E a distance of 1167.82 feet to the POINT OF BEGINNING;

32  
33 THENCE N00°03'52"E a distance of 28.48 feet, tangent with the following described curve;  
34 THENCE along the arc of a curve to the right, having a central angle of 38°52'49", a radius of 229.00 feet, a  
35 chord bearing of N19°30'17"E, a distance of 152.43 feet, and an arc distance of 155.40 feet;

36 THENCE S45°02'56"E, non-tangent with the last described curve a distance of 9.30 feet, non-tangent with  
37 the following described curve;

38 THENCE along the arc of a curve to the left, having a central angle of 38°37'35", a radius of 219.75 feet, a  
39 chord bearing of S19°22'40"W, a distance of 145.36 feet, and an arc distance of 148.15 feet;

40 THENCE S00°03'52"W, tangent with the last described curve a distance of 28.48 feet;

41 THENCE N89°56'08"W a distance of 9.25 feet to the POINT OF BEGINNING.

42 Containing 1,667 square feet, (0.038 Acres), more or less.

1 **PARCEL DESCRIPTION ROW NO. 2016-ENCROACHMENT-0000016-002:**

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3 A portion of a tract of land described at Reception No. 2013167548 recorded November 20, 2013 and Reception No.  
4 2013029217 recorded March 4, 2013, in the City and County of Denver Clerk and Recorder's Office, located in the  
5 Southwest Quarter of Section 19, Township 3 South, Range 67 West of the Sixth Principal Meridian, City and County  
6 of Denver, Colorado, being more particularly described as follows:  
7

8 COMMENCING at the South Sixteenth Corner common to said Section 19 and to Section 24, Township 3 South,  
9 Range 68 West, (being a found 3-1/4 inch aluminum cap in range box, stamped: "COLO DEPT OF HIGHWAYS  
10 S1/16 S24 S19 R68W R67W T3S 1990 PLS 11434"); WHENCE the Southwest Corner of said Section 19, (being a  
11 found 3-1/4 inch aluminum cap in range box, stamped: "COLO DEPT OF HIGHWAYS T3S S24 S19 S25 S30 1990  
12 PLS 11434") bears S00°03'52"W (Basis of Bearing-Assumed), a distance of 1322.58 feet;  
13 THENCE S83°02'05"E, a distance of 191.82 feet to the POINT OF BEGINNING;

14  
15 THENCE N87°01'13"E, a distance of 75.30 feet;  
16 THENCE S89°56'06"E, a distance of 102.54 feet;  
17 THENCE S00°03'54"W, a distance of 13.00 feet;  
18 THENCE N89°56'06"W, a distance of 241.47 feet, tangent with the following described curve;  
19 THENCE along the arc of a curve to the left, having a central angle of 16°08'37", a radius of 82.32 feet, a chord  
20 bearing of S81°59'34"W, a distance of 23.12 feet, and an arc distance of 23.19 feet;  
21 THENCE S46°14'21"W, non-tangent with the last described curve a distance of 33.00 feet;  
22 THENCE S00°03'52"W, a distance of 205.51 feet;  
23 THENCE S03°52'42"W, a distance of 195.49 feet;  
24 THENCE S00°03'52"W, a distance of 142.92 feet;  
25 THENCE N89°56'08"W, a distance of 10.00 feet;  
26 THENCE N00°03'52"E, a distance of 128.22 feet;  
27 THENCE N03°52'42"E, a distance of 233.07 feet;  
28 THENCE N00°03'52"E, a distance of 185.22 feet;  
29 THENCE N46°14'21"E, a distance of 42.66 feet, non-tangent with the following described curve;  
30 THENCE along the arc of a curve to the right, having a central angle of 14°51'39", a radius of 91.32 feet, a chord  
31 bearing of N82°38'02"E a distance of 23.62 feet, and an arc distance of 23.69 feet to the southerly line of the East 40<sup>th</sup>  
32 Avenue Right of Way as shown on Albion Street Subdivision Filing No.1 recorded at Reception No. 2003197552,  
33 on September 19, 2003, in said office;  
34 THENCE S89°56'06"E tangent with the last described curve, in part coincident with said southerly Right of Way line,  
35 a distance of 63.74 feet to the POINT OF BEGINNING.

36  
37 Containing 7,959 square feet, (0.183 Acres), more or less.

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39 **PARCEL DESCRIPTION ROW NO. 2016-ENCROACHMENT-0000016-003:**

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41 A portion of the Steele Street Right-of-Way located in the Southeast Quarter of Section 24, Township 3  
42 South, Range 68 West of the Sixth Principal Meridian, City and County of Denver, Colorado, being more  
43 particularly described as follows:  
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45 COMMENCING at the South Sixteenth Corner common to said Section 24 and to Section 19, Township 3  
46 South, Range 67 West, (being a found 3-1/4 inch aluminum cap in range box, stamped: "COLO DEPT OF  
47 HIGHWAYS S1/16 S24 S19 R68W R67W T3S 1990 PLS 11434"); WHENCE the Southeast Corner of said  
48 Section 24, (being a found 3-1/4 inch aluminum cap in range box, stamped: "COLO DEPT OF  
49 HIGHWAYS T3S S24 S19 S25 S30 1990 PLS 11434") bears S00°03'52"W (Basis of Bearing-Assumed), a  
50 distance of 1322.58 feet;  
51 THENCE N66°48'41"W, a distance of 2864.01 feet to the northerly line of Union Pacific Railroad Right of  
52 Way and the POINT OF BEGINNING;  
53

1 THENCE S86°06'05"W, coincident with said northerly Right of Way line a distance of 10.02 feet;  
2 THENCE N00°08'16"E, a distance of 96.20 feet;  
3 THENCE S89°51'44"E, a distance of 10.00 feet;  
4 THENCE S00°08'16"W, a distance of 95.50 feet to said northerly Right of Way line and the POINT OF  
5 BEGINNING.

6 Containing 958 square feet, (0.022 Acres), more or less.

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

9 (a) Permittee shall obtain a street occupancy permit from City's Public Works Permit  
10 Operations at 2000 West 3<sup>rd</sup> Avenue, 303-446-3759, prior to commencing construction.

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

13 (c) If the Permittee intends to install any underground facilities in or near a public road,  
14 street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification  
15 Association of Owners and Operators of Underground Facilities by contacting the Utility Notification  
16 Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado 80215, at 303-  
17 232-1991. Further, Permittee shall contact the Utility Notification Center at 1-800-922-1987 to  
18 locate underground facilities prior to commencing any work under this Permit.

19 (d) Permittee is fully responsible for any and all damages incurred to facilities of the Water  
20 Department and/or drainage facilities for water and sewage of the City due to activities authorized  
21 by the Permit. Should the relocation or replacement of any drainage facilities for water and sewage  
22 of the City become necessary as determined by the City's Executive Director of Public Works  
23 ("Executive Director"), in the Executive Director's sole and absolute discretion, Permittee shall pay  
24 all cost and expense of the portion of the sewer affected by the permitted structure. The extent of  
25 the affected portion to be replaced or relocated by Permittee shall be determined by the Executive  
26 Director. Any and all replacement or repair of facilities of the Denver Water and/or drainage facilities  
27 for water and sewage of the City attributed to the Permittee shall be made by the Denver Water  
28 and/or the City at the sole expense of the Permittee. In the event Permittee's facilities are damaged  
29 or destroyed due to the Denver Water or the City's repair, replacement and/or operation of its  
30 facilities, repairs will be made by the Permittee at its sole expense. Permittee agrees to cause its  
31 contractors to defend, indemnify and save the City harmless and to repair or pay for the repair of  
32 any and all damages to said sanitary sewer, or those damages resulting from the failure of the sewer  
33 to properly function as a result of the permitted structure.

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

4 (f) All construction in, under, on or over the Encroachment Area shall be accomplished  
5 in accordance with the Building Code of the City. Plans and specifications governing the  
6 construction of the Encroachments shall be approved by the Executive Director and the Director of  
7 Building Inspection Division prior to construction. Upon completion, a reproducible copy of the exact  
8 location and dimensions of the Encroachments shall be filed with the Executive Director.

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

15 (h) Permittee shall pay all costs of construction and maintenance of the Encroachments.  
16 Upon revocation of the permit or upon abandonment, Permittee shall pay all costs of removing the  
17 Encroachments from the Encroachment Areas and return the Encroachment Areas to the original  
18 conditions under the supervision of the City Engineer.

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

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

28 (k) During the existence of the Encroachments and this permit, Permittee, its successors  
29 and assigns, at its expense, and without cost to the City, shall procure and maintain a Commercial  
30 General Liability insurance policy with a limit of not less than Two Million Dollars (\$2,000,000.00),  
31 or evidence satisfactory to the City of self-insurance. All coverages are to be arranged on an  
32 occurrence basis and include coverage for those hazards normally identified as X.C.U. during  
33 construction. The insurance coverage required herein constitutes a minimum requirement and such

1 enumeration shall in no way be deemed to limit or lessen the liability of the Permittee, its successors  
2 or assigns, under the terms of this Permit. All insurance coverage required herein shall be written  
3 in a form and by a company or companies approved by the Risk Manager of the City and authorized  
4 to do business in the State of Colorado. A certified copy of all such insurance policies shall be filed  
5 with the Executive Director, and each such policy shall contain a statement therein or endorsement  
6 thereon that it will not be canceled or materially changed without written notice, by registered mail,  
7 to the Executive Director at least thirty (30) days prior to the effective date of the cancellation or  
8 material change. All such insurance policies shall be specifically endorsed to include all liability  
9 assumed by the Permittee hereunder and shall name the City as an additional insured.

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

17 (m) The right to revoke this Permit is expressly reserved to the City.

18 (n) Permittee shall agree to indemnify and always save the City harmless from all costs,  
19 claims or damages arising, either directly or indirectly, out of the rights and privileges granted by  
20 this Permit.

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

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1 COMMITTEE APPROVAL DATE: October 20, 2016, by consent

2 MAYOR-COUNCIL DATE: October 25, 2016

3 PASSED BY THE COUNCIL: \_\_\_\_\_

4 \_\_\_\_\_ - PRESIDENT

5 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
6 EX-OFFICIO CLERK OF THE  
7 CITY AND COUNTY OF DENVER

8 PREPARED BY: Brent A. Eisen, Assistant City Attorney DATE: October 27, 2016

9 Pursuant to section 14-12, D.R.M.C., this proposed resolution has been reviewed by the office of  
10 the 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  
14 Kristin M. Bronson, City Attorney for the City and County of Denver

15 BY: \_\_\_\_\_, Assistant City Attorney DATE: \_\_\_\_\_