

1 **BY AUTHORITY**

2 RESOLUTION NO. CR22-0908
3 SERIES OF 2022

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to Metro Water Recovery, to encroach into the right-**
6 **of-way at 4420 Cahita Court.**

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 Metro Water Recovery,
9 its successors and assigns (“Permittee”), a revocable permit to encroach into the right-of-way with a
10 six-foot fence having fifty percent open panels around the wastewater monitoring station
11 (“Encroachment(s)”) located at 4420 Cahita Court in the following described area (“Encroachment
12 Area”):

13 **PARCEL DESCRIPTION ROW NO. 2021-ENCROACHMENT-0000149-001:**

14 A PARCEL OF LAND LOCATED IN THE SE1/4 OF THE NW1/4 OF SECTION 22, TOWNSHIP 3
15 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY & COUNTY OF DENVER,
16 STATE OF COLORADO, WITHIN THE RIGHT-OF-WAY FOR CAHITA COURT PER HORNE'S
17 SUBDIVISION SECOND FILING, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS;

18
19 COMMENCING AT THE DENVER RANGE POINT IN THE INTERSECTION OF WEST 44TH
20 AVENUE AND CHEROKEE STREET PER SAID HORNE'S SUBDIVISION SECOND FILING,
21 WHENCE THE DENVER RANGE POINT IN THE INTERSECTION OF WEST 44TH AVENUE AND
22 BROADWAY BEARS S89°56'31"E A DISTANCE OF 1017.49 FEET, THE BASIS OF BEARINGS
23 FOR THIS DESCRIPTION; THENCE S89°56'31"E, A DISTANCE OF 272.00 FEET; THENCE ON
24 THE 20 FOOT DENVER RANGE LINE FOR THE EAST LINE OF BLOCK 2, SAID HORNE'S
25 SUBDIVISION SECOND FILING, N00°03'29"E, A DISTANCE OF 158.84 FEET; THENCE
26 S89°56'31"E, A DISTANCE OF 19.19 FEET TO THE POINT OF BEGINNING;

27
28 THENCE N00°24'00"E, A DISTANCE OF 22.25 FEET;

29
30 THENCE S89°56'31"E, A DISTANCE OF 12.67 FEET;

31
32 THENCE ON THE EAST RIGHT-OF-WAY LINE OF CAHITA COURT, S00°03'29"W, A DISTANCE
33 OF 22.25 FEET;

34
35 THENCE N89°56'31"W, A DISTANCE OF 12.81 FEET TO THE POINT OF BEGINNING;

36
37 CONTAINING 283 SQUARE FEET OR 0.01 ACRES, MORE OR LESS.

38
39 **Section 2.** The revocable permit (“Permit”) granted by this Resolution is expressly granted
40 upon and subject to each and all of the following terms and conditions (terms not defined herein are

1 defined in the Rules and Regulations Governing Encroachments & Encumbrances in the Public Right
2 of Way):

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

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

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

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

33 (e) Permittee shall comply with all requirements of affected Utility Companies and pay for

1 all costs of removal, relocation, replacement or rearrangement of Utility Company facilities. Existing
2 utility facilities shall not be utilized, obstructed or disturbed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

32 iv. Insurance coverage requirements specified in this Encroachment Permit shall in no
33 way lessen or limit the liability of Permittee under the terms of this indemnification obligation.

1 Permittee shall obtain, at its own expense, any additional insurance that it deems necessary for the
2 City's protection.

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

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

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

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

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

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

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

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

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

33 (x) Only clean soil may be brought onto an Encroachment Area. Verification of soil quality

1 must be provided if requested. Material removed from an Encroachment Area must be properly
2 disposed and is the responsibility of the Permittee.

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

11 COMMITTEE APPROVAL DATE: August 2, 2022 by Consent

12 MAYOR-COUNCIL DATE: August 9, 2022

13 PASSED BY THE COUNCIL: _____
14 _____ - PRESIDENT

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

18 PREPARED BY: Martin A. Plate, Assistant City Attorney DATE: August 11, 2022

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

23
24 Kristin M. Bronson, Denver City Attorney

25
26 BY: _____, Assistant City Attorney DATE: _____