

1 BY AUTHORITY

2 RESOLUTION NO. CR14-0197
3 SERIES OF 2014

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4
5 A RESOLUTION

6 **Granting a revocable permit to Auraria Higher Education Center to encroach**
7 **into the right-of-way along 5th Street between Walnut Street and vacated**
8 **Larimer Street.**

9
10 **NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY**
11 **OF DENVER:**

12 **Section 1.** The City and County of Denver hereby grants grants to the State of
13 Colorado, acting by and through the Board of Directors of the Auraria Higher Education Center, a
14 body corporate and agency of the State of Colorado, and its successors and assigns
15 ("Permittee"), a revocable permit to encroach into the right-of-way with a one hundred and twenty-
16 six foot long and eighteen inches high seat wall ("Encroachments") along 5th Street between
17 Walnut Street and vacated Larimer Street in the following described area ("Encroachment Area"):

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19 PARCEL DESCRIPTION ROW NO. 2013-0136-09-001

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21 A STRIP OF LAND BEING 2.00 FEET IN WIDTH, LOCATED WITHIN THE RIGHT-
22 OF-WAY OF 5TH STREET, SITUATED IN THE SOUTHWEST QUARTER OF
23 SECTION 33, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH PRINCIPAL
24 MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, BEING
25 MORE PARTICULARLY DESCRIBED AS FOLLOWS:

26
27 COMMENCING AT THE INTERSECTION OF THE SOUTHEASTERLY LINE OF
28 VACATED LARIMER STREET (80 FEET IN WIDTH, VACATED PER ORD. NO. 43
29 SERIES OF 1914) AND THE NORTHEASTERLY RIGHT-OF-WAY LINE OF 5TH
30 STREET (80 FEET IN WIDTH); THENCE N34°53'18"W, A DISTANCE OF 118.29
31 FEET TO THE POINT OF BEGINNING; THENCE N30°31'32"W, A DISTANCE OF
32 139.58 FEET TO THE POINT OF TERMINUS.

33
34 PARCEL CONTAINS 279 SQUARE FEET, 0.006 ACRE, MORE OR LESS.

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

38
39 ALL LINEAL DISTANCES ARE REPRESENTED IN U.S. SURVEY FEET.
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1 **Section 2.** The revocable permit (“Permit”) granted by this Resolution is expressly
2 granted upon and subject to each and all of the following terms and conditions:

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

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

7 (c) If the Permittee intends to install any underground facilities in or near a public road,
8 street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification
9 Association of Owners and Operators of Underground Facilities by contacting the Utility
10 Notification Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado
11 80215, at 303-232-1991. Further, Permittee shall contact the Utility Notification Center at 1-800-
12 922-1987 to locate underground facilities prior to commencing any work under this permit.

13 (d) Permittee is fully responsible for any and all damages incurred to facilities of the
14 Water Department and/or drainage facilities for storm water and sanitary sewage of the City and
15 County of Denver due to activities authorized by the Permit. Should the relocation or replacement
16 of any drainage facilities for storm water and sanitary sewage of the City and County of Denver
17 become necessary as reasonably determined by the Manager of Public Works, Permittee shall
18 pay all cost and expense of the portion of the facility affected by the permitted structure. The
19 extent of the affected portion to be replaced or relocated by Permittee shall be reasonably
20 determined by the Manager of Public Works. Any and all replacement or repair of facilities of the
21 Water Department and/or drainage facilities for water and sewage of the City and County of
22 Denver attributed to the Permittee shall be made by the Water Department and/or the City and
23 County of Denver at the sole expense of the Permittee. In the event Permittee’s facilities are
24 damaged or destroyed due to the Water Department’s or the City and County of Denver’s
25 reasonable, usual and customary repair, replacement and/or operation of its facilities, in its
26 ordinary course of business, repairs will be made by the Permittee at its sole expense. The City
27 and County of Denver and the Water Department shall give the Permittee notice of any non-
28 emergency repair or maintenance work to be performed on their facilities above or adjacent to the
29 Encroachments at least two (2) weeks prior to the start of the work. Permittee agrees, to the
30 extent it legally may, and specifically subject to the Constitution of the State of Colorado and the
31 Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as may be amended, to repair
32 or pay for the repair of any and all damages to said sanitary sewer, or those damages resulting
33 from the failure of the sewer to properly function as a result of the permitted structure.

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

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

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

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

23 (j) The City reserves the right to make an inspection of the Encroachments contained
24 within the Encroachment Area. An annual fee, subject to change, of Two Hundred Dollars
25 (\$200.00) shall be assessed.

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

32 (l) During the existence of the Encroachments and this permit, Permittee, its
33 successors and assigns, at its expense, and without cost to the City and County of Denver, shall

1 procure and maintain a Commercial General Liability insurance policy with a limit of not less than
2 Two Million Dollars (\$2,000,000.00), or evidence satisfactory to the City of self insurance. All
3 coverages are to be arranged on an occurrence basis and include coverage for those hazards
4 normally identified as X.C.U. during construction. The insurance coverage required herein
5 constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or
6 lessen the liability of the Permittee, its successors or assigns, under the terms of this permit. All
7 insurance coverage required herein shall be written in a form and by a company or companies
8 approved by the Risk Manager of the City and County of Denver and authorized to do business in
9 the State of Colorado. A certified copy of all such insurance policies shall be filed with the
10 Manager of Public Works, and each such policy shall contain a statement therein or endorsement
11 thereon that it will not be canceled or materially changed without written notice, by registered mail,
12 to the Manager of Public Works at least thirty (30) days prior to the effective date of the
13 cancellation or material change. All such insurance policies shall be specifically endorsed to
14 include all liability assumed by the Permittee hereunder and shall name the City and County of
15 Denver as an additional insured.

16 (m) The right to revoke this Permit is expressly reserved to the City and County of
17 Denver.

18 (n) Permittee shall, to the extent it legally may, and specifically subject to the
19 Constitution of the State of Colorado and the Colorado Governmental Immunity Act, C.R.S. § 24-
20 10-101, *et seq.*, as may be amended, agree to be solely responsible for all costs, claims or
21 damages arising, either directly or indirectly, out of the rights and privileges granted by this Permit.
22 Permittee shall require its contractors, for the work allowed under this permit, to indemnify and
23 always save the City and County of Denver harmless from all costs, claims or damages arising,
24 either directly or indirectly, out of the rights and privileges granted by this Permit.

25 **Section 3.** That the Permit hereby granted shall be revocable at any time that the
26 Council of the City and County of Denver determines that such revocation is deemed to be
27 necessary to facilitate the movement of traffic; to provide for public safety; or to provide for the
28 public safety, convenience or necessity in use of the Encroachment Area, and the right to revoke
29 the same is hereby expressly reserved to the City and County of Denver; provided however, at a
30 reasonable time prior to Council action upon such revocation or proposed revocation, opportunity
31 shall be afforded to Permittee, its successors and assigns, to correct any issues arising under this
32 Permit and to be present at a hearing to be conducted by the Council upon such matters and

1 thereat to present its views and opinions thereof and to present for consideration action or actions
2 alternative to the revocation of such Permit.

3 COMMITTEE APPROVAL DATE: March 13, 2014 [by consent]

4 MAYOR-COUNCIL DATE: March 18, 2014

5 PASSED BY THE COUNCIL: _____, 2014

6 _____ - PRESIDENT

7 ATTEST: _____ - CLERK AND RECORDER,
8 EX-OFFICIO CLERK OF THE
9 CITY AND COUNTY OF DENVER

10

11 PREPARED BY: Brent A. Eisen, Assistant City Attorney DATE: March 20, 2014

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13 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of
14 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed
15 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §
16 3.2.6 of the Charter.

17

18 D. Scott Martinez, Denver City Attorney

19 BY: _____, Assistant City Attorney DATE: _____, 2014