

BY AUTHORITY

RESOLUTION NO. CR23-0547

COMMITTEE OF REFERENCE:

SERIES OF 2023

Land Use, Transportation & Infrastructure

A RESOLUTION

Granting a revocable permit to CP VIII 2800 Speer, LLC, to encroach into the right-of-way at 2801 Firth Court.

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

Section 1. The City and County of Denver ("City") hereby grants to CP VIII 2800 Speer, LLC, the owner of the Benefitted Property, and their successors and assigns ("Permittee"), a revocable permit to encroach into the right-of-way with two 12-inch storm sewer pipelines totaling 119-feet and a four-foot diameter manhole ("Encroachment(s)") at 2801 Firth Court in the following described area ("Encroachment Area"):

PARCEL DESCRIPTION ROW NO. 2022-ENCROACHMENT-0000115-001:

A PARCEL OF LAND BEING A PORTION OF LOTS 9 AND 10 AND THE RIGHT OF WAY FOR FIRTH COURT, RESUBDIVISION OF LOTS 1, 2, 3, 4, 5 AND 6, BLOCK 15, HIGHLAND PARK, CITY AND COUNTY OF DENVER, STATE OF COLORADO RECORDED AUGUST 29, 1890 IN BOOK 10, PAGE 34 OF THE RECORDS OF THE CITY AND COUNTY OF DENVER COUNTY, COLORADO, SITUATED IN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE 6TH P.M., CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE RANGE POINT LOCATED IN THE INTERSECTION OF 29TH AVENUE AND BRYANT STREET. THENCE SOUTH 59°22'53" ALONG A FLY TIE, A DISTANCE OF 540.66 FEET TO A POINT ON A LINE THAT IS 9.00 FEET SOUTHWEST OF, AS MEASURED AT RIGHT ANGLES FROM AND PARALLEL WITH THE SOUTHWEST RIGHT-OF-WAY LINE OF FIRTH COURT AND THE **POINT OF BEGINNING**;

THENCE LEAVING SAID LINE NORTH 50°26'14" EAST, A DISTANCE OF 17.50 FEET;

THENCE SOUTH 40°37'31" EAST, A DISTANCE OF 100.79 FEET FROM WHICH THE RANGE POINT LOCATED IN THE INTERSECTION OF 29TH AVENUE AND FIRTH COURT BEARS NORTH 38°16'11" WEST ALONG A FLY TIE, A DISTANCE OF 400.03 FEET;

THENCE SOUTH 49°22'29" WEST, A DISTANCE OF 5.00 FEET;

THENCE NORTH 40°37'31" WEST, A DISTANCE OF 95.88 FEET;

THENCE SOUTH 50°26'14" WEST, A DISTANCE OF 12.60 FEET TO SAID LINE;

1 THENCE NORTH 39°32'59" WEST ALONG SAID LINE, A DISTANCE OF 5.00 FEET TO THE
2 **POINT OF BEGINNING.**

3
4 SAID PARCEL CONTAINS 567 SQUARE FEET OR 0.013 ACRES, MORE OR LESS.

5
6 **BASIS OF BEARINGS:** BEARINGS ARE BASED ON THE 20-FOOT RANGE LINE LOCATED IN
7 W 29TH AVENUE BETWEEN FIRTH COURT AND BRYANT STREET IN THE SOUTHEAST
8 QUARTER OF THE SOUTHWEST QUARTER OF SECTION 29, TOWNSHIP 3 SOUTH, RANGE
9 68 WEST OF THE 6TH PRINCIPAL MERIDIAN. AS MONUMENTED AT THE RANGE POINT AT
10 THE INTERSECTION OF WEST 29TH AVENUE AND BRYANT STREET BY A FOUND ONE INCH
11 AXLE IN A RANGE BOX AND BY A RANGE POINT AT THE INTERSECTION OF WEST 29TH
12 AVENUE AND FIRTH COURT BY A FOUND ONE INCH AXLE IN A RANGE BOX, AS BEARING
13 NORTH 89°21'46" WEST, BASED ON GPS OBSERVATIONS OF SAID MONUMENTS IN THE
14 CITY AND COUNTY OF DENVER'S LOW-DISTORTION PROJECTION, WITH ALL BEARINGS
15 SHOWN HEREON RELATIVE THERETO

16 and benefitting the following described parcel of property ("Benefitted Property"):

17 **Parcel 1:**

18 Lots 43, 44, 45, 46, 47, 48 and 49, Resubdivision of Lots 1, 2, 3, 4, 5 and 6, Block 15, Highland
19 Park, City and County of Denver, State of Colorado.

20 Note: For informational purposes only / Assessor Parcel No. 02294-16-021-000

21 **Parcel 2:**

22 Lots 9 to 12, inclusive, and the South ½ of Lot 13 (also described as that part of Lot 13 beginning
23 at the most South corner of Lot 13: thence Northeasterly along the boundary line of Lots 12 and 13
24 to the East corner of Lot 13: thence Northwesterly 12.5 feet along the Northeasterly line of Lot 13;
25 thence Southwesterly parallel to the boundary line of Lots 13 and 12 to point on the Southwesterly
26 line of Lot 13; thence Southeasterly 12.5 feet to the point of beginning);

27 Resubdivision of Lot 1, 2, 3, 4, 5 and 6, Block 15, Highland Park;

28 EXCEPT that portion of the above-described property deeded to the City and County of Denver in
29 Instrument recorded July 15, 1985, at Reception No. 1985038717.

30 And

31 EXCEPT that portion of above-described Lot 9 deeded to the City and County of Denver by
32 Instrument recorded February 12, 1985, at Reception No. 1985076510,
33 City and County of Denver, State of Colorado.

34 Note: For informational purposes only / Assessor Parcel No. 02294-16-040-000

35 **Parcel 3:**

36 Lot 14, and the North ½ of Lot 13, Resubdivision of Lots 1, 2, 3, 4, 5 and 6, Block 15, Highland
37 Park, City and County of Denver, State of Colorado.

38 Note: For informational purposes only / Assessor Parcel No. 02294-16-014-000

39 **Parcel 4:**

40 Lot 15, and the South ½ of Lot 16, Resubdivision of Lots 1, 2, 3, 4, 5 and 6, Block 15, Highland
41 Park, City and County of Denver, State of Colorado.

42 Note: For informational purposes only / Assessor Parcel No. 02294-16-013-000

43 **Parcel 5:**

44 Lot 17 and the North ½ of Lot 16, Resubdivision of Lots 1, 2, 3, 4, 5 and 6, Block 15, Highland
45 Park, City and County of Denver, State of Colorado.

1 Note: For informational purposes only / Assessor Parcel No 02294-16-012-000.

2 **Section 2.** The revocable permit ("Permit") granted by this Resolution is expressly granted
3 upon and subject to each and all of the following terms and conditions (terms not defined herein are
4 defined in the Rules and Regulations Governing Encroachments & Encumbrances in the Public Right
5 of Way):

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

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

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

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

1 resulting from the failure of the water, storm, sanitary sewer facilities or other Utility Company
2 facilities to properly function because of the Encroachment(s).

3 (e) Permittee shall comply with all requirements of affected Utility Companies and pay for
4 all costs of removal, relocation, replacement or rearrangement of Utility Company facilities. Existing
5 utility facilities shall not be utilized, obstructed or disturbed.

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

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

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

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

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

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

28 (l) During the existence of the Encroachment(s) and the Permit, Permittee, its successors
29 and assigns, at its expense, and without cost to the City, shall procure and maintain Commercial
30 General Liability insurance policy with a limit of not less than \$1,000,000 per occurrence. All
31 coverages are to be arranged on an occurrence basis and include coverage for those hazards
32 normally identified as X.C.U. during construction. The insurance coverage required herein
33 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 authorized to do business in the State of Colorado. A certified copy of all such insurance policies shall be filed with the Executive Director, and each such policy shall contain a statement therein or endorsement thereon that it will not be canceled or materially changed without written notice, by registered mail, to the Executive Director at least thirty (30) days prior to the effective date of the cancellation or material change. The City and County of Denver, its Elected and Appointed Officials, Employees and Volunteers shall be included as Additional Insured.

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

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

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

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

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

iii. Permittee will defend any and all Claims which may be brought or threatened against City and will pay on behalf of City any expenses incurred by reason of such Claims including, but not limited to, court costs and attorney fees incurred in defending and investigating such Claims or seeking to enforce this indemnity obligation. Such payments on behalf of City shall be in addition

to any other legal remedies available to City and shall not be considered City's exclusive remedy.

iv. Insurance coverage requirements specified in this Encroachment Permit shall in no way lessen or limit the liability of Permittee under the terms of this indemnification obligation. Permittee shall obtain, at its own expense, any additional insurance that it deems necessary for the City's protection.

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

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

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

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

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

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

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

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

(w) Encroachment(s) in the regulatory floodplain shall require a SUDP and comply with Chapter 4 Floodplain Regulations of the "Storm Drainage Design and Technical Criteria", Chapter 12 Floodplain Management of the "DOTI Rules and Regulations Governing Sewerage Charges and Fees and Management of Wastewater" and the City Floodplain Ordinance in DRMC Section 56-200 through 56-206. Above ground Encroachment(s) in a Floodway require a No-Rise Certification

1 sealed and signed by a Professional Engineer licensed in the State of Colorado. If there is any rise
2 in Base Flood Elevations, a Conditional Letter of Map Revision (CLOMR) and LOMR will be required.


3 (x) Only clean soil may be brought onto an Encroachment Area. Verification of soil quality
4 must be provided if requested. Material removed from an Encroachment Area must be properly
5 disposed and is the responsibility of the Permittee.

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

14 COMMITTEE APPROVAL DATE: May 9, 2023 by Consent

15 MAYOR-COUNCIL DATE: May 16, 2023

16 PASSED BY THE COUNCIL: May 22, 2023

17  - PRESIDENT

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

21 PREPARED BY: Martin A. Plate, Assistant City Attorney DATE: May 18, 2023

22 Pursuant to section 13-9, D.R.M.C., this proposed resolution has been reviewed by the Office of the
23 City Attorney. We find no irregularity as to form and have no legal objection to the proposed
24 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to
25 § 3.2.6 of the Charter.

26
27 Kerry Tipper, Denver City Attorney

28 BY: , Assistant City Attorney
29 DATE: May 18, 2023