

BY AUTHORITY

RESOLUTION NO. 99  
SERIES OF 2009

COMMITTEE OF REFERENCE:  
**FasTracks**

A RESOLUTION

**Granting a revocable permit, subject to certain terms and conditions, to Denver Union Station Project Authority, to encroach into the 17<sup>th</sup> Street right-of-way with an underground bus terminal and related surface improvements.**

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

**Section 1.** The City and County of Denver hereby grants to Denver Union Station Project Authority ("DUSPA") and their successors and assigns ("Permittee"), a revocable permit to encroach into the 17<sup>th</sup> Street right-of-way with an underground bus terminal and related surface improvements required for the operation and maintenance of the bus terminal, including without limitation, skylights and ventilation equipment ("Encroachments") in the following described area ("Encroachment Area"):

A PARCEL OF LAND CONTAINING 97,634 SQUARE FEET, MORE OR LESS, BEING ALL OF 17<sup>TH</sup> STREET RIGHT-OF-WAY AS SHOWN ON "THE COMMONS SUBDIVISION - FILING NO. 5", A SUBDIVISION PLAT RECORDED AT RECEPTION NO. 2003013146, CITY AND COUNTY OF DENVER, STATE OF COLORADO, LOCATED WITHIN THE SOUTHEAST ONE-QUARTER OF SECTION 28 AND THE NORTHEAST ONE-QUARTER OF SECTION 33, TOWNSHIP 3 SOUTH, RANGE 68 WEST, OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28, A FOUND 3-1/4" ALUMINUM CAP IN A RANGE BOX;

THENCE N82°41'30"W, A DISTANCE OF 1541.98 FEET TO THE EAST CORNER OF BLOCK 3, "THE COMMONS SUBDIVISION - FILING NO. 5", SAID CORNER BEING ON THE NORTHEASTERLY LINE OF SAID 17<sup>TH</sup> STREET AND THE TRUE POINT OF BEGINNING;

THENCE ALONG THE NORTHEAST RIGHT-OF-WAY OF 17<sup>TH</sup> STREET, S44°39'16"E, A DISTANCE OF 559.23 FEET TO A POINT ON THE SOUTHEAST RIGHT-OF-WAY OF WEWATTA STREET;

THENCE ALONG THE SAID RIGHT-OF-WAY, S44°52'49"W, A DISTANCE OF 160.00 FEET;

THENCE DEPARTING SAID RIGHT-OF-WAY AND ALONG THE SOUTHWEST RIGHT-OF-WAY OF 17<sup>TH</sup> STREET, N44°39'16"W, A DISTANCE OF 560.53 FEET TO A POINT OF CURVATURE;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, 94.25 FEET ALONG THE ARC OF A CURVE TO THE RIGHT, HAVING A RADIUS OF 60.00 FEET, A CENTRAL ANGLE OF 90°00'00" AND A CHORD WHICH BEARS N00°20'44"E A DISTANCE OF 84.85 FEET TO POINT OF TANGENCY;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, N45°20'44"E, A DISTANCE OF 40.00 FEET TO A POINT OF CURVATURE;

THENCE CONTINUING ALONG SAID RIGHT-OF-WAY, 94.25 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT, HAVING A RADIUS OF 60.00 FEET, A CENTRAL ANGLE OF 90°00'00" AND A CHORD WHICH BEARS S89°39'16"E A DISTANCE OF 84.85 FEET TO THE POINT OF BEGINNING.

THE ABOVE DESCRIBED PARCEL CONTAINS 97,634 SQUARE FEET OR 2.24 ACRES, MORE OR LESS.

**BASIS OF BEARINGS:** FOR THE PURPOSE OF THIS DESCRIPTION, THE BEARINGS ARE BASED ON THE SOUTH LINE OF THE SOUTHEAST ONE-QUARTER OF SECTION 28, TOWNSHIP 3 SOUTH, RANGE 68 WEST, OF THE 6<sup>TH</sup> PRINCIPAL MERIDIAN, AS MONUMENTED BY A FOUND 3-1/4" ALUMINUM CAP IN A RANGE BOX, AT THE SOUTHEAST CORNER OF SAID SECTION 28, AND BY A FOUND 3-1/4" ALUMINUM CAP IN A RANGE BOX, LS 23881 (W.C.) AT THE SOUTH QUARTER CORNER OF SAID SECTION 28, BEARING N 89°55'41" W.



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

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

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

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

(d) Permittee is fully responsible for any and all damages incurred to facilities of the Water Department and/or drainage facilities for storm water and sanitary sewage of the City and County of Denver due to activities authorized by the Permit. Should the relocation or replacement of any drainage facilities for storm water and sanitary sewage of the City and County of Denver become necessary as reasonably determined by the Manager of Public Works, Permittee shall pay all cost and expense of the portion of the facility affected by the permitted structure. The extent of the affected portion to be replaced or relocated by Permittee shall be reasonably determined by the Manager of Public Works. Any and all replacement or repair of facilities of the

1 Water Department and/or drainage facilities for water and sewage of the City and County of  
2 Denver attributed to the Permittee shall be made by the Water Department and/or the City and  
3 County of Denver at the sole expense of the Permittee. In the event Permittee's facilities are  
4 damaged or destroyed due to the Water Department's or the City and County of Denver's  
5 reasonable, usual and customary repair, replacement and/or operation of its facilities, in its  
6 ordinary course of business, repairs will be made by the Permittee at its sole expense. The City  
7 and County of Denver and the Water Department shall give the Permittee notice of any non-  
8 emergency repair or maintenance work to be performed on their facilities above or adjacent to the  
9 Encroachments at least two (2) weeks prior to the start of the work. Permittee agrees, to the  
10 extent it legally may, and specifically subject to the Constitution of the State of Colorado and the  
11 Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *et seq.*, as may be amended, to  
12 defend, indemnify and save the City harmless and to repair or pay for the repair of any and all  
13 damages to said sanitary sewer, or those damages resulting from the failure of the sewer to  
14 properly function as a result of the permitted structure.

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

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

25 (g) The underground bus terminal structure, and sidewalk and street/alley over the  
26 Encroachment Area shall be capable of withstanding an LRFD HL-93 loading in accordance with  
27 the latest AASHTO Specifications or as otherwise approved by the Manager of Public Works as  
28 evidenced by written consent placed in City Clerk File No. 09-791. All installations within the  
29 Encroachment Area shall be constructed so that the paved section of the street/alley can be  
30 widened without requiring additional structural modifications. All sidewalks shall be constructed so  
31 that it can be removed and replaced without affecting structures within the Encroachment Area.

32 (h) Permittee shall pay all costs of construction and maintenance of the Encroachments.  
33 Upon revocation or Permittee's election to abandon or release the Permit, Permittee shall pay all

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

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

11 (j) The City reserves the right to make an inspection of the Encroachments contained  
12 within the Encroachment Area. An annual fee, subject to change, of Two Hundred Dollars  
13 (\$200.00) shall be assessed.

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

20 (l) During the existence of the Encroachments and this permit, Permittee, its  
21 successors and assigns, at its expense, and without cost to the City and County of Denver, shall  
22 procure and maintain a Commercial General Liability insurance policy with a limit of not less than  
23 Two Million Dollars (\$2,000,000.00), or if assigned to the Regional Transportation District "RTD"  
24 evidence satisfactory to the City of self insurance. All coverages are to be arranged on an  
25 occurrence basis and include coverage for those hazards normally identified as X.C.U. during  
26 construction. The insurance coverage required herein constitutes a minimum requirement and  
27 such enumeration shall in no way be deemed to limit or lessen the liability of the Permittee, its  
28 successors or assigns, under the terms of this permit. All insurance coverage required herein  
29 shall be written in a form and by a company or companies approved by the Risk Manager of the  
30 City and County of Denver and authorized to do business in the State of Colorado. A certified  
31 copy of all such insurance policies shall be filed with the Manager of Public Works, and each such  
32 policy shall contain a statement therein or endorsement thereon that it will not be canceled or  
33 materially changed without written notice, by registered mail, to the Manager of Public Works at

1 least thirty (30) days prior to the effective date of the cancellation or material change. All such  
2 insurance policies shall be specifically endorsed to include all liability assumed by the Permittee  
3 hereunder and shall name the City and County of Denver as an additional insured.

4 (m) Permittee shall comply with the provisions of Article IV (Prohibition of Discrimination  
5 in Employment, Housing and Commercial Space, Public Accommodations, Educational  
6 Institutions and Health and Welfare Services) of Chapter 28 (Human Rights) of the Revised  
7 Municipal Code of the City and County of Denver. The failure to comply with any such provision  
8 shall be a proper basis for revocation of this Permit.

9 (n) The right to revoke this Permit is expressly reserved to the City and County of  
10 Denver.

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

16 (p) Final "As Constructed" Plans for the Encroachments will be placed on file with the  
17 Denver City Clerk in a City Clerk File No. 09-791 when completed.

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

1 COMMITTEE APPROVAL DATE: N/A MAYOR-COUNCIL DATE: September 1, 2009  
2 PASSED BY THE COUNCIL September 14 2009

3 Jeanne Robb - PRESIDENT

4 ATTEST: Anthony Wallace - CLERK AND RECORDER,  
5 EX-OFFICIO CLERK OF THE  
6 CITY AND COUNTY OF DENVER  
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8 PREPARED BY: KAREN A. AVILES, ASSISTANT CITY ATTORNEY, September 1, 2009  
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10 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of  
11 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
12 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §  
13 3.2.6 of the Charter.  
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15 David R. Fine, City Attorney

16 BY: [Signature], Assistant City Attorney DATE: Sept 1, 2009  
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