

1 BY AUTHORITY

2 RESOLUTION NO. CR13-0694
3 SERIES OF 2013

COMMITTEE OF REFERENCE:
Land Use, Transportation & Infrastructure

4 A RESOLUTION

5 **Granting a revocable permit to SE Fillmore Place, LLC to encroach into the**
6 **right-of-way at 2960 East 2nd Avenue.**

7
8 **NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY AND COUNTY**
9 **OF DENVER:**

10 **Section 1.** The City and County of Denver hereby grants to SE Fillmore Place, LLC and
11 its successors and assigns ("Permittee"), a revocable permit to encroach into the right-of-way with
12 a an Xcel transformer and a service connection cabinet on a concrete pad ("Encroachments") at
13 2960 East 2nd Avenue in the following described area ("Encroachment Area"):

14
15 **PARCEL DESCRIPTION ROW 2013-0365-001**

16 A portion of Milwaukee Street, as shown on the Official Survey of Harman's
17 Subdivision as recorded in Book 8, Page 14 in the official records of the
18 Recorders Office, City and County of Denver, State of Colorado and being a
19 portion of Section 12, Township 4 South, Range 68 West of the Sixth Principle
20 Meridian, Denver County, Colorado, being more particularly described as follows:

21 Basis of Bearing:

22 The North line of the 1st Street, monumented on the west by a nail and disk
23 stamped PLS 19003, being the southeast corner of Lot B 1/2 , Block 69 and on
24 the east by a nail and disk stamped LS 16412, being the southeast corner of Lot
25 B1/2, Block 70 of said Harman's Subdivision and is considered to bear
26 N89°44'06"E.

27 Commencing at the southeast corner of said Lot B1/2, Block 70;

28 Thence N04°53'50"E, a distance of 205.58 feet to the point of beginning;

29 Thence S89°31'33"W, a distance of 19.25 feet to a point on the west right of way
30 of Milwaukee Street;

31 Thence N00°28'33"W along said west line, a distance of 18.00 feet;

32 Thence leaving said west line N89°31'33", a distance of 19.25 feet;

33 Thence S00°28'33"E, a distance of 18.00 feet to the point of beginning.

34 Said easement contains 345.38 square feet more or less.

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

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

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

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

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

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

30 (f) All construction in, under, on or over the Encroachment Area shall be accomplished
31 in accordance with the Building Code of the City and County of Denver. Plans and Specifications
32 governing the construction of the Encroachments shall be approved by the Manager of Public
33 Works and the Director of Building Inspection Division prior to construction. Upon completion, a

1 reproducible copy of the exact location and dimensions of the Encroachments shall be filed with
2 the Manager of Public Works.

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

9 (h) Permittee shall pay all costs of construction and maintenance of the Encroachments.
10 Upon revocation of the permit or upon abandonment, Permittee shall pay all costs of removing the
11 Encroachments from the Encroachment Area and return the Encroachment Area to its original
12 condition under the supervision of the City Engineer.

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

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

22 (k) This revocable permit shall not operate or be construed to abridge, limit or restrict
23 the City and County of Denver in exercising its right to make full use of the Encroachment Area
24 and adjacent rights-of-way as public thoroughfares nor shall it operate to restrict the utility
25 companies in exercising their rights to construct, remove, operate and maintain their facilities
26 within the Encroachment Area and adjacent rights-of-way.

27 (l) During the existence of the Encroachments and this permit, Permittee, its
28 successors and assigns, at its expense, and without cost to the City and County of Denver, shall
29 procure and maintain a single limit comprehensive general liability insurance policy with a limit of
30 not less than \$500,000.00. All coverages are to be arranged on an occurrence basis and include
31 coverage for those hazards normally identified as X.C.U. during construction. The insurance
32 coverage required herein constitutes a minimum requirement and such enumeration shall in no
33 way be deemed to limit or lessen the liability of the Permittee, its successors or assigns, under the

1 terms of this permit. All insurance coverage required herein shall be written in a form and by a
2 company or companies approved by the Risk Manager of the City and County of Denver and
3 authorized to do business in the State of Colorado. A certified copy of all such insurance policies
4 shall be filed with the Manager of Public Works, and each such policy shall contain a statement
5 therein or endorsement thereon that it will not be canceled or materially changed without written
6 notice, by registered mail, to the Manager of Public Works at least thirty (30) days prior to the
7 effective date of the cancellation or material change. All such insurance policies shall be
8 specifically endorsed to include all liability assumed by the Permittee hereunder and shall name
9 the City and County of Denver as an additional insured.

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

15 (n) The right to revoke this permit is expressly reserved to the City and County of
16 Denver.

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

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

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COMMITTEE APPROVAL DATE: October 10, 2013 [by consent]

MAYOR-COUNCIL DATE: October 15, 2013

PASSED BY THE COUNCIL: _____, 2013

_____ - PRESIDENT

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

PREPARED BY: Brent A. Eisen, Assistant City Attorney DATE: October 17, 2013

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

Douglas J. Friednash, Denver City Attorney

BY: _____, Assistant City Attorney DATE: _____, 2013