

1 **BY AUTHORITY**

2 RESOLUTION NO. CR16-1204  
3 SERIES OF 2016

COMMITTEE OF REFERENCE:  
Land Use, Transportation & Infrastructure

4 **A RESOLUTION**

5 **Granting a revocable permit to Xcel Energy to encroach into the right-of-way at**  
6 **Havana Street and Florence Way.**

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 Xcel Energy and its  
9 successors and assigns ("Permittee"), a revocable permit to encroach into the right-of-way with an  
10 above-ground natural gas piping and valve set consisting of 16 feet and 6 inch piping and valves.  
11 The footprint is approximately 26.5 feet by 7 feet by 5.5 feet. The valve set will be protected by 8  
12 inch bollards with a 4 inch cross post ("Encroachments") at Havana Street and Florence Way in the  
13 following described area ("Encroachment Area"):

14 **PARCEL DESCRIPTION ROW NO. 2016-ENCROACHMENT-0000053-001:**

15 A parcel of land lying in the Northwest Quarter of Section 26, Township 3 South, Range 67  
16 West, of the 6th Principal Meridian, City and County of Denver, State of Colorado, said parcel also being a part  
17 of that parcel of land described in Book 277, Page 498, Adams County Records, said parcel being more  
18 particularly described as follows:

19  
20 Commencing at the West Quarter corner of said Section 26;  
21 Thence N89°41'15"E, along the south line of said Northwest Quarter, 68.94 feet;  
22 Thence N00°18'45"W, 20.00 feet to the Point of Beginning;  
23 Thence N00°28'47"W, 32.50 feet;  
24 Thence N89°31'13 "E, 13 .00 feet;  
25 Thence S00°28'47"E, 32.50 feet;  
26 Thence S89°31'13"W, 13.00 feet to the Point of Beginning.  
27 Containing 422.5 square feet, more or less.

28  
29 For the purpose of this description, the basis of bearings is the south line of the said Northwest  
30 Quarter, being N89°41'15"E, monumented as shown on the attached illustration.

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

33 (a) Permittee shall obtain a street occupancy permit from City's Public Works Permit  
34 Operations at 2000 West 3<sup>rd</sup> Avenue, 303-446-3759, prior to commencing construction.

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

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

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

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

25 (f) All construction in, under, on or over the Encroachment Area shall be accomplished  
26 in accordance with the Building Code of the City. Plans and specifications governing the  
27 construction of the Encroachments shall be approved by the Executive Director and the Director of  
28 Building Inspection Division prior to construction. Upon completion, a reproducible copy of the exact  
29 location and dimensions of the Encroachments shall be filed with the Executive Director.

30 (g) The sidewalk and street/alley over the Encroachment Area shall be capable of  
31 withstanding an HS-20 loading in accordance with the latest AASHTO Specifications. The  
32 installations within the Encroachment Area shall be constructed so that the paved section of the  
33 street/alley can be widened without requiring additional structural modifications. The sidewalk shall

1 be constructed so that it can be removed and replaced without affecting structures within the  
2 Encroachment Area.

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

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

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

16 (k) This revocable Permit shall not operate or be construed to abridge, limit or restrict the  
17 City in exercising its right to make full use of the Encroachment Area and adjacent rights-of-way as  
18 public thoroughfares nor shall it operate to restrict the utility companies in exercising their rights to  
19 construct, remove, operate and maintain their facilities within the Encroachment Area and adjacent  
20 rights-of-way.

21 (l) During the existence of the Encroachments and this Permit, Permittee, its successors  
22 and assigns, at its expense, and without cost to the City, shall procure and maintain a single limit  
23 comprehensive general liability insurance policy with a limit of not less than \$500,000.00. All  
24 coverages are to be arranged on an occurrence basis and include coverage for those hazards  
25 normally identified as X.C.U. during construction. The insurance coverage required herein  
26 constitutes a minimum requirement and such enumeration shall in no way be deemed to limit or  
27 lessen the liability of the Permittee, its successors or assigns, under the terms of this Permit. All  
28 insurance coverage required herein shall be written in a form and by a company or companies  
29 approved by the Risk Manager of the City and authorized to do business in the State of Colorado.  
30 A certified copy of all such insurance policies shall be filed with the Executive Director, and each  
31 such policy shall contain a statement therein or endorsement thereon that it will not be canceled or  
32 materially changed without written notice, by registered mail, to the Executive Director at least thirty  
33 (30) days prior to the effective date of the cancellation or material change. All such insurance

1 policies shall be specifically endorsed to include all liability assumed by the Permittee hereunder  
2 and shall name the City as an additional insured.

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

8 (n) The right to revoke this Permit is expressly reserved to the City.

9 (o) Permittee shall agree to indemnify and always save the City harmless from all costs,  
10 claims or damages arising, either directly or indirectly, out of the rights and privileges granted by  
11 this Permit.

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

20 COMMITTEE APPROVAL DATE: November 29, 2016, by consent

21 MAYOR-COUNCIL DATE: December 6, 2016

22 PASSED BY THE COUNCIL: \_\_\_\_\_ December 12, 2016

23 \_\_\_\_\_ *Al Bush* \_\_\_\_\_ - PRESIDENT

24 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
25 EX-OFFICIO CLERK OF THE  
26 CITY AND COUNTY OF DENVER

27 PREPARED BY: Brent A. Eisen, Assistant City Attorney DATE: December 8, 2016

28 Pursuant to section 14-12, D.R.M.C., this proposed resolution has been reviewed by the office of  
29 the City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
30 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §  
31 3.2.6 of the Charter.

32 Kristin M. Bronson, Denver City Attorney

33 BY: \_\_\_\_\_, Assistant City Attorney DATE: \_\_\_\_\_ Dec 8, 2016