

1 BY AUTHORITY

2 RESOLUTION NO. CR12-0317  
3 SERIES OF 2012

COMMITTEE OF REFERENCE:  
Land Use, Transportation & Infrastructure

4  
5 A RESOLUTION

6 **Granting a revocable permit to BNSF Railway Company, to encroach with various**  
7 **items into the right-of-way at 44<sup>th</sup> Avenue, east of Sherman Street.**

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

10 **Section 1.** The City and County of Denver hereby grants to BNSF Railway Company and its  
11 successors and assigns ("Permittee"), a revocable permit to encroach into the right-of-way with a  
12 private storm sewer and man hole ("Encroachments") in 44<sup>th</sup> Avenue, just east of Sherman Street in  
13 the following described area ("Encroachment Area"):

14 **PARCEL DESCRIPTION ROW 2011-0293-01-001**

A PARCEL OF LAND SITUATED IN THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 3 SOUTH, RANGE 68 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY AND COUNTY OF DENVER, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS;

THE BASIS OF BEARINGS OF THIS LEGAL DESCRIPTION IS AN ASSUMED BEARING OF S89°55'30"E BETWEEN THE RANGE POINT MONUMENTS LOCATED AT THE INTERSECTION OF WEST 45TH AVENUE AND GRANT STREET AND THE INTERSECTION OF WEST 45TH AVENUE AND PENNSYLVANIA STREET.

COMMENCING AT THE NORTHEAST CORNER OF BLOCK 9, TACOMA HEIGHTS, A SUBDIVISION FILED IN THE CITY AND COUNTY OF DENVER CLERK AND RECORDER'S OFFICE AND ACCEPTED AND APPROVED BY THE CITY AND COUNTY OF DENVER BY ORDINANCE 134 OF SERIES 1889; SAID POINT ALSO BEING S54°08'42"W A DISTANCE OF 1200.11 FEET FROM THE RANGE POINT AT THE INTERSECTION OF WEST 45TH AVENUE AND PENNSYLVANIA STREET; THENCE S89°55'38"E ALONG THE SOUTH RIGHT OF WAY LINE OF 44th AVENUE DISTANCE OF 6.00 FEET TO THE POINT OF BEGINNING; THENCE N00°41'09"E A DISTANCE OF 60.91 FEET; THENCE S89°55'38"E A DISTANCE OF 10.00 FEET; THENCE S00°41'09"W A DISTANCE OF 60.91 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF 44th AVENUE; THENCE S00°41'09"W ALONG A LINE 16.00 FEET EAST OF AND PARALLEL WITH THE EAST LINE OF SAID BLOCK 9, A DISTANCE OF 10.00 FEET; THENCE N89°55'38"W A DISTANCE OF 10.00 FEET; THENCE N00°41'09"E A DISTANCE OF 10.00 FEET TO THE POINT OF BEGINNING;

SAID PARCEL CONTAINS 709 SQUARE FEET, 0.016 ACRES, MORE OR LESS.

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

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

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

22 (c) If the Permittee intends to install any underground facilities in or near a public road,  
23 street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification

1 Association of Owners and Operators of Underground Facilities by contacting the Utility Notification  
2 Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado 80215, at 303-  
3 232-1991. Further, Permittee shall contact the Utility Notification Center at 1-800-922-1987 to locate  
4 underground facilities prior to commencing any work under this permit.

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

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

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

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 curb  
8 and gutter, both inside the Encroachment Area and in the rights-of-way adjacent thereto, that become  
9 broken, damaged or unsightly during the course of construction. In the future, Permittee shall also  
10 remove, replace or repair any street/alley paving, sidewalks, and curb and gutter that become broken  
11 or damaged when, in the opinion of the City Engineer, the damage has been caused by the activity of  
12 the Permittee within the Encroachment Area. All repair work shall be accomplished without cost to  
13 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 and County of Denver in exercising its right to make full use of the Encroachment Area and  
18 adjacent rights-of-way as public thoroughfares nor shall it operate to restrict the utility companies in  
19 exercising their rights to construct, remove, operate and maintain their facilities within the  
20 Encroachment Area and adjacent 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 and County of Denver, shall procure and  
23 maintain a single limit comprehensive general liability insurance policy with a limit of not less than  
24 \$500,000.00. All coverages are to be arranged on an occurrence basis and include coverage for  
25 those hazards normally identified as X.C.U. during construction. The insurance coverage required  
26 herein constitutes a minimum requirement and such enumeration shall in no way be deemed to limit  
27 or 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 County of Denver and authorized to do business in the  
30 State of Colorado. A certified copy of all such insurance policies shall be filed with the Manager of  
31 Public Works, and each such policy shall contain a statement therein or endorsement thereon that it  
32 will not be canceled or materially changed without written notice, by registered mail, to the Manager of  
33 Public Works at least thirty (30) days prior to the effective date of the cancellation or material change.

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

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

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

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

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

20 COMMITTEE APPROVAL DATE: April 26, 2012

21 MAYOR-COUNCIL DATE: N/A

22 PASSED BY THE COUNCIL: \_\_\_\_\_, 2012

23 \_\_\_\_\_ - PRESIDENT

24 ATTEST: \_\_\_\_\_ - CLERK AND RECORDER,  
25 EX-OFFICIO CLERK OF THE  
26 CITY AND COUNTY OF DENVER  
27

28 PREPARED BY: KAREN A. AVILES, Assistant City Attorney DATE: April 26, 2012  
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30 Pursuant to section 13-12, D.R.M.C., this proposed resolution has been reviewed by the office of the  
31 City Attorney. We find no irregularity as to form, and have no legal objection to the proposed  
32 resolution. The proposed resolution is not submitted to the City Council for approval pursuant to §  
33 3.2.6 of the Charter.  
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35 Douglas J. Friednash, Denver City Attorney

36 BY: \_\_\_\_\_, Assistant City Attorney DATE: \_\_\_\_\_, 2012