

BY AUTHORITY

RESOLUTION NO. 75
SERIES OF 2009

COMMITTEE OF REFERENCE:
Public Works

A RESOLUTION

Granting a revocable permit to The University of Denver Network Services to encroach into the right-of-way with various items at South York Street and East Jewell Avenue, with a special condition.

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

Section 1. The City and County of Denver hereby grants to The University of Denver Network Services and their successors and assigns ("Permittee"), a revocable permit to encroach into the right-of-way with installing six hundred fifteen (615) feet of overhead telecom fiber optic cable, pole hardware, and service drops and down guys in the following described area ("Encroachment Area"):

A parcel of land lying in the right-of-way of the alley of Block 3 and the right-of way of East Jewell Avenue as shown on the plat of University Park Amended, filed for record on February 9, 1892 and recorded in Book 12 of Plats, Page 9, of the records of Arapahoe County, Colorado, also lying in the right-of-way of the alley of Block 24, as shown on the plat of Resers Subdivision, filed for record on October 7, 1882 and recorded in Book 3 of plats, Page 10 of the records of Arapahoe County. Colorado said parcel being located in the northeast quarter (NE¼) of Section 26, and the southeast quarter (SE¼) of Section 23, Township 4 South, Range 68 West of the Sixth Principal Meridian, City and County of Denver, State of Colorado more particularly described as follows:

The POINT OF BEGINNING is the southwest corner of Lot 24, Block 3, University Park Amended, said point also being on the east right-of-way line of the alley in said Block 3;
thence N89°42'22"W a distance of 15.00 feet to a point on the west right-of-way line of the alley in said Block 3;
thence N0°06'38"E a distance of 530.75 feet along the west right-of-way line of the alley in said Block 3 to the south right-of-way line of East Jewell Avenue said point also being the northeast corner of Lot 1 of said Block 3;
thence N 0°12'05"E a distance of 81.09 feet across East Jewell Avenue to the intersection of the north right-of-way line of East Jewell Avenue with the west right-of-way line of the alley in said Block 24;
thence N 0°11'27" E a distance of 195 feet along the west right-of-way line of the alley in said Block 24;
thence S89°48'33"E a distance of 15.00 feet to a point on the east right-of way-line of the alley in said Block 24;
thence S0°11'27"W a distance of 195.05 feet along the east right-of-way line of the alley in said Block 24 to the north right-of-way line of East Jewell Avenue;
thence S0°12'05"W a distance of 81.07 feet across East Jewell Avenue to the intersection of the east right-of-way-line of the alley in said Block 3 with the south right-of-way line of East Jewell Avenue said point also being the northwest corner of Lot 44 in said Block 3;
thence S0°06'38"W a distance of 530.75 feet along the east right-of-way line of the alley in said Block 3, to the POINT OF BEGINNING.

Parcel contains 12,102 square feet, (0.2778 acre) more or less.

Basis of Bearing

Basis of Bearing is the line between the range boxes in Evans Avenue between South Race Street and South Vine Street Bearing S89°42'22"E

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

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

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

7 (c) If the Permittee intends to install any underground facilities in or near a public road,
8 street, alley, right-of-way or utility easement, the Permittee shall join the Statewide Notification
9 Association of Owners and Operators of Underground Facilities by contacting the Utility
10 Notification Center of Colorado, 12600 West Colfax Avenue, Suite B-310, Lakewood, Colorado
11 80215, at 303-232-1991. Further, Permittee shall contact the Utility Notification Center at 1-800-
12 922-1987 to locate underground facilities prior to commencing any work under this permit.

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

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

32 (f) All construction in, under, on or over the Encroachment Area shall be accomplished
33 in accordance with the Building Code of the City and County of Denver. Plans and Specifications

1 governing the construction of the Encroachments shall be approved by the Manager of Public
2 Works and the Director of Building Inspection Division prior to construction. Upon completion, a
3 reproducible copy of the exact location and dimensions of the Encroachments shall be filed with
4 the Manager of Public Works.

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

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

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

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

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

29 (l) During the existence of the Encroachments and this permit, Permittee, its
30 successors and assigns, at its expense, and without cost to the City and County of Denver, shall
31 procure and maintain a single limit comprehensive general liability insurance policy with a limit of
32 not less than \$500,000.00. All coverages are to be arranged on an occurrence basis and include
33 coverage for those hazards normally identified as X.C.U. during construction. The insurance

1 coverage required herein constitutes a minimum requirement and such enumeration shall in no
2 way be deemed to limit or lessen the liability of the Permittee, its successors or assigns, under the
3 terms of this permit. All insurance coverage required herein shall be written in a form and by a
4 company or companies approved by the Risk Manager of the City and County of Denver and
5 authorized to do business in the State of Colorado. A certified copy of all such insurance policies
6 shall be filed with the Manager of Public Works, and each such policy shall contain a statement
7 therein or endorsement thereon that it will not be canceled or materially changed without written
8 notice, by registered mail, to the Manager of Public Works at least thirty (30) days prior to the
9 effective date of the cancellation or material change. All such insurance policies shall be
10 specifically endorsed to include all liability assumed by the Permittee hereunder and shall name
11 the City and County of Denver as an additional insured.

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

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

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

22 (p) It is required to provide a 16.5 foot minimum vertical clearance at the crown of Jewell
23 Avenue.

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

1 COMMITTEE APPROVAL DATE: N/A MAYOR-COUNCIL DATE: June 30, 2009
2 PASSED BY THE COUNCIL July 13 2009

3 Joanne Robb - PRESIDENT

4 ATTEST: Stephanie Kelly - CLERK AND RECORDER,
5 EX-OFFICIO CLERK OF THE
6 CITY AND COUNTY OF DENVER

7
8 PREPARED BY: KERRY A. BUCKEY, ASSISTANT CITY ATTORNEY, July 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.

14 David R. Fine, City Attorney

15 BY: Stephanie Kelly, Assistant City Attorney DATE: 7/21, 2009
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