

04R-22

Introduce: 2-2-04

RESOLUTION NO. A-_____

1 WHEREAS, Technical Management, Inc. has submitted an application for a
2 permit to use the public right-of-way between 421 S. 9th Street and 830 L Street for the
3 installation of a 3" conduit for fiber optic cable to provide telecommunication and network data
4 connections between the tow properties; and

5 WHEREAS, said applicant has submitted a letter of application with a site plan
6 which are attached hereto, marked as Exhibit "A" and Exhibit "B" respectively, and made a part
7 of this resolution by reference, to use the public right-of-way as detailed in Exhibit B; and

8 WHEREAS, this resolution is prepared in part for settling compensation issues
9 related to Resolution A-82476; and

10 WHEREAS, said applicant has complied with all of the provisions of Chapter
11 14.53 of the Lincoln Municipal Code pertaining to such use.

12 NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of
13 Lincoln, Nebraska:

14 That the aforesaid application of Technical Management, Inc., hereinafter
15 referred to as "Permittee," to use the public right-of-way related to Res. No. A-82476 between
16 421 S. 9th Street and 830 L Street, crossing underneath Capitol Parkway as shown on Exhibit
17 "B" for the purpose of installing fiber optic cable and copper wire inside the conduit be granted
18 as a privilege only by virtue of and subject to strict compliance with the site plans, the letter of
19 application, and the following terms and conditions, to wit:

20 1. That the permission herein granted is subject to all the terms and
21 conditions of Chapter 14.53 of the Lincoln Municipal Code including those provisions relating to
22 the posting of a continuing bond in the amount of \$5,000 and the filing of a certificate of
23 insurance evidencing a commercial or comprehensive general liability policy, or an acceptable

1 substitute policy form, with a minimum combined single limit of \$500,000 aggregate for any one
2 occurrence and naming the City as additional insured.

3 2. The work shall be constructed in accordance with plans and
4 specifications approved by the Department of Public Works and Utilities. The facilities, where
5 they are underground, shall be laid to a minimum depth of 3½ feet from the top of the cable to
6 the surface of the ground. All land surfaces and all pavement shall be restored to their original
7 condition after the work is completed on each segment of the project. "As built" drawings shall
8 be furnished to the City by the Permittee to show the precise locations, depths, and nature of all
9 materials installed in accordance with the permit. The City shall have the right at any time
10 when, in its judgment, it becomes necessary or advisable to require a change of location of said
11 facilities as a matter of safety, or on account of change of grade, resurfacing, repair,
12 reconstruction of any street, alley, sidewalk, or other public ground, or the construction of any
13 structure thereon, or for any other reason, all of which shall be done at the cost and expense of
14 the Permittee in a good and workmanlike manner.

15 3. The Permittee shall pay to the City an annual rental for the use and
16 occupancy of the space beneath said public street occupied by such use which rental is
17 currently \$1.00 per lineal foot of space occupied underneath the public street, alley, sidewalk,
18 or other public ground. Such rental is based upon the number of conduits being placed within
19 the right-of-way. The term of the right herein provided to Technical Management, Inc. to use
20 the City's right-of-way shall expire on the earlier to occur of: a) one year from the date of this
21 resolution; or b) after the City's adoption of a new telecommunications ordinance regulating
22 access to the City's right-of-way. In the event that the ordinance is not enacted within one year
23 from the date of this resolution, the parties agree to negotiate in good faith a renewal hereto
24 based upon terms mutually agreeable to both parties in conformity with the applicable law then
25 and there existing.

1 All payments shall be made to the City Treasurer and shall be due and payable
2 on the 1st day of October of each year; provided, however, the amount of the initial payment
3 shall be prorated from the date of approval of this permit to the 1st day of October, 1999 and
4 payment shall be due and payable on October 1st thereafter. In the event that the new
5 telecommunications ordinance is enacted within one year from the date of this resolution, the
6 City shall pro-rate the portion of the fees remaining from the one year term and apply them to
7 any fees payable under the ordinance if the ordinance.

8 Any such rent shall become delinquent on the 1st day of December of each year
9 and such delinquent rent shall bear interest at the rate of 1% per month until paid and if such
10 rent is not paid for six months or more after such delinquent date, a penalty of 5% shall be
11 added thereto in addition to said interest.

12 4. The use of the public way herein granted and the terms and conditions of
13 this resolution shall be binding and obligatory upon the above-named Permittee, its successors
14 and assigns.

15 5. Any additions, changes, modifications, amendments of the uses
16 permitted herein shall require a new permit or other authorization.

17 6. That within 30 days from the adoption of this resolution, and before
18 commencing any construction under the provisions hereof, the above-named Permittee shall
19 file an unqualified written acceptance of all the terms and conditions of this resolution with the
20 City Clerk. Failure to do so will be considered a rejection hereof and all privileges and
21 authorities hereunder granted shall thereupon terminate.

22 The Permittee shall, within thirty days after written demand, reimburse the City
23 for all direct and indirect costs and expenses, as provided in Section 14.53.070, in connection
24 with the issuance and review of this permit.

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7. The Permittee acknowledges that the City is currently in the process of considering and developing a telecommunications ordinance that will define the procedures and fees for access to the City's right-of-way. Permittee acknowledges that its operations shall become subject to the provisions of that ordinance when it is adopted. This permit is in no way intended to provide Permittee any grandfather rights or exclusion from the provisions of such subsequent ordinance.

8. Resolution No. A-82476, adopted by the City Council on November 24, 2003, is hereby rescinded and replaced in its entirety by the provisions of this Resolution.

Introduced by:

Approved as to Form and Legality:

City Attorney

Approved this ___ day of _____, 2004:

Mayor