



Legislation Text

File #: 13-1691, Version: 1

AN ORDINANCE GRANTING PERMISSION TO LIGHT TOWER FIBER LONG ISLAND LLC TO INSTALL AND MAINTAIN APPROXIMATELY 21,000 LINEAR FEET OF FIBER OPTIC TELECOMMUNICATIONS NETWORK WITHIN THE PUBLIC RIGHT-OF-WAY

No Action Taken 6PSF-g 100213/Public Hearing Open

Special Note - Adopted 6PSF-f 101013/ Public Hearing Closed

WHEREAS, Light Tower Fiber Long Island LLC, a Limited Liability Delaware Corporation, whose principal place of business is located at 80 Central Street, Boxborough, Massachusetts 01719, desires to build a telecommunication network in existing conduit as set forth on maps labeled "Carteret to Newark", attached hereto and made part hereof, and has requested authority from the City of Newark to occupy the existing conduit located in the public right-of-way; and

WHEREAS, the Municipal Council is desirous of granting the requested permissions, on a non-exclusive basis to Light Tower Fiber Long Island LLC, pursuant to the City of Newark's general municipal powers and City of Newark Ordinance 6S & FF, adopted May 19, 1999.

NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY THAT:

Section 1. Permission is hereby granted to Light Tower Fiber Long Island LLC, its successors and assigns to install, operate, repair, and maintain approximately 21,000 linear feet of fiber optic telecommunications network as set forth on the attached maps labeled "Carteret to Newark" dated 6/17/13 numbered Sheet 1, 2, 3, and 4. The Mayor and/or his designee, the Director of the Department of Engineering, are hereby authorized to execute an Agreement with Light Tower Fiber Long Island LLC, a Delaware Corporation, 80 Central Street, Boxborough, Massachusetts 01719, for permission to use the City of Newark right-of-way, on a non-exclusive basis, for the occupation or use in connection with the provision of telecommunications services, including any renewals or amendments thereto, in accordance with the terms and conditions of this Ordinance.

Section 2. No part of the proposed fiber optic telecommunications network shall be laid over existing utilities. Light Tower Fiber Long Island LLC shall contact utility companies and NJ One Call for utility mark-outs prior to the commencement of any work.

Section 3. Light Tower Fiber Long Island LLC, its successors and assigns, shall adhere to all applicable requirements of Federal, State and Local laws.

Section 4. Such permission is hereby given upon the condition and provision that Light Tower Fiber Long Island LLC, its successors, assigns, agents, contractors, and subcontractors, not only indemnify and save harmless the City of Newark, its elected officials, directors, officers, employees, agents, and servants, from any claims whatsoever arising from or in any way connected with the granting or use of the public right-of-way but shall agree to assume on behalf of the City of Newark, defense of any

action at law or equity which may be brought against the City upon such claims or from claims arising from the installation, operation, repair and maintenance of the fiber optic telecommunications network and telecommunications equipment.

Section 5. In addition to the aforesaid hold harmless and indemnity agreement, Light Tower Fiber Long Island LLC, its successors, assigns, agents, contractors, and subcontractors shall at its own cost and expense procure and keep at all times in full force and effect paid up policies for Comprehensive General Liability Insurance in favor of the City of Newark, in an amount of at least \$5,000,000 covering bodily injury and property damage arising out of any one accident, said policies to be approved by the Risk Manager and the Corporation Counsel of the City of Newark. Proof of said coverage, naming the City of Newark as an additional insured and including the indemnification clause in Section 4 of the Agreement or the alternative appropriate Additional Insured Endorsement shall be filed with the City Clerk prior to the installation of any telecommunications fiber optic cable or equipment. The City shall have the right to require or increase the amount of Comprehensive General Liability Insurance and to alter the terms of insurance called for under this section upon prior notice to Light Tower Fiber Long Island LLC. Said insurance shall not be subject to cancellation or change until thirty (30) days after the City Clerk has received written notice thereof as evidenced by return receipt or certified or registered letter. Failure of Light Tower Fiber Long Island LLC to submit insurance certificate approved by the Risk Manager and Corporation Counsel of the City of Newark prior to the installation of the telecommunications fiber optic cable or equipment shall render this Ordinance and the rights granted hereunder invalid. Light Tower Fiber Long Island LLC shall forward a copy of the Certificate of Insurance and any necessary policy endorsement to the Secretary of the City of Newark's Insurance Fund Commission, together with any Agreement authorized by this Ordinance.

Section 6. Such permission is hereby given upon the further condition that in the use of the public right-of-way, Light Tower Fiber Long Island LLC its successors, assigns, agents, contractors, and subcontractors shall become subject to any applicable Ordinance or Resolution now or hereafter adopted by the City of Newark that may apply to the easement and/or license agreement and fiber optic telecommunications network and telecommunications equipment and Light Tower Fiber Long Island LLC, its successors, assigns, agents, contractors, and subcontractors shall become liable for the payment of any fee hereafter imposed by the City by such Ordinance or Resolution.

Section 7. As-built plans shall be filed with the Director of the Department of Engineering within 30 days of the completion of work authorized under this Ordinance. The plans shall be in a form approved by the Director of Engineering. In addition, a survey by a licensed surveyor in the State of New Jersey must be submitted with GPS location of all points.

Section 8. Such permission is hereby given upon the condition that Light Tower Fiber Long Island LLC shall file with the City of Newark its written acceptance of the provisions of this Ordinance within 30 days from the date of adoption and shall pay on demand of the City of Newark the amount and cost and expense to the City for all official publications of this Ordinance.

Section 9. Such permission is hereby given upon the condition that Light Tower Fiber Long Island LLC shall obtain all applicable permits which may be required by the City of Newark and shall be responsible for the repair of any damage to including but not limited to paving, existing utility lines, or any surface or subsurface installations arising from the installation, repair, or maintenance of the fiber optic telecommunications network. Light Tower Fiber Long Island LLC shall also become a member utility of NJ One Call.

Section 10. In the event the fiber optic telecommunications network and/or telecommunications equipment covered in the aforesaid easement and/or license agreement is no longer used, or used for a purpose other than for the original

intent by either Light Tower Fiber Long Island LLC or its successors or assigns in title, the City of Newark shall be so notified, and it shall have the right to terminate this easement and/or license agreement and upon such termination all rights shall revert to the City.

Section 11. Light Tower Fiber Long Island LLC, subject to the approval of the City of Newark Corporation Counsel, shall place an instrument on record in the Essex County Register Office giving notice of the existence of the easement if so created by this Ordinance. This instrument shall be executed on behalf of the City of Newark by the Director of Engineering and attested to by the City Clerk who shall affix the City Seal thereto. The City shall record this instrument at the cost of Light Tower Fiber Long Island LLC who shall pay all such costs upon request from the City.

Section 12. The term of this easement and/or license agreement shall be a period of ten (10) years from the adoption of this Ordinance with an option to request an extension for an additional five (5) year term and a subsequent option to request an extension for an additional five years thereafter, subject to approval by Municipal Council. After 10 years from the date of adoption of this Ordinance, the City of Newark shall have the right to terminate permission and/or renegotiate the terms, subject to approval by Ordinance.

Section 13. For the rights and privileges herein granted, Light Tower Fiber Long Island LLC, shall pay the City of Newark a one-time fee of \$15,000 and an annual recurring fee (due each January 15th) of \$5,000 plus \$2.50 per linear foot of conduit installed for a total of \$57,500. The fee for the first year will be prorated by based on the remaining complete months in the year.

Section 14. This Ordinance shall take effect upon promulgation and passage in accordance with law.

STATEMENT

This Ordinance grants permission to Light Tower Fiber Long Island LLC to locate, place, attach, install, operate, control, and maintain Telecommunications Equipment in the Public Right-of- Way (as defined in the attached Agreement).