



Date of Council Meeting: January 12, 2016

**TOWN OF LEESBURG
TOWN COUNCIL MEETING**

Subject: License Agreement between the Town of Leesburg and Lighttower Fiber Networks II, LLC, for telecommunications facilities in Town Right-of-Way.

Staff Contact: Barbara Notar, Town Attorney
Calvin Grow, Transportation Engineer

Council Action Requested: To approve a resolution for a License Agreement between the Town of Leesburg and Lighttower Fiber Networks II, LLC.

Staff Recommendation: Staff supports the proposed License Agreement to authorize Lighttower Fiber Networks II, LLC, to use the Town Right-of-Way for telecommunications purposes (fiber optic cable).

Commission Recommendation: Not applicable.

Fiscal Impact: Lighttower Fiber Networks II, LLC, will pay the Town a \$5,000 license agreement fee along with an annual fee of \$4,645.00, which is based upon the amount of linear feet that is needed by Lighttower Fiber Networks. Additionally, Lighttower will provide and install a twenty-four (24) count fiber optics cable in a separate conduit access. These fibers will allow for additional technological connectivity between Town Hall and remote Town offices.

Work Plan Impact: None.

Executive Summary: Lighttower Fiber Networks II, LLC, seeks to install fiber optic cable in the Town right-of-way in order to connect their Potomac River crossing to the data center community in Ashburn, Virginia.

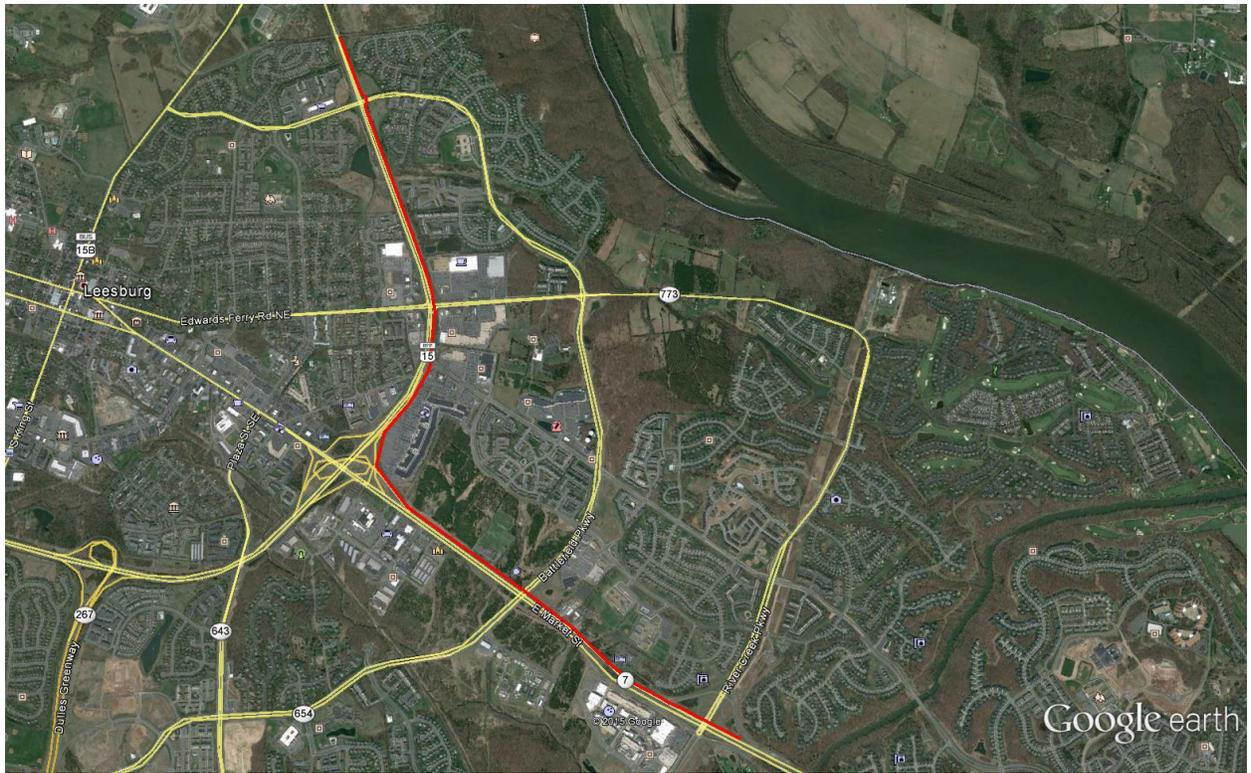
Background: Lighttower Fiber Networks II, LLC, seeks to install fiber optic cable to pass through the Town in order to connect their Potomac River crossing to the data center community in Ashburn. This will enable Lighttower to provide secure and diverse services to their customers connecting to those data centers.

A License Agreement is needed by Lighttower Fiber Networks II, LLC, to allow the fiber optic cable system to use public streets located within the Town. The term of the License Agreement shall be for five (5) years with an automatic renewal period for a like period.

Attachment: Resolution

Authorizing a License Agreement Between the Town and Lighttower Fiber Networks II,
LLC
January 12, 2016
Page 2

Draft License Agreement between Town Lighttower Fiber Networks II,
LLC.
Exhibit A (Route)



**LICENSE AGREEMENT
FOR TELECOMMUNICATIONS FACILITIES PASSING THROUGH
THE TOWN OF LEESBURG, VIRGINIA**

THIS LICENSE AGREEMENT, made and entered into this _____ day of _____, 2015, by and between **LIGHTOWER FIBER NETWORKS II, LLC** (the “Provider”), a company authorized to do business in the Commonwealth of Virginia and having a principal place of business at 80 Central Street, Boxborough, MA 01719, and the **TOWN OF LEESBURG, VIRGINIA**, a municipal corporation (“Town”), (the Provider and the Town being collectively referred to as the “Parties”).

WITNESSETH

WHEREAS, the Provider, licensed to do business in the Commonwealth of Virginia, has requested that the Town authorize the Provider to use Town Rights-of-Way and public owned property for telecommunications purposes and to install, operate and maintain a fiber optic cable system (the “Facilities”) that will use the public streets within the Town to a certain extent; and

WHEREAS, the general location and description of the telecommunications facilities to be installed within the Town’s Rights-of-Way (the “Facilities”) shall be in accordance with certain drawings approved by the Town and attached hereto as Exhibit A (the “Route Map”) and,

WHEREAS, the Provider acknowledges that the primary use of the Town’s Rights-of-Way is for street purposes and that the construction and operation of the Facilities shall not adversely affect such property’s primary use for street purposes; and

WHEREAS, the Town is willing to allow the Provider to use certain Town Rights-of-Way and public owned property subject to the terms and conditions set forth herein.

NOW, THEREFORE, the Town and Provider, for and in consideration of the mutual promises and covenants hereinafter contained, hereby agree and the Town hereby grants unto the Provider for the term and upon the conditions, covenants and agreements hereinafter set forth, permission to use the subject Rights-of-Way for the purpose of installing, operating, and maintaining the Facilities.

A. Conditions. The Facilities shall be, at all times, maintained, operated and repaired by the Provider as provided herein in a safe manner satisfactory to the Town.

The rights and privileges herein granted to the Provider shall be subject to the rights or interests held by others, if any, in and to the subject Rights-of-Way as of the date of this Agreement. The Town makes no representations or warranties, express or implied, concerning the extent of such rights held by others and shall have no responsibility for conflicts with others as a result of this Agreement. The Town makes no warranties with respect to the subject Rights-of-way but gives the Provider permission to use such rights as are herein provided.

B. Term/Termination. Unless terminated in accordance with the provisions herein, the term of the Agreement shall be five (5) years from the date hereof. The Agreement will automatically renew for a like period unless either party provides twelve (12) months' notice of non-renewal.

Should the Provider abandon or remove the Facilities without an intention to resume use thereof for a six (6) month period of time, this Agreement shall terminate forthwith at the election of the Town.

The Town may unilaterally terminate the Agreement upon one hundred twenty (120) days' notice in the event the Town determines, in the exercise of its reasonable good faith judgment, that the maintenance and/or operation of the Facilities and the continuation of such License shall adversely affect the health, safety, and welfare of the Town. In such an event, the Town agrees to cooperate with the Provider to attempt to find other suitable space in the public Rights-of-Way of the Town for placement of the Facilities. The Provider agrees, in such cases to relocate its Facilities at its own expense unless otherwise provided by applicable law of the Commonwealth of Virginia and/or by an ordinance of the Town.

Termination of this Agreement shall not relieve or release the Provider or the Town from any liability or obligation, which may have been incurred or assumed by the Provider or the Town hereunder prior to termination.

C. Right-of-Way Application and Permit. The Provider shall pay the Town a Right-of-Way Permit Application fee at the time it files its plans with the Town. The Right-of-Way Permit Application fee paid pursuant to Sec. 30-2 of the Town Code shall be in addition to the other fees required hereunder. Additionally, prior to the commencement of any construction, the Provider, if required by the Town, shall deposit with the Town an irrevocable, unconditional letter of credit and/or surety bond equal to 10% of the anticipated construction costs of the Provider's Facilities in the Rights-of-Way or public owned property or such other amount determined by the Town. Upon completion of construction, and thereafter until the Provider's facilities have been removed from the Rights-of-Way or public owned property, and for one hundred twenty (120) days thereafter, (unless the Town notifies the Provider that a reasonably longer period shall apply), Provider shall deposit with the Town and maintain an irrevocable, unconditional letter of credit or a bond in an amount reasonably determined by the Town. The construction bond and removal bond shall serve as security for:

1. The faithful performance by the Provider of all terms, conditions and obligations including the restoration of the Rights-of-Way or public owned property of this License;
2. Any expenditure, damage, or loss incurred by the Town occasioned by the Provider's breach of this License or its failure to comply with all rules, regulations, orders, permits and other directives of the Town;
3. Payment of all compensation due to the Town, including Permit and Application Fees;

4. The payment of premiums for the liability insurance required pursuant to this License.

D. Compensation.

1. The Provider shall pay to the Town for the usage of the public right-of-way for telecommunications facilities the following amounts:

First Year	\$4,645.00
Second Year	\$4,645.00
Third Year	\$4,645.00
Fourth Year	\$4,645.00
Fifth Year	\$4,645.00

The annual fee shall be due to the Town within 45 days after the effective date of this License, and upon each anniversary of that date.

In addition, the Provider will provide to the Town the following:

2. The Town will receive a twenty-four (24) count fibers optic cable, (with documented nm readings of 1310 nm), to be installed by Provider, at Provider's sole cost and expense, underground, in a separate 1.25" HDPE conduit, along the route depicted in the Route Map (i.e., from the northern corporate limits along Leesburg Bypass to the eastern corporate limits along Route 7 (East Market Street) at River Creek Parkway), with Tracer and one hundred (100) feet of slack loops at either end of such route and at any junction boxes or handholes (such fiber optic cable and conduit are the "Town Cable").
3. To the extent the Town Cable passes the Town's existing traffic boxes on the same side of the street as the route depicted in the Route Map, Provider shall work with the Town to tie-in the Town Cable to such existing traffic boxes. To the extent the route depicted in the Route Map passes on the other side of the street from the Town's existing traffic boxes, Provider shall install handholes along the route at locations reasonable for the Town to tie-in the existing traffic boxes and such tie-ins shall be at the Town's sole cost and expense. Any excavation of sidewalk or roadway required by this provision, and any resulting re-paving or re-setting therefrom, shall be the sole responsibility of the Town.
4. Provider shall install a 24"x36"x30" hand hole with a "tier22" rating and marked as "communications" Route 7 (East Market Street) and River Creek Parkway and 24"x36"x30" hand hole with a "tier22" rating and marked as "communications" at the intersection of Route 7 (East Market Street) at Battlefield Parkway.
5. In the event the Town Cable passes by Town facilities (existing or planned), the Town reserves the right to add extensions, at the Town's sole cost and expense, to the Town Cable, and the Town will identify, prior to Provider's construction, the desired location of any necessary handholes for the tie-ins of any such extensions. In an

effort to minimize disruption to Facilities and the Town Cable, any future extensions may access the Town Cable only at the designated access points (i.e., existing handholes and manholes), unless the Parties mutually agree otherwise.

6. Any maintenance or repair of the Town Cable shall be the Town's sole responsibility; provided, however, any such maintenance or repair that requires digging in the shared trench shall require no less than forty-eight (48) hours advance notice to Provider, and Provider shall have the option to have a representative on sight for such digging, at Provider's sole expense.
7. The Town will join Miss Utility of Virginia (VA811) and will comply with any such notice requirements.
8. All components of the Town Cable shall remain property of the Town in perpetuity after completion and once acceptance of conduit/fiber and facilities are deemed complete by the Town.

E. Communications Right of Way Use License Review and Inspection Fee. The Provider shall pay to the Town prior to the Town's execution of this License Agreement, a License Agreement Fee of Five Thousand Dollars (\$5,000.00) which shall compensate the Town to evaluate the route, and coordinate with other provides and other agencies, the route, plans and plats submitted by the Provider.

F. Construction Plans and Specifications. Construction of the Facilities shall be performed in accordance with the approved construction plans approved in connection with the right-of-way permit.

G. Confining Construction Activity. During construction, Provider and its contractors and subcontractors shall confine all construction activity, including access and storage, within the applicable areas specified on the approved Plans.

The Provider hereby agrees that the roadway and/or vehicular traffic shall not be hindered significantly or disturbed during installation, maintenance or operation of the Facilities. Prior to construction or repair, other than "Routine Maintenance" as defined below, the Provider shall notify the Town, obtain a Right-of-Way Application and Permit, and, if necessary, proper traffic controls approved by the Town shall be installed. Except in an emergency, the Provider shall notify all residents affected by proposed work prior to the commencement of such work by:

1. Mailing written notice of the Provider's intent to commence work in the area to each address affected by the proposed work; or
2. Hanging door placards on the doors of all affected residences and businesses at least seven (7) days prior to commencement of such work and posting additional notices in conspicuous places in the area of the proposed work as required to provide reasonable notice to affected residences and business of the proposed work.

The Provider shall perform the work authorized in such Permit in accordance with all requirements of the Town Code, and any subsequent ordinances or regulations currently in force or that may be adopted by the Town regarding excavation work.

H. Excavation. Provider shall not make or begin any excavation or other subsurface activity within the subject Rights-of-Way without first obtaining a Right-of-Way Permit and information concerning the possible location of any underground facility from each and every public utility, municipal corporation, or other person having the right to bury underground facilities.

I. Inspection of Construction. The construction of the Facilities is subject to the Town's inspection at all places and all reasonable times to ensure strict compliance with the terms of this Agreement. Such inspections shall be performed in a timely manner so as not to delay the installation of the Facilities.

J. Maintenance and Operation. Routine maintenance shall be defined as any work which can be accomplished utilizing mechanical equipment and/or vehicles operated from a location which is entirely behind the back of curb and in such a manner as to not encroach into the traffic lanes or disrupt traffic flow.

Prior to commencement of any maintenance that is more extensive than routine maintenance, Provider shall submit a proposed maintenance plan and schedule to the Town for approval. The plan and schedule, at a minimum, shall provide a description of work to be performed, a description of equipment, vehicles, work techniques and methods to be used in connection with the maintenance or operation activity, a schedule of when maintenance or operation work will occur with an estimate as to the length of time required to perform the work, and such other information as the Town may need to evaluate the proposed maintenance or operation activity.

Provider shall confine all such extensive maintenance and operation activities, including access and storage, within the applicable areas specified in the approved maintenance and operation plans.

K. Restoration. Provider shall, as soon as practicable after the completion of any extensive maintenance activities, restore all areas disturbed during such activities. These areas shall be restored in kind to a condition substantially the same as that which existed prior to Provider performing such maintenance activities, and shall be restored to the reasonable satisfaction of the Town.

L. General Responsibilities of Provider.

1. Compliance with Applicable Laws and Regulations. Provider shall construct, operate, and maintain its facilities and improvements in accordance with all applicable federal, state, county and Town laws, orders, rules and regulations existing on the date of this Agreement or enacted thereafter, affecting the installation, maintenance and use of the Facilities, including any necessary Federal Aviation Administration ("FAA") approval for land located within the Town's airport, if applicable.

2. Indemnification. Provider agrees to indemnify and hold the Town, its officers, agents, and employees, harmless from and against all claims, losses, expenses, or suits for injuries, death, or damages to real and/or tangible personal property caused by the acts or omissions of Provider, its officers, agent or employees, including the cost of actual reasonable attorney's fees and other costs. Notwithstanding the provisions of this clause, Provider shall not be liable for nor shall it indemnify the Town for property damage or personal injuries caused by the acts of any third parties over which the Provider has no control, or acts of the Town, its authorized officers, agents, and employees. The Town shall not be liable for damage to the Facilities caused by future road improvements except where the damage to the Facilities is caused by the negligence, gross negligence, or willful misconduct of the Town.
3. Disclaimer of Consequential Damages. Notwithstanding any other provision of this Agreement, in no event shall either party be liable for consequential, incidental, punitive, exemplary, or similar damages under this Agreement.
4. Relocation of Facilities. Whenever the Town shall determine that it is necessary in connection with the repair, relocation, or improvement of the public Rights-of-Way, the Town may require by written notification that any properties or facilities of the Provider be removed or relocated. This provision also shall apply to instances where Provider has not obtained necessary FAA approval. Within thirty (30) days after receipt of notification, unless the Town extends such period for good cause shown, or because of its reliance on traffic control infrastructure installed by Provider that must be relocated, the Town will extend the relocation time to a sufficient degree that continuity of services to the Town can be assured, the Provider shall remove or relocate its facilities to such place and under such terms and conditions as specified by the Town. The Provider shall bear all expenses associated with the removal and relocation except that the Town will issue, without charge to the Provider, whatever local permits are required for the relocation of the Provider's facilities. If the Provider does not complete its removal or relocation within thirty (30) days or such other period as authorized by the Town, the Town may take such actions as necessary to effect such removal or relocation at the Provider's expense. Further, the Provider will be responsible for any additional costs and expenses incurred by the Town as a result of the Provider's failure to remove or relocate its facilities in a timely manner.

M. Insurance. Provider shall maintain general liability insurance in the amount of Two Million Dollars (\$2,000,000) and shall provide to the Town simultaneously with the execution hereof, a certificate of insurance for such policy, which shall name the Town as an additional insured thereon.

N. Notices. Notices under the Agreement shall be deemed to be properly served if delivered in person or in writing by certified mail, with return receipt requested, to the following addresses or such other places as the parties reasonably designate:

To the Town:
Director of Public Works & Capital Projects
The Town of Leesburg
25 W. Market Street
Leesburg, Virginia 20176

With a copy to:
Town Manager
Town of Leesburg
25 W. Market Street
Leesburg, VA 20176

To Provider:
Lightower Fiber Networks
80 Central Street
Boxborough, MA 01719
Attn: COO

With a copy to:
Lightower Fiber Networks
80 Central Street
Boxborough, MA 01719
Attn: General Counsel

In addition to the foregoing, the Provider will provide the name and contact person and an emergency telephone number for maintenance of the Facilities.

O. No Waiver. Nothing contained in the Agreement shall be deemed to waive the requirement of the various codes, regulations, resolutions, and statutes regarding permits, fees to be paid, or manner of construction, operation, or maintenance, including without limitation, the Town's right-of-way permit requirements to work within the Rights-of-Way.

P. Assignment. No assignment of this Agreement or any rights hereunder shall be made without the prior written consent of the Town. However, the Town shall not unreasonably delay, condition, or refuse its consent to any such assignment by the Provider, upon written request by the Provider.

Q. Entire License. This License Agreement (and the Exhibits) embodies the entire agreement between the Town and the Provider. It is not to be modified or terminated except as provided herein or by any written agreements signed by the authorized representatives of both parties. If any provision herein is invalid it shall be considered deleted and shall not invalidate the remaining provisions. The Provider shall not expand or extend its Facilities without approval

from the Town Transportation Engineer and a written amendment to this License signed by the Town Manager and authorized agent of the Provider.

R. Applicable Law. The parties agree that this License Agreement will be governed by the laws of the Commonwealth of Virginia and shall be binding upon the parties and their respective-successors and/or assigns.

IN WITNESS WHEREOF, the parties hereto have executed this License Agreement as of the date and year first written above.

Lightower Fiber Networks II, LLC

By _____

Name _____

Title _____

Date _____

THE TOWN OF LEESBURG

By _____

Kaj H. Dentler
Town Manager

Date _____

PRESENTED January 12, 2016

RESOLUTION NO. 2016-

ADOPTED _____

A RESOLUTION: AUTHORIZING THE TOWN MANAGER TO EXECUTE A LICENSE AGREEMENT BETWEEN THE TOWN OF LEESBURG AND LIGHTOWER FIBER NETWORKS II, LLC, FOR TELECOMMUNICATIONS FACILITIES IN TOWN RIGHT-OF-WAY

WHEREAS, Lightower Fiber Networks II, LLC, seeks to use the Town's Right-of-Way for telecommunication purposes; and

WHEREAS, Lightower Fiber Networks II, LLC, seeks to install, operate and maintain a fiber optic cable system that will use public streets within the Town; and

WHEREAS, the purpose is to provide support to Loudoun County's data center community;

WHEREAS, Lightower Networks II, LLC, acknowledges that the primary use of the Town's Rights-of-Way is for street purposes, and that the construction and operation shall not adversely affect such property's primary use for street purposes; and

WHEREAS, a License Agreement is necessary to allow installation, operation and maintenance of the fiber optic cable system; and

WHEREAS, the Town Attorney has negotiated a License Agreement between the Town and Lightower Fiber Networks II, LLC, to install operate and maintain the fiber optic cable system; and

WHEREAS, the term of the License Agreement will run for five (5) years, with an automatic renewal for a like period; and

WHEREAS, Lightower Fiber Networks II, LLC, has approved the License Agreement and all fees will be borne by Lightower; and

A RESOLUTION: AUTHORIZING THE TOWN MANAGER TO EXECUTE A LICENSE AGREEMENT BETWEEN THE TOWN OF LEESBURG AND LIGHTOWER FIBER NETWORKS II, LLC, FOR TELECOMMUNICATIONS FACILITIES IN TOWN RIGHT-OF-WAY

WHEREAS, the terms contained in the License Agreement are reasonable and equitable and will benefit the Town.

THEREFORE, RESOLVED by the Council of the Town of Leesburg in Virginia that the Town Manager is authorized to execute the License Agreement with Lightower Fiber Networks II, LLC, for telecommunications facilities to pass through the Town so long as approved by the Town Attorney.

PASSED this _____ day of January, 2016.

Kelly Burk, Vice Mayor
Town of Leesburg

ATTEST:

Clerk of Council