

CITY OF LYNN, MASSACHUSETTS
LYNN CITY COUNCIL
2020-2021

Ward One Wayne A. Lozzi
Ward Two Richard B. Starbard
Ward Three Darren P. Cyr, President
Ward Four Richard C. Colucci
Ward Five Dianna M. Chakoutis
Ward Six Frederick W. Hogan
Ward Seven John M. Walsh, Jr.



At-Large Buzzy Barton, Vice President
At-Large Brian M. Field
At-Large Brian P. LaPierre
At-Large Hong L. Net

UTILITIES COMMITTEE AGENDA
TUESDAY, MAY 19, 2020

5:00 PM

120 min

Lynn City Council – Committee Meetings and Council Meeting

ID: 539-165-541

start

Copy invitation

edit

delete

Lynn City Council -- Subcommittee Meeting and Council Meetings
Tue, May 19, 2020 5:00 PM - 7:00 PM (EDT)

Please join my meeting from your computer, tablet or smartphone.

<https://global.gotomeeting.com/join/539165541>

You can also dial in using your phone.

United States: +1 (669) 224-3412

Access Code: 539-165-541

New to GoToMeeting? Get the app now and be ready when your first meeting starts:

<https://global.gotomeeting.com/install/539165541>

2020 MAY 15 P 12:35

OFFICE

TO BE SET DOWN FOR PUBLIC HEARINGS:

Petition of Extenet Systems for permission to construct a small cell wireless telecommunications facility to be attached to an existing utility pole located on a public way at the following locations:

451 Chestnut St.	388 Eastern Ave.	53 Wyman St.
31 Graves Ave.	62-64 Lafayette Park	10 Sidney Ave.
184 Allen Ave.	59 Tracy Ave.	
17 Beacon Hill Ave.	22 Livingston St.	
18 Hanover Circle	299 Chatham St.	
88 Loughton St.	189 Western Ave.	
95 Park St.	18-20 Etna Place	
13 Relay St.	65 Kirtland St.	
25 Winthrop St.	9 Heffernan Ave.	
16 Cedar St.	16 Amory St.	
96 New Park St.	11 Grant St.	
40 Norton St.	346 Chatham St.	
51 Orchard St.	27 New Park St.	
30 Witt St.	316 Eastern Ave.	
21-25 Ames St.	21 Trinity Ave.	
293 Curwin Circle	9 Wardwell Place	
98 Myrtle St.	139 Empire St.	
62-64 Raddin Grove	84 Marianna St.	
24 Revere Ave.	13 Essex St.	
55 Walnut Park	68 High Rock St.	

Petition of National Grid at Silsbee St. to install approximately 80 feet of PVC conduit to the property of 113 Broad St.

Petition of National Grid to relocate 1 JO Pole at intersection of Rollin Ave & Rollin Terrace.

Petition of National Grid to install 1 JO Pole at intersection of Houston St & Houston Pl.

Petition of National Grid to relocate 1 JO Pole at intersection of Geneva Ave & Houston Pl.

Petition of National Grid to install 1 JO Pole at intersection of Fair Oaks Ave & Kernwood Drive.

Petition of National Grid to install 2 SO Poles at intersection of Hanson St & Lynnway.

Petition of Comcast to install a new underground conduit to provide service to 38 Andrew Street.

Petition of Comcast to install a new underground conduit to provide service to 34 Munroe Street.

Discussion re: Access Agreement – City of Lynn / ExteNet
ACCESS AGREEMENT

THIS ACCESS AGREEMENT (the "Agreement") is made and entered into this _____ day of _____, 2020, by and between ExteNet Systems, Inc., a Delaware corporation, with its principal office located at: 3030 Warrenville Rd., Ste 340, Lisle, Illinois 60532 ("ExteNet"), and TI-IF York Development, L.P (the "Owner"), which owns the land (the "Land") and building(s) (the "Building") located at 2801 E. Market St., York, PA. 17402 County of York, Commonwealth of Pennsylvania, and having Parcel Number 46000JJ00060000000 (together, the "Property"),

1. UNDERGROUND CONSTRUCTION AUTHORIZATION. ExteNet has placed communications antennae and related equipment upon a wood utility pole depicted as York-00012 of the attached Exhibit A and requires ingress and egress for access and utilities to and from the York-0012 pole to the pole identified as the "MetEd pole 30218-23786 or its respective replacement pole for the purpose of placing fiber, cable, utility and other lines necessary for the operation of ExteNet's wireless communication services. Owner hereby grants to ExteNet a non-exclusive easement and license to install, construct, replace, maintain, repair, operate, and remove, at ExteNet's sole option and expense, certain underground wires, cables, conduit in the area between the poles and other appurtenant fixtures and equipment (the "Facilities"), over, under, across and along the Property as depicted in Exhibit A, and as may be necessary or useful in distributing ExteNet's communications services (the "Services"). While there is no intention for ExteNet to disrupt the asphalt parking lot, any damage to the asphalt surface of the parking lot caused by ExteNet, will be properly repaired by ExteNet using only hot asphalt. Cold patch shall not be permitted. ExteNet. Owner shall provide ExteNet with access to the Property at all times for the foregoing purposes.

2. OWNER TO APPROVE PLANS. Owner acknowledges and approves ExteNet's placement of the Facilities over under and through the Property as depicted in Exhibit A. As to any material modifications or changes to the Facilities in the future, ExteNet shall prepare and deliver to Owner plans and specifications prior to any construction or material modification (the "Plans") of the Facilities. No work for any material modifications or changes to the Property except as identified in Exhibit A, shall commence until Owner has approved Plans, which approval will not be unreasonably withheld, conditioned, or delayed. Upon approval of the Plans or as it relates to the placement of the Facilities identified in Exhibit A attached hereto, such construction shall be performed in a manner consistent with generally accepted construction standards. ExteNet shall coordinate with Owner's property manager and shall follow Owner's rules and regulations in connection with the installation of the Facilities, provided that; (i) such rules and regulations do not materially alter the Services provided by ExteNet; and (ii) do not alter ExteNet's rights and obligations hereunder.

3. RESPONSIBILITY TO CONTACT PUBLIC UTILITIES. ExteNet and/or its contractors will contact and coordinate with local agencies to physically mark the location of all public utility lines (including, but not limited to, water, electric, phone, gas and sewer lines) that are located in areas in which ExteNet intends to install the Facilities. ExteNet shall be responsible for any damage to public utility lines that are located along the routes or in the location in which ExteNet installs its Facilities that were clearly and accurately located and marked, to the extent such damage arises from the installation activities of ExteNet. It is understood that the Property Owner has not and will not consent to ExteNet cutting or damaging any public utility lines whether such lines are clearly and accurately located and marked or not.

4. RESPONSIBILITY TO MARK PRIVATE UNDERGROUND LINES. ExteNet acknowledges and agrees that Property Owner may have private underground lines. ExteNet is required to use its best efforts to verify and clearly mark, to the best of its knowledge, using a qualified contractor approved by Owner, which costs for said contractor shall be paid for by ExteNet, any and all buried, private lines, including, but not limited to, irrigation lines, irrigation heads, drains, cables, pipes and wires (collectively "Private Lines"). After all aforesaid locating and marking has been performed by Property Owner, ExteNet shall thereafter be responsible for any damage to any cut or damaged Private Lines whether located and marked or not that are located along the routes or in the location in which ExteNet installs any

Facilities to the extent caused by ExteNet's installation of its Facilities, and shall repair the same immediately.

5. RESPONSIBILITY FOR FACILITIES. ExteNet shall comply with all applicable laws. ExteNet shall keep the Facilities in good order and repair and shall promptly repair any damage caused by ExteNet, other than ordinary wear and tear. The Facilities shall belong to ExteNet, shall be there at the sole risk of ExteNet and Owner shall not be liable for damage thereto or loss thereof, except in the event of Owner's negligence or willful misconduct. ExteNet shall be responsible for, and shall also indemnify, hold harmless and defend Owner against, the satisfaction or payment of any liens for any provider of work, labor, material or services claiming by, through or under ExteNet. Prior to installation of the Facilities, and thereafter upon Owner's request at the renewal of required policies, ExteNet shall provide a certificate of insurance to Owner, naming Owner as an additional insured.

6. REMOVAL OF FACILITIES. At the expiration or earlier termination of this Agreement, ExteNet shall not be required to remove any of the Facilities located underground, and to the extent that ExteNet does remove any of its Facilities, ExteNet shall repair all damage caused by such removal. Any property not so removed within ninety (90) days after the expiration of this Agreement shall become the property of the Owner.

7. TERM. This Agreement shall have an initial term of ten (10) years (the "Initial Term"), commencing on the date set forth above. This Agreement shall automatically renew for two (2) successive periods of five (5) years each (the "Renewal Terms"), unless ExteNet shall provide the Owner with at least ninety (90) days' notice of its intention not to renew at the end of the then-current term (the "Initial Term" and the "Renewal Terms" are collectively referred to as the "Term").

8. TERMINATION OF AGREEMENT. Either party may, upon at least one hundred twenty (120) days prior written notice to the other, terminate this Agreement at any time without liability to the other, except with respect to liabilities that have accrued through the date of termination, provided ExteNet is not providing Services.

9. RELOCATION. In the event Owner requests ExteNet relocate the Facilities, ExteNet shall relocate the Facilities to a new comparable location, mutually agreeable to Owner and ExteNet, at the sole expense of Owner, within thirty (30) days of receiving such request, so long as such relocation is feasible and does not interfere with the Services provided by ExteNet or increase the cost to ExteNet of providing the Services. Owner shall allow ExteNet to perform a standard cutover procedure, if required by said relocation, which will ensure that the relocated Facilities is operational prior to discontinuing service from the original service location. Once the Facilities are relocated and operational, Owner and ExteNet shall amend the Plans (Exhibit A of this Agreement) to reflect the new location of the Facilities.

10. DEFAULT. In the event either party defaults in the performance of any of the material terms of this Agreement, the non-defaulting party shall give the defaulting party written notice specifying the nature of such default. The defaulting party shall have thirty (30) days to cure the default, unless such default is of a nature that it cannot be completely cured within thirty (30) days, if a cure is not commenced within such time and thereafter diligently pursued to completion, the non-defaulting party may terminate this Agreement and may pursue all other remedies available to it at law and/or equity.

11. INDEMNIFICATION/HOLD HARMLESS. ExteNet shall indemnify, hold harmless and defend Owner, partners, officers, directors, tenants, agents and employees from and against any and all claims, actions, damages, liabilities and expenses, including reasonable attorney's fees, arising from or out of installation, operation, maintenance, or removal by ExteNet of the Facilities, except to the extent caused by the negligence or willful misconduct of Owner, its employees, agents or contractors. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY LOST PROFITS, SPECIAL INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGE.

12. INSURANCE. Prior to commencing the Work, ExteNet shall procure, and thereafter maintain, at its own expense, until final acceptance of the Work or later as required by the terms of this Agreement insurance coverage required by this Agreement. At a minimum, the types of insurance and minimum policy limits specified shall be maintained in a form and from insurers acceptable to Owner as set forth below. All insurers shall have at least an A- (excellent) rating by A.M. Best and be qualified to do business in the state where the project is located.

This insurance will provide a defense and indemnify the Owner, but only with respect to liability for bodily injury, property damage and personal and advertising injury caused in whole or in part by the Contractor's acts or omissions or the acts or omissions of those acting on the Contractor's behalf.

Proof of this insurance shall be provided to the Owner before the Work commences, as set forth below. To the extent that ExteNet subcontracts with any other entity or individual to perform all or part of the Work, ExteNet shall require the Subcontractors to furnish evidence of equivalent insurance coverage, in all respects, terms and conditions as set forth herein, prior to the commencement of work by the Subcontractor. In no event shall the failure to provide this proof, prior to the commencement of the Work, be deemed a waiver by ExteNet of Subcontractor's or the Sub-Subcontractor's insurance obligations set forth herein.

In the event that the insurance company(ies) issuing the policy(ies) required by this exhibit deny coverage to the Owner, ExteNet or the Subcontractor will, upon demand by the Owner, defend and indemnify the Owner at ExteNet's or Subcontractor's expense.

Commercial General Liability Insurance
\$1,000,000 Each Occurrence Limit (Bodily Injury and Property Damage) \$2,000,000 General
Aggregate per Project
\$2,000,000 Products & Completed Operations Aggregate
\$1,000,000 Personal and Advertising Injury Limit

Business or Commercial Automobile Liability Insurance
\$1,000,000 combined single limit per accident

Workers' Compensation and Employers' Liability Insurance
\$1,000,000 Each Accident
\$1,000,000 Each Employee for Injury by Disease
\$1,000,000 Aggregate for Injury by Disease

Excess or Umbrella Liability
\$1,000,000 occurrence/aggregate (extending over GL, Auto, Employers Liability limits listed above)

Professional Liability
\$1,000,000 occurrence/aggregate

Crime
\$1,000,000 Including "Client Property" coverage

The Owner, TKG Management, Inc. and Western Skies Management, Inc. along with their respective officers, agents and employees, shall be named as additional insureds for Ongoing Operations and Products/Completed Operations on ExteNet's and any Subcontractor's Commercial General Liability Policy, which must be primary and noncontributory with respect to the additional insureds. ExteNet shall continue to carry Completed Operations Liability Insurance for at least three (3) years after either ninety (90) days following Substantial Completion of the Work.

ExteNet's professional liability shall cover all services performed for Owner and include Owner as indemnified Party.

Crime coverage shall include "client property" coverage for loss or damage to money, securities and other property sustained by Owner resulting directly from theft committed by Contractor's employee, acting alone or in collusion with other persons,

It is expressly understood by the parties to this Contract that it is the intent of the Parties that any insurance obtained by the Owner is deemed excess, non-contributory and not co-primary in relation to the coverage(s) procured by ExteNet, the Subcontractor or any of their respective consultants, officers, agents, subcontractors, employees or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of the aforementioned may be liable by operation of statute, government regulation or applicable case law.

To the fullest extent permitted by applicable state law, a Waiver of Subrogation Clause shall be added to the General Liability, Automobile and Workers Compensation policies in favor of Owner, and this clause shall apply to the Owner's officers, agents and employees, with respect to all Projects during the policy term.

Prior to commencement of Work, ExteNet shall submit a Certificate of Insurance in favor of Owner. The Certificate shall provide for thirty (30) days' notice to Owner for cancellation or any change in coverage. Copies of insurance policies shall promptly be made available to the Owner upon request.

13. SAFETY. The Owner makes no representation with respect to the physical conditions or safety of the Property. The Contractor shall, at its own expense, preserve and protect from injury its employees engaged in the performance of the Work and all property and persons which may be affected by its operations in performing the Work. The prevention of accidents to workers engaged in the Work and others affected by the Work is the responsibility of the Contractor and Contractor shall comply with all federal, state, labor and local laws, regulations and codes concerning safety as shall be applicable to the Work and to the safety standards established by Owner during the progress of the Work. Contractor shall indemnify, defend and hold harmless Owner and their respective officers, directors, agents and employees from any costs, expenses or liability (including attorneys' fees, fines or penalties) arising out of the Contractor's failure to comply with the aforesaid laws, regulations and codes.

14. NOTICES. All notices, demand, requests or other communications given under this Agreement shall be in writing and be given by, certified mail, return receipt requested, or nationally recognized overnight courier service to the address set forth below or as may subsequently in writing be requested.

If to Owner: THF Harrisonburg Crossing, L.L.C.
211 N. Stadium Blvd. Suite 201
Columbia, MO. 65203
Attn.: Legal Department

If to ExteNet:

ExteNet Systems, Inc.
Attention: Chief Financial Officer
3030 Warrenville Rd.
Ste. 340

Lisle, IL 60532

With a copy to (same address):

Attention: General Counsel

And a copy emailed to: NOTICE@extenetsystems.com

15. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, promises and understandings, whether oral or written. This Agreement shall not be modified, amended, supplemented or revised, except by a written document signed by both parties.

16. AUTHORITY. Each party represents to the other that the person signing on its behalf has the legal right and authority to execute, enter into and bind such party to the commitments and obligations set forth herein.

17. BINDING EFFECT. This Agreement shall be binding on and inure to the benefit of the parties and their respective successors and assigns.

18. VENUE. This Agreement shall be construed and enforced in accordance with the laws of the State in which the Property is located.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives as of the date first written above.

OWNER:
THF York Development, L.P.

By: _____
Otto Maly
President

Dated: _____

STATE OF _____

COUNTY OF _____

BE IT REMEMBERED, that on this _____ day of _____, 2020, before me appeared _____ of York Development, L.P., to me known to be the person described in and who executed as such _____ the foregoing instrument on behalf of said entity, and duly acknowledged the execution of the same to be the act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Notary Public in and for said County and State

Print Name: _____

My Commission Expires:

[SEAL] _____

EXTENET:
ExteNet Systems, Inc.

By: _____
Name: Richard Coyle

Title: Executive Vice President & COO

Dated:

STATE OF ILLINOIS)
) ss.
COUNTY OF DUPAGE)

BE IT REMEMBERED, that on this _____ day of _____, 2020, before me appeared Richard Coyle, Executive Vice President and COO of ExteNet Systems, Inc., to me known to be the person described in and who executed as such Executive Vice President and COO the foregoing instrument on behalf of said entity, and duly acknowledged the execution of the same to be the act and deed of said entity.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on the day and year last above written.

Notary Public in and for said County and State

Print Name: _____

My Commission Expires:

[SEAL]

EXHIBIT "A"

The Plans

