

IX. ADMINISTRATION REPORTS

Mayor Woodruff

Township Administrator – John Bussiculo

X. 2015 MUNICIPAL BUDGET ADOPTION

Public Hearing and Final Adoption on 2015 Municipal Budget as Introduced on April 21, 2015.

- a. Adoption or Resolution to Read Budget by Title.**
- b. Budget Hearing**

XI. APPROVAL OF MINUTES – Public Meeting – April 21, 2015

XII. HEARING ON AGENDA ITEMS ONLY – 3 minutes per resident

Comments are welcome during the public comment period during this meeting on any agenda item. However, if an ordinance is listed for its own public hearing on the agenda, please hold your comments for that particular public hearing. To make your comment, the speaker must come forward to the microphone and state his/her name and address for the record. Each speaker is limited to 3 minutes. The (Mayor/Council President) will keep time. Please promptly yield on the floor when time is called and return to your seat. Your cooperation in adherence to these rules of order will ensure an orderly and respectful meeting.

XIII. PUBLIC HEARING AND FINAL ADOPTION OF ORDINANCE INTRODUCED ON June 9, 2015.

“AN ORDINANCE OF THE TOWNSHIP OF BERKELEY HEIGHTS, COUNTY OF UNION, STATE OF NEW JERSEY, AMENDING, REVISING AND SUPPLEMENTING CHAPTER 2.100 ENTITLED “POLICE DIVISION” OF TITLE 2 ENTITLED “ADMINISTRATION AND PERSONNEL” OF THE CODE OF THE TOWNSHIP OF BERKELEY HEIGHTS TO CREATE NEW SECTION 2.100.100 TO BE ENTITLED “OUTSIDE EMPLOYMENT OF OFF-DUTY POLICE OFFICERS.”

XIV .NEW BUSINESS- RESOLUTIONS

OFFICIAL ACTION WILL BE TAKEN ON THE FOLLOWING:

A. RESOLUTIONS

1. Resolution approving Bill List dated June 23, 2015 in the amount of \$404,692.09.
2. Resolution awarding bid to New Jersey Analytical Laboratories, 380 Scotch Road, Building 2, Suite 1B, Ewing, NJ, for Laboratory Services for the Water Pollution Control Plant in the amount not to exceed \$15,023.00.
3. Resolution authorizing a contract with Mary M. Moody for professional planning services for the administration of an affordable housing rehabilitation program.

4. Resolution authorizing an agreement with the County of Union to modify the Cooperative agreement dated June 2011, for conducting certain community development activities.
5. Resolution authorizing renewal applications for 2015/2016 Alcoholic Beverage Licenses.

6. CONSENT AGENDA – All matters listed under Consent Agenda are considered routine by the Township Council and will be enacted upon by one motion; there will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.

- a. Resolution authorizing a block party on June 28, 2015 from 2:00 – 8:00 p.m. at the corner of Countryside Drive and Crest Drive.
- b. Resolution authorizing the issuance of a Tax Sale Certificate #14-00005, in the amount of \$7,895.95 to John Venutolo for Block# 3303, Lot #14.02 located at 13 3 Lillian Court, Berkeley Heights, N.J.

XV. INTRODUCTION OF ORDINANCES:

Public Hearing and Final Adoption scheduled for July 7, 2015:

”AN ORDINANCE OF THE TOWNSHIP OF BERKELEY HEIGHTS, COUNTY OF UNION STATE OF NEW JERSEY, CONSENTING TO THE PETITION OF LIGHTOWER FIBER NETWORKS TO UTILIZE THE TOWNSHIP’S RIGHTS-OF-WAY WITHIN THE TOWNSHIP OF BERKELEY HEIGHTS, AND AUTHORIZING THE AGREEMENT SETTING FORTH THE TERMS AND CONDITIONS OF SAME.”

Explanation: This Ordinance consents to the petition of Lightower Fiber Networks to utilize the Township’s rights-of-way for the purpose of operating a telecommunications network, and authorizing the Agreement setting forth the terms and conditions of same.)

XVI. CITIZENS HEARING - 3 minutes per resident

Comments are welcome during the public comment period during this meeting on any matter over which the Township has jurisdiction. To make your comment, the speaker must come forward to the microphone and state his/her name and address for the record. Each speaker is limited to 3 minutes. The Mayor and/or Council will keep time. Please promptly yield the floor when time is called and return to your seat. Your cooperation in adherence to these rules of order will ensure an orderly and respectful meeting.

XVII. ADJOURNMENT

**Ana Minkoff
Township Clerk**

TOWNSHIP OF BERKELEY HEIGHTS
RESOLUTION TO READ BUDGET BY TITLE

WHEREAS, N.J.S.A. 40A:4-8 as amended provides that the Budget as advertised shall be read in full at the public hearing, or that it may be read by its title only if:

1. At least one week prior to the date of the hearing a complete copy of the approved Budget:
 - (a) shall be made available for public inspection in the free public library, if any, of the municipality and in the free county libraries or regional libraries located in the municipality or, if no county libraries or regional libraries are located in the municipality, the county or regional library of the county in which the municipality is located, and the public officer delegated responsibility for delivering copies of the approved budget to such library shall forward to the governing body an attestation that each such delivery was made, and
 - (b) copies are made available to each person requesting the same, during said week and during the public hearing.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Council of the Township of Berkeley Heights that it is hereby declared that the conditions of N.J.S.A. 40A:4-8, as amended set forth in subsections 1(a) and 1(b), have been met and therefore the Budget for 2015 shall be read by title only.

ATTEST:

Ana Minkoff
Township Clerk

APPROVED June 23, 2015.

EXPLANATORY STATEMENT: This Ordinance amends the requirements and procedures to retain the services of off-duty police officers of the Township of Berkeley Heights.

TOWNSHIP OF BERKELEY HEIGHTS, UNION COUNTY

ORDINANCE No. _____

An Ordinance of the Township of Berkeley Heights, County of Union, State of New Jersey, Amending, Revising and Supplementing Chapter 2.100 entitled "Police Division" of Title 2 entitled "Administration and Personnel" of *The Code of the Township of Berkeley Heights* to create new Section 2.100.100 to be entitled "Outside Employment of Off-Duty Police Officers."

BE IT ORDAINED by the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, as follows:

Section 1. Township Ordinance No. 13-03 is hereby repealed and replaced in its entirety by the terms of this Ordinance and the new Sections of the Township Code established herein.

Section 2. Chapter 2.100 entitled "Police Division" of Title 2 entitled "Administration and Personnel" of *The Code of the Township of Berkeley Heights* is hereby supplemented and amended to create and establish a new Section 2.100.100 to be entitled "Outside Employment of Off-Duty Police Officers" to read as follows:

2.100.100 – Outside Employment of Off-Duty Police Officers.

- A. Police officers may work for outside private persons or entities on their off-duty hours provided that the Chief of Police determines, in his discretion, that there are sufficient police personnel available, that the outside employment assignment will not interfere with the needs of the Township, and that sufficient funds have been deposited in an escrow account with the Township Chief Financial Officer to cover the anticipated costs of such off-duty assignments.
- B. Establishment of an Escrow Account; Application and Advance Payment.
 1. The Township shall establish an escrow account dedicated to the payment of off-duty police officers for outside employment by private persons or entities.

2. Any prospective person or entity shall apply to the Chief of Police, requesting off-duty police services. The application shall include the following:
 - i. The date(s) that the off-duty police services and police vehicle will be needed.
 - ii. An estimate of the number of hours the person or entity anticipates using the off-duty police officer(s), and, if appropriate, a police vehicle(s).
 - iii. An executed services agreement in a form satisfactory to the Township Attorney.
 - iv. A check or cash to cover the cost of off-duty police services and use of any Township vehicle, based on the estimated number of hours set forth in the application, which shall be submitted to the Township prior to the start of the off-duty employment.
3. Prospective contractors who continuously request off-duty police service, or anticipate a need for periodic or long-term off-duty police services, may request to deposit monies with the Township on an ongoing basis to be depleted as such work is performed. Funds on deposit shall not earn interest.
4. In the event that the person's or entity's needs exceed the estimated sum in the escrow account, the Chief of Police or his designee shall immediately notify the person or entity that the funds in the escrow account are insufficient to pay for continued off-duty police services. In such event, the person or entity shall either replenish the escrow account with a check or cash sufficient to pay for continued services, or the Chief of Police shall immediately terminate the off-duty police services.
5. If the person's or entity's estimated costs exceed the actual costs incurred, then the Township shall promptly refund the remainder of the escrow account that was not used.
6. Upon written request with support therefor, the Township Council may waive the escrow deposit requirement at the Council's sole discretion.

C. Rates for Off-Duty Police Services.

1. Police officer - The hourly rate of pay for the provision of off-duty police services shall be \$85.00 per hour per officer, plus an administrative fee of \$5.00 per hour per officer. For large scale events (events involving 4 or more officers), shall require a supervisor, whose hourly rate shall be \$90.00 per hour. There shall be a minimum of four (4) hours charged for all off-duty police services provided. The Chief may also deem a Supervisor necessary.

2. For all off-duty police services provided that require services over a period of eight (8) hours per day, the hourly rate of pay for each hour exceeding 8 hours shall be \$100.00 per hour per officer (including supervisors).
3. Use of Borough Police Vehicle - \$50.00 per day.
4. Township events – The hourly rate of pay for the provision of off-duty police services for Township sponsored events shall be \$60.00 per hour per officer; and, for large scale events involving 4 or more officers the supervisor’s hourly rate shall be \$65.00 per hour. There shall be no four (4) hour minimum for Township sponsored events.
5. Emergency Rates. For the provision of off-duty police services in an emergency situation (as set forth in Section 2.100.100D below), as well as all off-duty police services required between the hours of 6:00 p.m. and 6:00 a.m. where less than 24-hour notice was provided, or on State and Federal holidays, the hourly rate of pay shall be \$100.00 per hour per officer (including supervisors).
6. Upon written request with support therefor, the Township Council may waive, at the Councils’ sole discretion, any applicable administrative and vehicle fee set forth herein.

D. Cancellation. The Police Department must be notified at least two (2) hours prior to the set start time for the off-duty police services. If the services are cancelled with less than 2-hour notice then a minimum of Four (4) hours will be charged to the escrow account pursuant to the rates set forth in Section 2.100.100(C). C).

E. Emergency Situation. In event of an emergency situation, where the written application and payment for off-duty police services cannot be made prior to the date such service is required, the application and payment for such service must be made by the responsible person or entity to the Township by the end of the following business day after the emergency situation has been resolved or concluded. If payment is not received by the Township by the end of the following business day, the responsible person or entity shall be charged a late fee of fifteen (15%) percent of the total amount due, which late fee will be assessed for every day such payment is late. For the purposes of this Section, “emergency situation” shall mean any situation, including any construction, maintenance or repair required to be performed as a result of an unforeseen event or act of God, whereby the private person or entity had no prior notice of the condition, and off-duty police services are required for the public safety and welfare, which determination is left in the sole discretion of the Chief of Police.

Section 3. The provisions of this Ordinance shall be severable. In the event that any portion of this Ordinance is found to be invalid for any reason by any Court of competent

jurisdiction, such judgment shall be limited in its effect only to that the portion of the Ordinance actually adjudged invalid and shall not be deemed to affect the operation of any other portion thereof, which shall remain in full force and effect.

Section 4. All other Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

Section 5. This Ordinance shall be presented to the Mayor for his approval and signature, which approval shall be granted or denied within ten (10) days of receipt of same, pursuant to N.J.S.A. 40:69A-149.7. If the Mayor fails to return this Ordinance with either his approval or objection to same within ten (10) days after it has been presented to him, then this Ordinance shall be deemed approved.

Section 6. This Ordinance shall not take effect until after final passage, approval by the Mayor pursuant to N.J.S.A. 40:69A-149.7, and publication in accordance with all applicable laws and statutes.

INTRODUCED the _____ day of _____, 2015.

ADOPTED the _____ day of _____, 2015.

Robert Woodruff, Mayor

ATTEST:

Ana Minkoff, Township Clerk

**NOTICE OF
INTRODUCTION**

Ordinance -2015

“An Ordinance of the Township of Berkeley Heights, County of Union, State of New Jersey, Amending, Revising and Supplementing Chapter 2.100 entitled “Police Division” of Title 2 entitled “Administration and Personnel” of *The Code of the Township of Berkeley Heights* to create new Section 2.100.100 to be entitled “Outside Employment of Off-Duty Police Officers.”

I, Ana Minkoff, Township Clerk of the Township of Berkeley Heights, do hereby certify that the foregoing Ordinance was introduced on First Reading at a meeting of the Township Council of the Township of Berkeley Heights, County of Union and State of New Jersey, on **June 9, 2015** and that said Ordinance shall be submitted for consideration and final passage at the Public Hearing to be held on **June 23, 2015** at **7:00** p.m. or as soon thereafter, as practical, same can be considered, at the Municipal Building, 29 Park Avenue, Berkeley Heights, NJ, at which time and place all persons interested therein or affected thereby will be given an opportunity to be heard concerning the same. During the week prior to and up to the time of Public Hearing, copies of said Ordinance will be available in the Municipal Clerk’s office in said Municipal Building, to the members of the general public who shall request the same.

**Ana Minkoff
Township Clerk**

ROLL CALL	AYE	NAY	ABSTAIN	ABSENT
DELIA	✓			
FAECHER				✓
HALL				✓
KINGSLEY	✓			
PASTORE	✓			
PIRONE				✓
TIE:				
IA FOR WOODRUFF				

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

NOTICE OF FINAL ADOPTION

**PUBLIC HEARING AND FINAL ADOPTION OF ORDINANCE
INTRODUCED ON JUNE 9, 2015:**

“An Ordinance of the Township of Berkeley Heights, County of Union, State of New Jersey, Amending, Revising and Supplementing Chapter 2.100 entitled “Police Division” of Title 2 entitled “Administration and Personnel” of *The Code of the Township of Berkeley Heights* to create new Section 2.100.100 to be entitled “Outside Employment of Off-Duty Police Officers.”

I, Ana Minkoff, Township Clerk of the Township of Berkeley Heights, County of Union, State of New Jersey, hereby certify that the above entitled Ordinance was adopted on final Passage by the Township Council of the Township of Berkeley Heights at its meeting held on June 23, 2015.

**Ana Minkoff,
Township Clerk
Township of Berkeley**

Agenda Item # 1

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

BE AND IT IS HEREBY RESOLVED by the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, in meeting assembled, authorizes and direct the Township Treasurer to make payment of vouchers listed on the Bill List dated 06/23/15, in the amount of \$404,692.09 such vouchers having been received by the Township Council, having been satisfied that appropriate procedure has been followed in the processing of said vouchers.

APPROVED this 23rd day of June, 2015.

ATTEST:

Ana Minkoff
Township Clerk

#2

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

WHEREAS, the Township accepted bids on June 9, 2015 for the provision of Laboratory Services Contract for the Water Pollution Control Plant for 2015; and

WHEREAS, by letter dated June 17, 2015 the Superintendent of Wastewater has recommended that the lowest responsible bid be awarded to New Jersey Analytical Laboratories, 380 Scotch Road, Building 2, suite 1B, Ewing, NJ 08628, be accepted and the Township Council concurs.

NOW, THEREFORE BE IT RESOLVED by the Township Council, Township of Berkeley Heights, County of Union, that the appropriate municipal officials are authorized to execute a (1)-year contract with New Jersey Analytical Laboratories., for the provision of Laboratory in an amount not to exceed \$15,023.00 per year for a total contract amount of \$15,023.00 and the Treasurer is authorized to pay properly completed vouchers up to such amount. The Township Clerk shall advertise the award of this contract in accordance with law.

BE IT FURTHER RESOLVED that a copy of this Resolution is to be forwarded to the Director of Wastewater, Township Treasurer, and New Jersey Analytical Laboratories.

BE IT FURTHER RESOLVED that this resolution shall take effect upon publication and pursuant to law.

APPROVED this 23rd day of June, 2015.

ATTEST:

**Ana Minkoff
Township Clerk**

#3

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY. NEW JERSEY**

RESOLUTION

WHEREAS, there exists a need for the professional planning services for the administration of an affordable housing rehabilitation program for the Township of Berkeley Heights; and

WHEREAS, the Local Public Contracts Law N.J.S.A. 40A:11-1 *et seq.*, more specifically N.J.S.A. 40A:11-5 allows for the awarding of a contract for "professional services" without public advertising for bids; and

WHEREAS, Mary M. Moody, N.J.P.P., submitted an undated proposal to the Township to provide professional planning services for the administration of an affordable housing rehabilitation program for the Township (the "Proposal"); and

WHEREAS, prior to the execution of a contract, Ms. Moody will have completed and submitted a Business Entity Disclosure Certification which certifies that she has not made any reportable contributions to a political or candidate committee in the Mayor or Township Council of the Township of Berkeley Heights in the previous year, and that the contract will prohibit her from making any reportable contributions through the term of the contract, pursuant to N.J.S.A. 19:44A-20.4, *et seq.*; and

WHEREAS, this was not awarded through a "fair and open process" pursuant to N.J.S.A. 19:44A-20.4, *et seq.*; and

WHEREAS, the Township Council finds it to be in the best interest of the Township to enter into a Professional Services Agreement with Mary M. Moody for the professional planning services for the administration of an affordable housing rehabilitation program for the Township.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, as follows:

1. The Mayor and Township Clerk are hereby authorized and directed to execute the attached Professional Services Agreement with Mary M. Moody, AICP, PP, for the professional planning services for the administration of an affordable housing rehabilitation program for the Township at an hourly rates of \$60.00 per hour as set forth in the Proposal.
2. This Contract is awarded without competitive bidding as a "professional service" under the provisions of the Local Public Contracts Law, more specifically N.J.S.A. 40A:11-5.
3. The Business Disclosure Entity Certification shall be placed on file with this Resolution.

4. A notice of this action shall be printed in the official newspapers required by law within ten (10) days of its passage.

BE IT FURTHER RESOLVED that this Resolution shall take effect pursuant to law.

APPROVED this 23rd day of June, 2015.

ATTEST:

Ana Minkoff
Township Clerk

#4

SAMPLE RESOLUTION TO MODIFY EXISTING COOPERATIVE AGREEMENT

(Annual Shared Services Agreement - Exhibit A)

A RESOLUTION AUTHORIZING THE MAYOR AND MUNICIPAL CLERK OF THE MUNICIPALITY OF BERKELEY HEIGHTS TO EXECUTE AN AGREEMENT WITH THE COUNTY OF UNION TO MODIFY THE COOPERATIVE AGREEMENT DATED JUNE 2011

WHEREAS, certain Federal funds are potentially available to the County of Union under Title I of the Housing and Community Development Block Grant Act of 1974, as amended, commonly known as the Community Development Block Grant Program; and

WHEREAS, certain Federal funds are potentially available to the County of Union under Title II of the National Affordable Housing Act of 1990, commonly known as the HOME Investment Partnership program; and

WHEREAS, substantial Federal funds provided through subtitle B of Title IV of the McKinney-Vento Homeless Assistance Act commonly known as the Emergency Solutions Grants program (ESG) are allocated to prevent homelessness and to enable homeless individuals and families to move toward independent living; and

WHEREAS, it is necessary to amend an existing Cooperative Agreement for the County of Union and its people to benefit from this program; and

WHEREAS, it is in the best interest of the Municipality of Berkeley Heights and the County of Union in cooperation with each other to enter into a modification of the existing Cooperative Agreement pursuant to N.J.S.A. 40A:65-1 et seq;

NOW THEREFORE, BE IT RESOLVED by the Mayor and Governing Body of the Municipality of Berkeley Heights that the agreement entitled **“COOPERATIVE AGREEMENT BETWEEN THE COUNTY OF UNION AND CERTAIN MUNICIPALITIES FOR CONDUCTING CERTAIN COMMUNITY DEVELOPMENT ACTIVITIES,”** dated June 2011, for the Purpose of Inserting a Description of Activities for Fiscal Year 2015-2016 of the Union County Community Development Block Grant program, the HOME Investment Partnership program, and the Emergency Shelter Grant program (ESG), a copy of which is attached hereto; be executed by the Mayor and Municipal Clerk in accordance with the provisions of law;

BE IT FURTHER RESOLVED that this resolution shall take effect immediately upon its adoption.

APPROVED this 23rd day of June, 2015.

ATTEST:

Ana Minkoff, Township Clerk

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

WHEREAS, renewal applications for 2015/2016 Alcoholic Beverage Licenses in proper form, together with the appropriate license fees, have been received from the following:

<u>PLENARY RETAIL CONSUMPTION LICENSES:</u>	<u>LICENSE NUMBER</u>
D. Heights, LLC t/a Delicious Heights 428 Springfield Avenue	#2001-33-005-007
Berkeley Plaza Caterers, Inc. 735 Springfield Avenue	# 2001-33-009-002
Druid Associates, LLC 279 Springfield Avenue	#2001-38-007-001
Nagoya Group LLC 538 Springfield Avenue	#2001-33-006-007
Giovanis Bistro LLC. – (INACTIVE) 449 Springfield Avenue	#2001-33-004-007

PLENARY RETAIL DISTRIBUTION LICENSES:

Sadal Wines, Inc. – (INACTIVE) t/a Kings Fine Wines & Spirits 434 Springfield Avenue	#2001-44-001-003
Berkeley Wine Co., LLC 500 Springfield Avenue	#2001-44-002-007

CLUB LICENSES:

Veterans of Foreign Wars Post #6259 15 Locust Avenue	#2001-31-013-001
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NOW, THEREFORE, BE IT RESOLVED by the Township Council of the Township of Berkeley Heights, County of Union, State of New Jersey, in meeting assembled, that the aforementioned Alcoholic Beverage Licenses are hereby renewed for a period of one (1) year expiring June 30, 2016.

Copies of this Resolution are to be forwarded to the Alcoholic Beverage Control Commission, the above licenses, Board of Health, Construction Code Official, Police Department, and Fire Department.

APPROVED this 23rd day of June, 2015.

ATTEST:

Ana Minkoff
Township Clerk

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

WHEREAS, by email dated June 11, 2015 a request was made by Alaina Kelly requesting permission from the Township Council to hold a neighborhood block party on the corner of Countryside Drive and Crest Drive which would involve erecting barricades on a public street; and

WHEREAS, the Township Council wishes to support the request for a neighborhood block party subject, however, to the special requirements of the appropriate local Township Officials.

NOW, THEREFORE BE IT RESOLVED by the Township Council of the Township of Berkeley Heights that it does hereby approve of a neighborhood block party for the corner of Countryside Drive & Crest Drive on Sunday, June 28, 2015 from 2:00 p.m. until 8:00 p.m.

BE IT FURTHER RESOLVED that said approval is subject and contingent upon the approval of the Berkeley Heights Police Department, Fire Department and other appropriate officials; and

BE IT FURTHER RESOLVED that a copy of this Resolution is to be forwarded to Alaina Kelly, Chief of Police, Fire Chief, and the Director of Public Works.

APPROVED this 23rd day of June, 2015.

ATTEST:

Ana Minkoff
Township Clerk

Agenda Item

6b

**TOWNSHIP OF BERKELEY HEIGHTS
UNION COUNTY, NEW JERSEY**

RESOLUTION

WHEREAS, the Township of Berkeley Heights issued Tax Sale Certificate #14-00005 to John Venutolo, for Block #3303, Lot #14.02, located at 3 Lillian Court, Berkeley Heights, NJ; and

WHEREAS, the owners of such property have now redeemed such certificate and the lien holder John Venutolo, is entitled to receive redemption in the amount of \$7,895.95 to be paid by or on behalf of the homeowner.

NOW, THEREFORE BE IT RESOLVED by the Township Council of the Township of Berkeley Heights, that the Treasurer is authorized to pay out the sum of \$7,895.95 in redemption of Tax Sale Certificate #14-00005 upon the submission of a properly completed voucher and surrender of such certificate.

Copies of this Resolution are to be forwarded to, John Venutolo, Tax Collector and the Treasurer.

APPROVED this 23rd day of June, 2015.

ATTEST:

Ana Minkoff
Township Clerk

XV

EXPLANATION: This Ordinance consents to the petition of Lightower Fiber Networks to utilize the Township's rights-of-way for the purpose of operating a telecommunications network, and authorizing the Agreement setting forth the terms and conditions of same.

TOWNSHIP OF BERKELEY HEIGHTS, UNION COUNTY

ORDINANCE No. _____

An Ordinance of the Township of Berkeley Heights, County of Union, State of New Jersey, Consenting to the Petition of Lightower Fiber Networks to Utilize the Township's Rights-of-Way Within the Township of Berkeley Heights, and Authorizing the Agreement Setting Forth the Terms and Conditions of Same.

WHEREAS, Lightower Fiber Networks ("Lightower") was approved by the New Jersey Board of Public Utilities to provide local exchange and interexchange telecommunications services throughout the State of New Jersey by Order of Approval in Docket No. TM08040212 on June 16, 2008, and intends to provide telecommunication services in accordance with these Orders and the rules and regulations of the Federal Communications Commission and the New Jersey Board of Public Utilities; and

WHEREAS, pursuant to such authority granted by the New Jersey Board of Public Utilities, Lightower may locate, place, attach, install, operate and maintain facilities within public rights-of-way for purposes of providing telecommunications services, with the consent of the Township; and

WHEREAS, Lightower proposes to place its telecommunication facilities aerially on existing utility poles or in underground conduit in the public rights-of-way within the Township for the purpose of owning, constructing, installing, operating, repairing and maintaining a telecommunications system; and

WHEREAS, N.J.S.A. 48:3-11, *et seq.*, authorizes a municipality to consent, by ordinance, to the petition of a public utility to use public rights-of-way for the operation of public utilities for a period not exceeding fifty years ; and

WHEREAS, in addition, N.J.S.A. 48:17-10, authorizes a municipality to permit telegraph or telephone companies to construct local telephone lines along public rights-of-way within that municipality; and

WHEREAS, the Township and Lighttower have negotiated an agreement entitled Right-of-Way Use Agreement which shall govern the terms and conditions of the Township's consent to utilize the public rights-of-way within the Township, a copy of which is attached hereto and made a part hereof, which Agreement has been reviewed and approved by the Township Attorney and the representatives of Lighttower; and

WHEREAS, the Mayor and Township Council of the Township of Berkeley Heights finds it to be in the best interest of the Township and its citizens to promote competition in the telecommunications market and to grant consent to Lighttower's petition to utilize the public rights-of-way within the Township for the purposes set forth herein pursuant to the terms and conditions set forth in the Right-of-Way Use Agreement.

NOW, THEREFORE, BE IT ORDAINED by the Mayor and Township Council of the Township of Berkeley Heights, in the County of Union and State of New Jersey as follows:

Section 1. The Township of Berkeley Heights hereby consents to the petition of Lighttower to utilize the public rights-of-way within the Township for the purposes of owning, constructing, installing, operating, repairing and maintaining a telecommunications system subject to the terms and conditions set forth herein and in the Right-of-Way Use Agreement, which Agreement is attached hereto and incorporated by referenced as if more fully set forth at length herein.

Section 2. The Mayor and Township Clerk are hereby authorized and directed to execute the attached Agreement with Lighttower to govern the terms and conditions of the consent to utilize the public rights-of-way.

Section 3. If any article, section, subsection, sentence, clause or phrase of this Ordinance is, for any reason, held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this Ordinance and they shall remain in full force and effect.

Section 4. In the event of any inconsistencies between the provisions of this Ordinance and any prior ordinance of the Township of Berkeley Heights, the provisions hereof shall be determined to govern. All other ordinances of the Township of Berkeley Heights are hereby ratified and confirmed, except where inconsistent with the terms hereof.

Section 5. This Ordinance shall not take effect until after final passage, approval by the Mayor pursuant to N.J.S.A. 40:69A-149.7, and publication in accordance with all applicable laws and statutes.

INTRODUCED the _____ day of _____, 2015.

ADOPTED the _____ day of _____, 2015.

Robert Woodruff, Mayor

ATTEST:

Ana Minkoff, Township Clerk

**NOTICE OF
INTRODUCTION**

Ordinance -2015

“An Ordinance of the Township of Berkeley Heights, County of Union, State of New Jersey, Consenting to the Petition of Lighttower Fiber Networks to Utilize the Township’s Rights-of-Way Within the Township of Berkeley Heights, and Authorizing the Agreement Setting Forth the Terms and Conditions of Same.”

I, Ana Minkoff, Township Clerk of the Township of Berkeley Heights , do hereby certify that the foregoing Ordinance was introduced on First Reading at a meeting of the Township Council of the Township of Berkeley Heights, County of Union and State of New Jersey, on **June 23, 2015** and that said Ordinance shall be submitted for consideration and final passage at the Public Hearing to be held on **July 7, 2015** at **7:00** p.m. or as soon thereafter, as practical, same can be considered, at the Municipal Building, 29 Park Avenue, Berkeley Heights, NJ, at which time and place all persons interested therein or affected thereby will be given an opportunity to be heard concerning the same. During the week prior to and up to the time of Public Hearing, copies of said Ordinance will be available in the Municipal Clerk’s office in said Municipal Building, to the members of the general public who shall request the same.

**Ana Minkoff
Township Clerk**

RIGHT-OF-WAY USE AGREEMENT

THIS RIGHT-OF-WAY USE AGREEMENT ("Use Agreement") is dated June ____, 2015 (the "Effective Date"), and entered into by and between the TOWNSHIP OF BERKELEY HEIGHTS ("Municipality"), a New Jersey municipal corporation, having its address at 29 Park Avenue, Berkeley Heights, New Jersey 07922; and LIGHT TOWER FIBER LONG ISLAND, LLC d/b/a Lighttower Fiber Networks (referred to herein as "Lighttower") with offices located at 80 Central Street, Boxborough, MA 01719.

RECITALS

WHEREAS, Lighttower was approved by the New Jersey Board of Public Utilities to provide local exchange and interexchange telecommunications services throughout the State of New Jersey by Order of Approval in Docket No. TM08040212 on June 16, 2008, and intends to provide telecommunication services in accordance with these Orders and the rules and regulations of the Federal Communications Commission and the New Jersey Board of Public Utilities; and

WHEREAS, pursuant to such authority granted by the New Jersey Board of Public Utilities, Lighttower may locate, place, attach, install, operate and maintain facilities within public rights-of-way for purposes of providing telecommunications services; and

WHEREAS, Lighttower proposes to place its telecommunication facilities aerially on existing utility poles or in underground conduit in the public rights-of-way within the Municipality for the purpose of owning, constructing, installing, operating, repairing and maintaining a telecommunications system.

WHEREAS, it is in the best interests of the Municipality and its citizenry for the Municipality to grant consent to Lighttower to occupy said public rights-of-way within the Municipality for this purpose.

WHEREAS, the consent granted herein is for the non-exclusive use of the public rights-of-way within the Municipality for the purpose of owning, constructing, installing, operating, and maintaining a telecommunications system.

NOW THEREFORE, in consideration of the mutual covenants and obligations hereinafter set forth, the Municipality and Lighttower hereby agree to and with each other as follows:

Section 1: Definitions

- a. "BPU" is the New Jersey Board of Public Utilities.
- b. "Lighttower" is the grantee of rights under this Use Agreement and is known as Lighttower, their successors and assigns.
- c. "Municipality" is the grantor of rights under this Use Agreement and is known as the Township of Berkeley Heights, County of Union, State of New Jersey.
- d. "Public Utility" means any public utility defined in N.J.S.A. 48:2-13.
- e. "Public Rights-of-Way" means the space in, upon, above, along, across, over, and through any public land, road, street or highway of the Municipality, including lands with public utility facilities as the same now or hereafter may exist, that are under the jurisdiction of the Municipality. This term shall not include county, state, or federal rights-of-way or any property owned by any person or agency other than the Municipality, except as provided by applicable Laws or pursuant to an agreement between the Municipality and any such person or agency.
- f. "Utility Pole" means, in addition to its commonly accepted meaning, any wires or cable connected thereto and any replacement thereof which are similar in construction and use.

Section 2: Grant of Consent.

The Municipality hereby grants Lighttower its municipal consent for the non-exclusive use of the Public Rights-of-Way within the Municipality for the purpose of owning, constructing, installing, operating, and maintaining a telecommunications system.

Section 3: Public Purpose.

It is deemed to be in the best interests of the Municipality and its citizenry, particularly including commercial and industrial citizens, for the Municipality to grant consent to Lightower to occupy said Public Rights-of-Way within the Municipality for this purpose.

Section 4: Scope of Use Agreement.

Any and all rights expressly granted to Lightower under this Use Agreement, which shall be exercised at Lightower's sole cost and expense, shall be subject to the prior and continuing right of the Municipality under applicable laws to use any and all parts of the Public Rights-of-Way exclusively or concurrently with any other person or persons, and shall by further subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may affect such Public Rights-of-Way. Nothing in this Use Agreement shall be deemed to grant, convey, create or vest in Lightower a real property interest in land, including any fee, leasehold interest, easement, or any other form of interest or ownership.

The Municipality hereby authorizes and permits Lightower to enter upon the Public Rights-of-Way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate and replace its telecommunications facilities, in or on Utility Poles or other structures owned by public utility companies, or others, or to be constructed by Lightower located within the Public Rights-of-Way as may be permitted by the property owner, as the case may be.

Section 5: Compliance with Ordinance

Lightower shall comply with all applicable existing ordinances of the Municipality as may be amended from time to time and with all future ordinances as may be enacted to the extent such ordinances are consistent with state and federal law.

Section 6: Duration of Consent

The non-exclusive municipal consent granted herein shall expire fifty (50) years from the Effective Date of this Use Agreement.

Section 7: Indemnification

Lightower, its successors, assigns, sub-contractors, agents, servants, officers, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Municipality, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all personal injury and property damage claims, demands, suits, actions at law or equity or otherwise, judgments, arbitration determinations, damages, liabilities, decrees of any person(s) or entities claiming to be or being harmed as a result of Lightower actions under this Use Agreement and costs in connection therewith. This indemnification shall specifically include, but not be limited to, any and all costs, reasonable attorneys fees, court costs and any other expenses that may be incurred by the Municipality in connection with any and all claims, demands, suits, actions at law or equity or otherwise and/or arbitration proceedings which may arise in connection with Lightower activities pursuant to the rights granted in this Use Agreement.

Section 8. Notices

All notices or other correspondence required or permitted to be given in connection with this Use Agreement shall be in writing and delivered personally, by telecopy, by overnight carrier service or by registered or certified mail to the parties at the following addresses:

To Lightower at:

Lightower Fiber Networks
80 Central Street
Boxborough, MA 01719
Attn: Chief Executive Officer

With a copy to:

Lightower Fiber Networks

80 Central Street
Boxborough, MA 01719
Attn: General Counsel

To the Municipality at: Township of Berkeley Heights
29 Park Avenue
Berkeley Heights, New Jersey 07922
Attn: Township Clerk

Section 9. Liability Insurance

Lighttower shall at all times maintain a comprehensive liability insurance policy with a single amount of at least One Million Dollars (\$1,000,000.00) covering liability for any death, personal injury, property damage or other liability arising out of the construction and operation contemplated herein, and an excess liability policy (or "umbrella") policy amount in the amount of Five Million Dollars (\$5,000,000.00).

Prior to the commencement of any work pursuant to this Use Agreement, Lighttower shall file with the Municipality Certificates of Insurance with endorsements evidencing the coverage provided by said liability and excess liability policies.

The Municipality shall notify Lighttower within fifteen (15) days after the presentation of any claim or demand to the Municipality, either by suit or otherwise, made against the Municipality on account of any of Lighttower or its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Use Agreement.

Section 10. Assignment.

Lighttower may not assign this Use Agreement without the written consent of the Municipality, which consent shall not be unreasonably withheld or delayed, except that Lighttower shall have the right, upon notice to the Municipality, to assign this Use Agreement without the Municipality's consent if such assignment is approved by the BPU.

Section 11. Successors and Assigns.

The terms and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto.

Section 12. Governing Law.

This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey.

Section 13. Incorporation of Prior Agreements.

This Agreement contains the entire understanding of the parties hereto with respect to the subject matter hereof, and no prior other written or oral agreement or undertaking pertaining to any such matter shall be effective for any purpose.

Section 14. Modification of Agreement.

This Agreement may not be amended or modified, nor may any obligation hereunder be waived orally, and no such amendment, modification or waiver shall be effective for any purpose unless it is in writing and signed by the party against whom enforcement thereof is sought.

Section 15. Invalidity.

If any provision hereof shall be declared invalid by any court or in any administrative proceedings, then the provisions of this Agreement shall be construed in such manner so as to preserve the validity hereof and the substance of the transaction herein contemplated to the extent possible. The headings are provided for purposes of convenience of reference only and are not intended to limit, define the scope of or aid in interpretation of any of the provisions hereof.

Section 16. Counterparts.

This Agreement may be executed and delivered in several counterparts, each of which,

when so executed and delivered, shall constitute an original, fully enforceable counterpart for all purposes.

IN WITNESS WHEEOF, this Use Agreement has been executed as of the date set forth below.

TOWNSHIP OF BERKELEY HEIGHTS

Ana Minkoff, Township Clerk

By: Robert Woodruff, Mayor

Dated: _____, 2015

LIGHTOWER FIBER NETWORKS

Name:

Title:

Dated: _____, 2015

Name:

Title: