

## **RIGHTS-OF-WAY USE AGREEMENT**

THIS RIGHTS-OF-WAY USE AGREEMENT ("Use Agreement") is dated \_\_\_\_\_ (the "Effective Date"), and entered into by and between the Township of West Orange (the "Township"), a New Jersey Township corporation, having its address at 66 Main Street, West Orange, New Jersey 07052 and Cross River Fiber LLC ("Cross River Fiber") with offices located at 461 Headquarters Plaza, Morristown, NJ 07960.

### **RECITALS**

WHEREAS, Cross River Fiber 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. TE11050320 on July 14, 2011, Docket No. TE12040297 on June 18, 2012 and Docket No. TM14080906 and intends to provide telecommunication services in accordance with that Order 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, Cross River Fiber may locate, place, attach, install, operate and maintain facilities within Public Rights-of-Way for purposes of providing telecommunications services; and

WHEREAS, Cross River Fiber 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.

WHEREAS, it is in the best interests of the Township and its citizenry for the Township to grant consent to Cross River Fiber to occupy said Public Rights-of-Way within the Township for this purpose.

WHEREAS, the consent granted herein is for the non-exclusive use of the Public Rights-of-Way within the Township 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 Township and Cross River Fiber hereby agree to and with each other as follows:

**Section 1. Definitions**

- a. "BPU" is the New Jersey Board of Public Utilities.
- b. "Cross River Fiber" is the grantee of rights under this Use Agreement and is known as Cross River Fiber, their successors and assigns.
- c. "Township" is the grantor of rights under this Use Agreement and is known as the Township of West Orange, 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 Township, including lands with public utility facilities as the same now or hereafter may exist, that are under the jurisdiction of the Township and depicted in the drawings attached hereto as Exhibit "A."  
  
This term shall not include Township, state, or federal rights-of-way or any property owned by any person or agency other than the Township, except as provided by applicable Laws or pursuant to an agreement between the Township and any such person or agency.
- f. "Telecommunications Facilities" or "Facilities" means fiber optic network and associated equipment.
- g. "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 Township hereby grants consent to Cross River Fiber for non-exclusive access of the Public Rights-of-Way within the Township for the purpose of owning, constructing, installing, operating, and maintaining a telecommunications system.

**Section 3. Scope of Use Agreement.**

Any and all rights expressly granted to Cross River Fiber under this Use Agreement, which shall be exercised at Cross River Fiber's sole cost and expense, shall be subject to the prior and continuing right of the Township under applicable laws to access any and all parts of the Public Rights-of-Way exclusively or concurrently with any other person or persons, and shall be 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 Cross River Fiber a real property interest in land, including any fee, leasehold interest, easement, or any other form of interest or ownership.

The Township hereby authorizes and permits Cross River Fiber 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 Cross River Fiber located within the Public Rights-of-Way as may be permitted by the property owner, as the case may be. Cross River Fiber shall obtain all required permits from the Township Construction Department and comply with all condition imposed by the Township Construction Department prior to any installation, operation, maintenance, removal, reattachment, reinstallation, relocation and/or replacement of its Telecommunications Facilities.

Cross River Fiber shall be solely responsible for the care and maintenance of its Facilities installed pursuant to this Use Agreement.

**Section 4. Fee**

Cross River Fiber shall agree to reimburse the Township in the amount of \$1,000 for its expenses in entering into this Use Agreement. Cross River Fiber shall pay for all traffic control with respect to its installation of its Facilities.

**Section 5. Compliance with Ordinance**

Cross River Fiber shall comply with all applicable existing ordinances of the Township 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; Renewals**

The Use Agreement shall be effective as of the date of execution by both Parties, provided, however, the initial term shall be for five (5) years and shall commence on the Commencement Date (as hereinafter defined) This Use Agreement shall automatically be extended for four (4) additional five (5) year terms unless either party terminates it at the end of the then current term by giving the other party written notice of the intent to terminate at least six (6) months prior to the end of the then current term.

**Section 7. Termination; Removal of All Facilities**

The Township shall maintain the right to terminate this Use Agreement in the event that Cross River Fiber's Facilities interfere or otherwise inhibits the use of the public right of way or creates any interference with any other utilities installed in the public right of way. Pursuant to this provision, the Township shall provide written notice to Cross River Fiber that all Facilities are to be removed no later than thirty (30) days from receipt of the written notice. The Township, however, shall maintain the right to require immediate removal of the Facilities in the event that such removal is needed for

the public health or safety.

## **Section 8. Indemnification**

Cross River Fiber, its successors, assigns, sub-contractors, agents, servants, officers, employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Township, its successors and assigns, elected officials, officers, employees, servants, contractors, designees and invitees from and against any and all 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 Cross River Fiber actions or Cross River Fiber Facilities 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 Township 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 Cross River Fiber activities pursuant to the rights granted in this Use Agreement.

## **Section 9. LIMITATION OF LIABILITY**

**TOWNSHIP SHALL NOT BE LIABLE TO CROSS RIVER FIBER FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES.**

## **Section 10: 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 Cross River Fiber at: | Cross River Fiber LLC                                 |
|                          | 461 Headquarters Plaza                                |
|                          | Morristown, NJ 07960                                  |
|                          | Attn: Robert Sokota, Chief Administrative Officer and |
|                          | General Counsel                                       |

To the Township at:

Township of West Orange  
66 Main Street  
West Orange, NJ 07052

Attn: Township Clerk

Richard D. Trenk, Esq.  
347 Mt. Pleasant Avenue, Suite 300  
West Orange, NJ 07052

#### **Section 11. Liability Insurance**

Cross River Fiber 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, Cross River Fiber shall file with the Township Certificates of Insurance with endorsements evidencing the coverage provided by said liability and excess liability policies.

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

#### **Section 12. Assignment.**

Cross River Fiber may not assign this Use Agreement without the written consent of the Township, which consent shall not be unreasonably withheld or delayed.

#### **Section 13. 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 14. Governing Law.**

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

**Section 15. 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 16. 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 17. 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 18. 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 WHEREOF, this Use Agreement has been executed as of the date set forth below.

Cross River Fiber LLC

Robert Sokota

Robert Sokota, Chief Administrative Officer and General Counsel

Dated: May 23, 2018

# Township of West Orange

Mayor Robert D. Parisi

Dated: \_\_\_\_\_

Exhibit “A”



