

RESOLUTION 2015-206

RESOLUTION OF THE TOWNSHIP OF BARNEGAT, COUNTY OF OCEAN, STATE OF NEW JERSEY AUTHORIZING EXECUTION OF RIGHTS-OF-WAY USE AGREEMENT WITH CROSS RIVER FIBER, INC.

WHEREAS, Cross River Fiber, Inc. (“Cross River”) is a public utility and telecommunications carrier as defined by N.J.S.A 48:2-13; and

WHEREAS, Cross River is authorized to provide service by the New Jersey Board of Public of Utilities and the Federal Communications Commission; and

WHEREAS, Cross River is seeking to install telecommunications facilities on utility poles or within underground conduits located in the public right-of-way in the **Township of Barnegat** in order to provide telecommunications services to the public, and to operate, maintain and repair facilities; and

WHEREAS, N.J.S.A 48:17-10 through 48:17-12 permits municipalities to enter into a Rights-of-Way Use Agreement with a telecommunications carrier; and

WHEREAS, the **Township of Barnegat** desires to enter into a Rights-of-Way Use Agreement with Cross River that sets forth the terms of use, occupancy and manner in which Cross River will utilize the **Township of Barnegat** Rights of Ways (“Use Agreement”); and

WHEREAS, the Use Agreement shall be effective for an initial ten (10) year term and contain three (3) additional renewable ten (10) year terms; and

WHEREAS, annexed hereto is a copy of the Use Agreement to be entered into by and between the **Township of Barnegat** and Cross River;

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the **Township of Barnegat**, being the governing body thereof, that the Mayor be and hereby is authorized to execute and the Municipal Clerk be and hereby is authorized to witness, the annexed Rights-of-Way Use Agreement between the **Township of Barnegat** and Cross River Fiber, Inc.

CERTIFICATION

I, Michele Rivers, Municipal Clerk of the Township of Barnegat, County of Ocean, State of New Jersey, do hereby certify that the foregoing resolution to be a true copy of a resolution adopted by the Township Committee of the Township of Barnegat on the 20th day of July 2015.

Michele Rivers, RMC
Municipal Clerk

RIGHTS-OF-WAY USE AGREEMENT

THIS RIGHTS-OF-WAY USE AGREEMENT ("Use Agreement") is dated July 20, 2015 (the "Effective Date"), and entered into by and between the Township of _____ Barnegat _____ ("Township"), a New Jersey Township corporation, having its address at _____ 900 W. Bay Avenue, Barnegat NJ 08005 _____ 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 __Barnegat____, 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. 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. "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 Cross River Fiber its Township consent 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.

Section 3. Public Purpose.

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

Section 4. 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 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 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.

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

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

Section 7. 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 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 Cross River Fiber 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 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 8. LIMITATION OF LIABILITY

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES. ALL DAMAGES ARISING FROM ANY CLAIM OR CAUSE OF ACTION SHALL BE LIMITED TO PROVEN DIRECT DAMAGES.

Section 9: 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: The Township of Barnegat

 900 W. Bay Avenue

 Barnegat, NJ 08005

 Attn: Township Clerk

Section 10. 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 11. 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, except that Cross River Fiber shall have the right, upon notice to the Township, to assign this Use Agreement without the Township's consent if such assignment is approved by the BPU.

Section 12. 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 13. Governing Law.

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

Section 14. 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 15. 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 16. 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 17. 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, Chief Administrative Officer and General Counsel

Dated: _____

The Township of Barnegat

Susan McCabe, Mayor

NAME & TITLE

Dated: July 21, 2015 _____

ATTEST:

Michele Rivers, RMC

Municipal Clerk

(SEAL)