

TOWNSHIP OF WASHINGTON  
BERGEN COUNTY, NEW JERSEY

RESOLUTION No. 20-165

**CROSS RIVER FIBER  
RIGHT-OF-WAY USE AGREEMENT**

WHEREAS, Cross River Fiber LLC (“Cross River”), is a telecommunications facility authorized to provide service by the New Jersey Board of Public Utilities (BPU); and

WHEREAS, Cross River has requested approval to install its telecommunication facilities aerially on existing utility poles or in an underground conduit in the Public Rights-of-Way within the Township of Washington for the purpose of owning, constructing, installing, operating, repairing and maintaining a telecommunications system; and

WHEREAS, Cross River was approved by the BPU to provide local exchange and interexchange telecommunications services throughout the State of New Jersey; and

WHEREAS, Pursuant to N.J.S.A. 48:3-19, Cross Fiber is required to obtain consent and approval of the Township of Washington (the “Township”) Council as a condition of such access; and

WHEREAS, N.J.S.A. 54:30A-124(a) provides that the municipality may not impose any fees, taxes, levies or assessments in the nature of franchise, right of way, or gross receipts fee, tax, levy or assessment against telecommunication companies but that the municipality may impose reasonable fees for actual services made by any municipal, regional or county governmental agency; and

WHEREAS, it is in the best interests of the Township of Washington and its citizens to grant consent to Cross River; and

WHEREAS, the consent granted is for the non-exclusive use of the Public Rights-of-Ways for the purpose of owning, constructing, installing, operating, repairing and maintaining a telecommunications system subject to the terms and conditions of the attached Rights-Of-Way Use Agreement between the Township of Washington and Cross River Fiber LLC;

NOW, THEREFORE, BE IT RESOLVED, by the Township Council of the Township of Washington as follows:

1. Permission and authority are hereby granted to Cross River to install telecommunications system on existing poles or in existing conduits, in the public rights-of-way in Washington Township in order to provide

communications services to the public, and to operate, maintain and repair said facilities, subject to the terms and conditions of that certain Rights-of-Way Use Agreement annexed hereto which has been executed by Cross Fiber;

2. The Mayor be and is hereby authorized to execute said Rights-of-Way Use Agreement on behalf of the Township.

ATTEST:

APPROVED:  
TOWNSHIP COUNCIL OF THE  
TOWNSHIP OF WASHINGTON

  
Susan Witkowski,  
Township Clerk

BY   
Stacey Feeney  
Council President

DATED: February 18, 2020

MOTION		SECOND		COUNCIL	AYES	NAYES	ABSTAIN	ABSENT	RECUSE
Cascio	x	Cascio		Cascio	x				
Cumming		Cumming		Cumming	x				
DeSena		DeSena		DeSena	x				
Feeney		Feeney		Feeney	x				
Morgan		Morgan	x	Morgan	x				

**RIGHTS-OF-WAY USE AGREEMENT**

THIS RIGHTS-OF-WAY USE AGREEMENT ("Use Agreement" or "Agreement") is dated 2/19/20 (the "Effective Date"), and entered into by and between the Township of Washington("Township"), a New Jersey Township corporation, having its address at 350 Hudson Avenue, Washington Township, New Jersey 07676 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 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 and includes Cross River Fiber, its successors and assigns.
- c. "Township" is the grantor of rights under this Use Agreement and is known as the Township of Washington, 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 limited use of the Public Rights-of-Way within the Township for the sole purpose of constructing,

installing, owning, 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, and as required by applicable law, 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 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, solely and exclusively in or on Utility Poles or other structures owned by public utility companies.

All work to be performed by Cross River Fiber shall be undertaken during normal business hours as prescribed by the Township. The Township or its representatives have the right to direct Cross River Fiber to immediately cease all activities and immediately leave any Public Right-of-Way if the Township reasonably believes the work is being conducted in an unsafe or improper manner.

**Section 5. Compliance with Ordinances; Storage of Materials; Restoration of Right-of-Way**

Cross River Fiber shall comply with all applicable existing ordinances (including but not limited to Street Openings under Article IV of Chapter 433 of the Township Code), rules and regulations of the Township as may be amended from time to time and with all future ordinances, rules and regulations as may be enacted to the extent such ordinances are consistent with state and federal law. Cross River Fiber and its subcontractors shall not stage or store any materials, equipment or waste material onsite and must remove offsite all materials, equipment and waste materials promptly. Cross River Fiber shall restore the Public Rights-of-Way to the condition same was in prior to the activities of Cross River Fiber under this Agreement.

**Section 6. Duration of Consent**

The non-exclusive Township consent granted herein shall expire ten (10) years from the Effective Date of this Use Agreement. The Use Agreement shall renew on an annual basis thereafter unless either party provides the other written notice of termination at least 90 days prior to any expiration date. After the termination of the Use Agreement or abandonment of use of its facilities by Cross River Fiber, Cross River Fiber shall be responsible for removal of its facilities.

**Section 7. Indemnification**

A. 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, professionals, 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.

B. Cross River Fiber shall use reasonable efforts during its activities hereunder to minimize interruption to traffic or other use of the Public Rights-of-Way and all other properties, and shall comply with all written rules adopted by the Township and made known to Cross River Fiber within a reasonable timeframe. Cross River Fiber will repair any damage to the Public Rights-of-Way and any other properties that may occur as a result of its activities hereunder. Cross River Fiber agrees to indemnify and hold harmless the Township, its representatives, employees, officers, professionals, agents, and invitees from and against, any claims, liabilities, costs and/or expenses, including legal and expert fees, resulting from the entry and presence of Cross River Fiber and its subcontractors on the Public Rights-of-Way, public roadways, public property and private property and all related activities of Cross River Fiber and its subcontractors in connection therewith. Cross River Fiber shall indemnify the Township for all ancillary costs incurred by the Township relating to access given to Cross River Fiber and its subcontractors hereunder including, by way of illustration but not limitation, the cost of services rendered by the Township Police Department and/or the Township Department of Municipal Facilities, same to be billed in accordance with general outside billing practices of the Township.

C. Cross River Fiber agrees to pay the fees of the Township's municipal attorney and municipal engineer for work performed in the negotiation, preparation and execution of this Agreement and any modifications and amendments hereof, and which may become necessary or warranted for the enforcement of the terms, conditions and intent of this Agreement. In addition, the professional time of the municipal engineer shall be paid by Cross River Fiber if the activities of Cross River Fiber



To the [Township] at:                      Township of Washington  
350 Hudson Avenue  
Washington Township, NJ 07676  
Attn: Township Clerk

With a copy to:                              Township of Washington  
350 Hudson Avenue  
Washington Township, NJ 07676  
Att: Township Administrator

**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 thirty (30) 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 in its sole and absolute discretion, 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 and further provided that any such assignee re-executes this Agreement to the end that such assignee shall be bound by the terms hereof.

**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. Signatures by “pdf” or facsimile shall be deemed to be original signatures.

IN WITNESS WHEREOF, this Use Agreement has been executed as of the dates set forth below, effective as of the date set forth on page 1 hereof.

**CROSS RIVER FIBER LLC**

By: 

Name: Robert Sokota

Title: Chief Administrative Officer and General Counsel

Dated: 1/31/2020

**TOWNSHIP OF WASHINGTON**

By: 

Name: Peter Calamari

Title: Mayor

Dated: 2/19/2020

KGP rev 1/21/20