

**R-16-36**

**RESOLUTION APPROVING RIGHT-OF-WAY USE TO CROSS RIVER FIBER**

**WHEREAS**, Cross River Fiber LLC is a provider to provide local exchange and interexchange telecommunication services subject to the regulations of the New Jersey Board of Public Utilities (“BPU”) and the Federal Communications Commission (“FCC”), which authorize Cross River Fiber LLC to provide local exchange and interexchange telecommunications services; and

**WHEREAS**, the BPU recognizes Cross River Fiber LLC as a local exchange carrier that provides local telephone and associated services in its service territory in New Jersey through a telecommunications network that it owns and operates; and

**WHEREAS**, Cross River Fiber LLC has represented that it has entered into agreements with parties that have the lawful right to maintain poles in the public right-of-way pursuant to which Cross River LLC may jointly use such poles erected within the public right-of-way in the Borough of Highlands (the “Borough”); and

**WHEREAS**, Cross River Fiber LLC proposes to provide telecommunications services in accordance with the Order and the rules and regulations of the FCC and the BPU; and

**WHEREAS**, Cross River Fiber LLC intends to access and use the Borough’s public rights-of-way to locate, place, attach, install, operate and/or maintain telecommunication facilities on existing utility poles as well as new and/or existing underground conduit systems in Borough of Highlands public rights-of-way; and

**WHEREAS**, N.J.S.A. 48:3-19 requires Cross River Fiber to obtain the consent of the Borough for the use of any existing utility poles; and

**WHEREAS**, pursuant to such authority granted by the BPU and FCC, Cross River Fiber LLC may locate, place, attach, install, operate and maintain facilities with public rights-of-way for purposes of providing telecommunications services; and

**WHEREAS**, the existing utility poles are owned and maintained by private telecommunications and utility providers; and

**WHEREAS**, Cross River Fiber LLC shall obtain the permission of the owner(s) of said existing utility poles and provide proof of said consent and/or license to the Borough before any work is commenced; and

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

**WHEREAS**, it is the best interest of the Borough and its residents for the Borough to grant consent to Cross River Fiber LLC to occupy and access said public rights-of-way within the Borough for this purpose.

**NOW, THEREFORE, BE IT RESOLVED** by the Council of the Borough of Highlands that Cross River Fiber LLC is hereby granted a non-exclusive use of public rights-of-ways for the purposes of owning, constructing, installing, operating, repairing and maintaining a telecommunications system subject to the terms and conditions of the Borough's Rights-of-Way Agreement with Cross River Fiber LLC; and

**BE IT FURTHER RESOLVED** that the Borough Administrator and the Borough Clerk are hereby authorized to execute any and all documents necessary to effectuate this Resolution; and

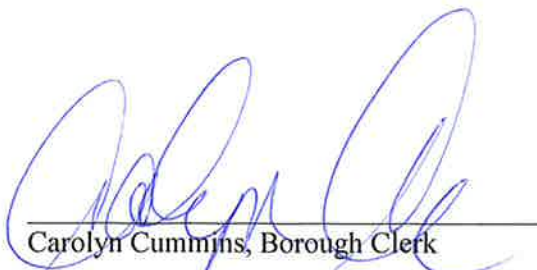
**BE IT FURTHER RESOLVED** that once executed the referenced Rights-of-Way Agreement with Cross River Fiber shall be kept on file by the Borough Clerk; and

**BE IT FURTHER RESOLVED** that certified copies of this resolution be forwarded to:

1. Bruce W. Padula, Esq., Borough Attorney
2. Timothy Hill, Borough Administrator

	INTRODUCED	SECONDED	AYE	NAY	ABSTAIN	ABSENT
BROULLON		X	X			
CARD	X		X			
D'ARRIGO			X			
WELLS			X			
NOLAN						X
ON CONSENT AGENDA			YES	X	NO	

DATE: January 20, 2016



\_\_\_\_\_  
Carolyn Cummins, Borough Clerk

I hereby certify this to be a true copy of the R-16-36 adopted by the Governing Body of the Borough of Highlands on January 20, 2016.

\_\_\_\_\_  
Borough Clerk/Deputy Clerk

36  
C. Vitale  
Leubner  
Heck

## 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 Borough of Highlands ("Borough"), a New Jersey Borough corporation, having its address at 42 Shore Drive, Highlands, NJ 07732 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 Borough for the purpose of owning, constructing, installing, operating, repairing and maintaining a telecommunication system; and

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

WHEREAS, the consent granted herein is for the non-exclusive use of the Public Rights-of-Way within the Borough 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 Borough 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. "Borough" is the grantor of rights under this Use Agreement and is known as the Borough of Highlands, 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 Borough, including lands with public utility facilities as the same now or hereafter may exist, that are under the jurisdiction of the Borough. This term shall not include Borough, state, or federal rights-of-way or any property owned by any person or agency other than the Borough, except as provided by applicable Laws or pursuant to an agreement between the Borough 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 Borough hereby grants Cross River Fiber its Borough consent for the non-exclusive use of the Public Rights-of-Way within the Borough 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 Borough and its citizenry, particularly including commercial and industrial citizens, for the Borough to grant consent to Cross River Fiber to occupy said Public Rights-of-Way within the Borough 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 Borough 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 further be 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 Borough 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 has been made aware

that existing utility poles are owned and maintained by private telecommunications and utility providers. Further, Cross River Fiber has represented that it has entered into agreements with parties that have the lawful right to maintain poles in the public right-of-way pursuant to which Cross River may jointly use such poles erected within the public right-of-way in the Borough of Highlands. As such, it is expressly understood and agreed that Cross River Fiber shall obtain the permission of the owner(s) of said existing utility poles or other structures and provide proof of said consent and/or license to the Borough before any work is commenced.

**Section 5. Compliance with Ordinance**

Cross River Fiber shall comply with all applicable existing ordinances of the Borough 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, including, but not limited to, Resolution No. 16-36, adopted by the governing body of the Borough of Highlands on January 20, 2016.

**Section 6. Duration of Consent**

The non-exclusive Borough 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, contractors and their sub-contractors, agents, servants, officers, employees, designees, guests and invitees (individually and collectively referred to herein as "Indemnitors"), hereby indemnify, defend and hold harmless the Borough, its successors and assigns, elected officials, officers, employees, servants, contractors, insurers, designees and invitees (individually and collectively referred to herein as "Indemnitees") from and against any and all per-

sonal 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 Indemnitors 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 Borough 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's activities pursuant to the rights granted in this Use Agreement. Indemnitors' obligations under this Section shall survive expiration or termination of 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 THAT MAY BE SUFFERED BY EITHER OF THEM. 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 Borough of Highlands at:            The Borough of Highlands  
42 Shore Drive

Highlands, NJ 07732  
Attn: Borough 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") 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 Borough, Certificates of Insurance with endorsements evidencing the coverage provided by said liability and excess liability policies. Thereafter, Cross River Fiber, shall continue to file with the Borough, on an annual basis, on or before January 31<sup>st</sup> of each year, Certificates of Insurance with endorsements evidencing the coverage provided by said liability and excess liability policies.

Cross River Fiber shall not allow the insurance coverage referenced herein to lapse or expire at any time during the term of this Agreement.

Failure of Cross River Fiber to maintain the insurance coverages as provided herein shall be deemed a material breach of this Use Agreement and shall be a basis for the Borough's termination hereof, notice of which shall be provided to Cross River Fiber in accordance with Section 9 above.

The Borough shall notify Cross River Fiber within forty-five (45) days after the presentation of any claim or demand to the Borough, either by suit or otherwise, made against the Borough, where



the Borough is aware that said claim is based upon the acts or omissions 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. Late notice of such claim to Cross River Fiber shall not be a basis for denial of Indemnitors' obligations under this Use Agreement unless and to the extent that Indemnitors can demonstrate that their rights have been materially prejudiced.

**Section 11. Assignment.**

Cross River Fiber may not assign this Use Agreement without the written consent of the Borough, which consent shall not be unreasonably withheld or delayed, except that Cross River Fiber shall have the right, upon notice to the Borough, to assign this Use Agreement without the Borough'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.

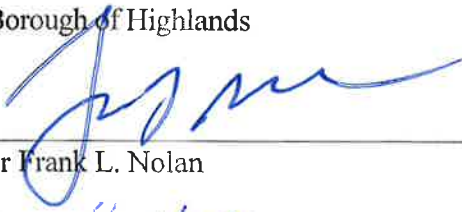
Cross River Fiber LLC



Robert Sokota, Chief Administrative Officer and General Counsel

Dated: 4/11/16

The Borough of Highlands



Mayor Frank L. Nolan

Dated: 4/11/16