

LEGAL NOTICE  
BOROUGH OF RINGWOOD  
COUNTY OF PASSAIC  
NEW JERSEY

Ordinance No. 2013-#11

AN ORDINANCE OF THE BOROUGH OF RINGWOOD AUTHORIZING THE INSTALLATION OF DARK FIBER-OPTIC CABLE AND OTHER TELECOMMUNICATIONS RELATED FACILITIES BY CROSS RIVER FIBER, INC. OVER THE PUBLIC RIGHTS-OF-WAY

NOTICE is hereby given that the ordinance published herewith was introduced and passed first reading at a Business Meeting of the Municipal Council of the Borough of Ringwood, in the County of Passaic, New Jersey held at the Violet E. Bogert Municipal Annex, 60 Margaret King Avenue, Ringwood, New Jersey on Tuesday, October 15, 2013, and will be considered for final passage at a Business Meeting of said Municipal Council of the Borough of Ringwood to be held on Thursday, November 14, 2013 at 8:00 pm, or as soon thereafter as same can be considered, at the Violet E. Bogert Municipal Annex, 60 Margaret King Avenue, Ringwood, New Jersey, at which time and place all persons interested therein or affected thereby will be given an opportunity to be heard concerning same. During the week prior and up to the time of public hearing, copies of said Ordinance will be available to the members of the general public who request same.

KELLEY A. ROHDE, RMC  
BOROUGH CLERK

1t: Wednesday, October 23, 2013  
Fees: \$  
The Suburban Trends

Ordinance No. 2013-#11

AN ORDINANCE OF THE BOROUGH OF  
RINGWOOD AUTHORIZING THE INSTALLATION  
OF DARK FIBER-OPTIC CABLE AND OTHER TELE-  
COMMUNICATIONS RELATED FACILITIES BY  
CROSS RIVER FIBER, INC. OVER THE PUBLIC  
RIGHTS-OF-WAY

WHEREAS, the general laws of the State of New Jersey grant the Municipal Council the authority to review an application made by a certified local telephone exchange carrier to install dark fiber-optic cable that is designed to provide telecommunications services within the municipality; and

WHEREAS, Cross River Fiber, Inc. is a Delaware corporation qualified to do business in the State of New Jersey; and

WHEREAS, Cross River Fiber, Inc., is a certified local exchange carrier authorized to provide telecommunications services in the State of New Jersey under the authority granted to it by the New Jersey Board of Public Utilities by order of the Board of Public Utilities on July 14, 2011 in docket number TE11050320 and on June 18, 2012 in docket number TE12040297; and

WHEREAS, Cross River Fiber, Inc., seeks consent from the Municipal Council to place its telecommunications facilities aerially on existing utility poles or in underground conduits in the public rights-of-way within the Borough of Ringwood for the purpose of owning, constructing, operating, repairing and maintaining dark fiber optic cable and telecommunications facilities; and

WHEREAS, the Municipal Council is satisfied that it is in the public interest to provide additional, extensive and innovative telecommunications facilities within the Borough of Ringwood by providing this authorization to Cross River Fiber, Inc.

NOW THEREFORE, BE IT ORDAINED by the Municipal Council as follows:

1. Permission is hereby granted to Cross River Fiber, Inc., to install dark fiber-optic cable and other telecommunications related facilities in and over the public rights-of-way for the purpose of operating a telecommunications network within the Borough's public rights-of-way as a non-exclusive use within the Borough of Ringwood in accordance with a certain Rights-of-Way Agreement attached hereto as Exhibit A and made a part hereof and the terms of this ordinance are incorporated therein by reference.
2. Cross River Fiber, Inc., shall obtain, at its own expense, all necessary permits and approvals as required by applicable laws and regulations.

3. Cross River Fiber, Inc. shall provide the borough, at least forty-five (45) days prior to the installation of any cable or facilities, at its sole cost and expense, a performance bond in the amount of twenty-five thousand dollars (\$25,000.00) to ensure faithful performance of its undertakings.
4. Cross River Fiber, Inc., shall consult with the Borough Manager and Ringwood Police Department with regard to the procedures taken during installation, repair and maintenance and shall comply with the said procedures.
5. During the installation of cable and facilities in the public rights-of-way, Cross River Fiber, Inc., shall take reasonable steps to avoid any impact on private property, landscaping or trees. The Borough Manager and designated local officials may review any installations that may cause disruption to private property and may require that Cross River Fiber, Inc., rectify any damage to private property caused by its activities.
6. The Mayor and Municipal Clerk are authorized to execute the Rights-of-Way Agreements attached hereto.
7. Should any part or parts of this ordinance be held to be invalid by any competent court of law, such invalidity shall only affect the part or parts held to be invalid, and all other parts shall remain in effect.
8. This ordinance shall take effect upon passage and publication as required by law.

## **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 Ringwood, ("Municipality"), a New Jersey municipal corporation, having its address at 60 Margaret King Avenue, Ringwood, New Jersey 07456 and Cross River Fiber, Inc. ("Cross River Fiber") with offices located at 382 Springfield Avenue, Suite 409, Summit, NJ.

### **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 and Docket No. TE12040297 on June 18, 2012 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 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 Cross River Fiber 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 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. "Municipality" is the grantor of rights under this Use Agreement and is known as the Borough of Ringwood, 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 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 Cross River Fiber 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 Cross River Fiber 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 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 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 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 Municipality 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 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 of twenty-five (25) 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 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 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 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 Cross River Fiber 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 Cross River Fiber at:           Cross River Fiber, Inc.  
382 Springfield Avenue, Suite 409  
Summit, NJ 07901  
Attn: Vincenzo Clemente, President & CEO

To the Municipality at:           Borough of Ringwood  
Municipal Building  
60 Margaret King Avenue  
Ringwood, NJ 07456  
Attn: Scott Heck, Borough Manager

## **Section 9. 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 Municipality Certificates of Insurance with endorsements evidencing the coverage provided by said liability and excess liability policies.

The Municipality shall notify Cross River Fiber 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 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 10. Assignment**

Cross River Fiber may not assign this Use Agreement without the written consent of the Municipality, which consent shall not be unreasonably withheld or delayed, except that Cross River Fiber 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. Notwithstanding the foregoing, the terms and conditions of a certain Ordinance authorizing the execution of this Agreement by municipal officials are incorporated herein by reference.

#### **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 WHEREOF, this Use Agreement has been executed as of the date set forth below.

**Cross River Fiber, Inc.**

**WITNESS:**

\_\_\_\_\_  
Vincenzo Clemente – President & CEO

\_\_\_\_\_

Date: \_\_\_\_\_

**Borough of Ringwood**

\_\_\_\_\_  
Linda M. Schaefer, Mayor

\_\_\_\_\_  
Kelley A. Rohde, RMC – Borough Clerk

Date: \_\_\_\_\_