

**O-18-01**  
**01/17/18**

**ORDINANCE AUTHORIZING THE EXECUTION OF A RIGHTS-OF-WAY USE AGREEMENT BETWEEN THE CITY OF BAYONNE AND CROSS RIVER FIBER LLC TO PERMIT THE INSTALLATION OF FIBER OPTIC FACILITIES AND RELATED EQUIPMENT WITHIN THE MUNICIPAL RIGHT-OF-WAY FOR PURPOSES OF PROVIDING TELECOMMUNICATION SERVICES**

**WHEREAS**, Cross River Fiber LLC, a Delaware limited liability company authorized and doing business in New Jersey ("Cross River Fiber") is a telecommunications utility authorized to provide services by the New Jersey Board of Public Utilities ("BPU") and the Federal Communications Commission ("FCC"); and

**WHEREAS**, Cross River Fiber has requested that the City of Bayonne ("City") grant it permission to place its telecommunication facilities aerially on existing utility poles or in underground conduit in the public rights-of-way within the City of Bayonne for the purpose of owning, constructing, installing, operating, repairing and maintaining a telecommunications system ("General Scope of Work"); and

**WHEREAS**, prior to commencement of work, Cross River Fiber, will present a detailed scope of work and will coordinate with the City's Engineer, Construction Official and other applicable City Officials and personnel; and

**WHEREAS**, Cross River Fiber agrees to execute a Rights-of-Way Use Agreement for a ten (10) year period commencing on a date to be agreed by the City with four (4) additional five (5) year periods unless the City notifies Cross River Fiber of its intent not to renew at least (90) days prior to the end of the then current term; and

**WHEREAS**, Cross River Fiber agrees to pay the City's reasonable fees and expenses incurred by the City for professional and legal services, police oversight and any other expenses incurred by the City as well as all applicable permit fees as a result of the Scope of Work and as contemplated in N.J.S.A. 54:30A-124(a); and

**WHEREAS**, N.J.S.A. 48:17-10 and N.J.S.A. 40:67-1 authorize the City to grant municipal consent for the General Scope of Work presented by Cross River Fiber in the City's rights-of-way; and

**WHEREAS**, it is deemed to be in the best interest of the City and its citizenry, including the commercial and industrial citizens, for the City to grant municipal consent to Cross River Fiber to occupy said public rights-of-way within the City for this purpose; and

**WHEREAS**, the granting of such consent shall be non-exclusive and shall be conditioned upon Cross River Fiber's continued compliance with all applicable existing City ordinances 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 and its entering into a Rights-of-Way Use Agreement with the City; and

**WHEREAS**, the granting of such consent shall further be subject to availability of adequate space on existing poles as determined by the City's Engineering professionals and taking into account other same or similar telecommunication projects that have been previously approved on a first-come, first-served basis; and

**WHEREAS**, Cross River Fiber agrees to indemnify, defend and hold the City harmless as to all claims and liability resulting from any injury or damage which may arise from the construction, installation, operation, repair, maintenance, disconnect, replacement and removal of its telecommunications facilities within certain public rights-of-way.

**NOW, THEREFORE, BE IT ORDAINED BY THE MUNICIPAL COUNCIL OF THE CITY OF BAYONNE THAT:**

1. Non-exclusive consent is hereby granted to Cross River Fiber to use certain public rights-of-way within the City for the purpose of installation, operation, repair, and maintenance of a telecommunications system for a period of ten (10) years, commencing on a date to be agreed by the City with four (4) additional five (5) year periods unless the City notifies Cross River Fiber of its intent not to renew at least (90) days prior to the end of the then current term subject to the mutual covenants and obligations as set forth in a Rights-of-Way Use Agreement executed by the parties in form and substance as is acceptable to the Law Director.
2. The Mayor and City Clerk are hereby authorized to execute said Rights-of-Way Use Agreement.

SF:sf