**TOWNSHIP OF BERNARDS**

**RIGHT-OF-WAY AGREEMENT**

**WITH CROSS RIVER FIBER L.L.C.**

**I. Definitions**

For purposes of this Right-of-Way Agreement (“ROW Agreement” or “Agreement”) the following terms shall have the same meaning herein. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number, and words in the singular include the plural. The word “shall” is always mandatory and not merely permissive.

a. “Cabinet” means a small box-like or rectangular structure used to facilitate utility or wireless service from within the Municipal Right-of-Way. This term shall not include small boxes which are directly attached to Fiber lines as they are strung from Pole to Pole.

b. “Fiber” means optical fibers used for telecommunications purposes.

c. “Effective Date” means date on which the Township provides written notice of receipt of payment pursuant to Section III below.

d. “Existing Pole” means a Pole owned by an Incumbent Local Exchange Carrier, Electric Distribution Company or other company that is in lawful existence within the Municipal Right-of-Way at the time Licensor attaches its Fiber line to same.

e. “Licensee” means Cross River Fiber, L.L.C. with an address of 461 Headquarters Plaza, Morristown, NJ 07960.

f. “Licensor” or “Township” means the Township of Bernards with an address of 1 Collyer Lane, Basking Ridge, NJ 07920.

g. “Municipal Right-of-Way” or “Municipal Rights-of-Way” or “Municipal ROW” means the surface of, and the space above or below, any public street, road, place, public way or place, sidewalk, alley, boulevard, parkway, drive, and the like, held by the Township as an easement or in fee simply ownership. This term also includes rights-of-way held by the County of Somerset where the Township’s approval is required for the use of same pursuant to N.J.S.A. 27:16-6. This term shall not include private roadways.

h. “Pole” means a long, slender, rounded piece of wood or metal.

i. “Pole Mounted Antenna” means a device that is attached to a Pole and used to transmit radio or microwave signals and shall include, but not be limited to, small cell equipment and transmission media such as femtocells, picocells, microcells,and outside distributed antenna systems.

j. “Township Attorney” means the person appointed as Township Attorney pursuant to N.J.S.A. 40A:9-139.

k. “Township Committee” means the Township Committee of the Township of Bernards.

l. “Unauthorized Installation” means use of the Municipal Rights-of-Way for the installation of equipment for which the Licensee did not receive approval pursuant to this ROW Agreement.

**II. Permitted use of Municipal Rights-of-Way**

1. License to use Municipal Rights-of-Way –The Township, as Licensor, hereby grants Licensee, a non-exclusive license to use and occupy its Municipal Rights-of-Way within the boundaries of the Township of Bernards for the purposes of stringing and installing Fiber lines on Existing Poles and the provisions of services subject to the conditions outlined in this ROW agreement, the Revised General Ordinances of the Township of Bernards and applicable federal and state rules and regulations.
2. Non-exclusive license- the Licensee’s right to use and occupy the Municipal Rights-of-Way shall not be exclusive as the Township reserves the right to grant a similar use of same to itself or any person or entity at any time during the term of this ROW Agreement.
3. Waiver of claims- In consideration for the rights granted under this Right-of-Way Agreement, Licensee waives all claims, demands, causes of action, and rights it may assert against the Township and Township officials, personnel, agents, and representatives because of any loss, damage, or injury to any equipment resulting from the installation, operation, maintenance or malfunction of its equipment regardless of cause.

(d) This agreement does not authorize Licensee to place Poles, Pole Mounated Antennas or Cabinets within the Municipal Right-of-Way.

**III. Municipal Costs Related to this Agreement & Effective Date of Same**

 (a) Licensor shall provide Licensee with an invoice of all reasonable professional costs related to the drafting and negotiation of this Agreement. This shall include, but not be limited to, the cost of legal and engineering review of this Agreement; and

 (b) Licensee shall remit payment to Licensor in the amount set forth in (a) above within seven (7) business days; and

 (c) Licensor shall provide written receipt of said payment within seven (7) business days of receiving same.

The date of said written receipt shall be the “Effective Date” of this agreement and will be attached to this agreement and made a part of hereof.

**IV. Term of ROW Agreement, Right to Terminate and End**

(a) The term of this ROW Agreement shall be fifteen (15) years commencing on the Effective Date.

(b) Effect of expiration of ROW Agreement—upon expiration of the this ROW Agreement, Licensee shall have up to two hundred forty (240) days following expiration in which to remove all of its equipment and related facilities from the Municipal Right-of-Way. Within thirty days following expiration, Licensee shall provide the Township Engineer with a schedule and timeline for removing the Small Cell Equipment. Thereafter, Licensee shall have no access to Rights-of-Way for the purposes of installing or maintaining any of its equipment.

(c) Amendment of ROW Agreement- either party shall have the right to request an amendment of this ROW Agreement after the fifth anniversary of the Effective Date and each five (5) year period of the term thereafter, provided notice to amend is sent to the other party no later than ninety (90) days prior to the end of such five (5) year period. No amendment of this ROW Agreement shall be effective until agreed upon in writing by the Township and Licensee.

(d). Termination of ROW Agreement- Licensee shall have the right to terminate applicable ROW Agreement in the event that (i) any application for any governmental approvals should be finally rejected; (ii) any governmental approval issued to a Licensee is cancelled, expires, lapses or is otherwise withdrawn or terminated by governmental authority; or (iii) Licensee determines that such governmental approval may not be obtained in a timely manner.

(e). Notice of Licensee’s exercise of its right to terminate the applicable ROW Agreement- Notice of Licensee’s exercise of its right to terminate under this subsection IV(d) shall be given to the Township with thirty (30) days notice. Upon such termination, this ROW Agreement shall be of no further force or effect except to the extent of the representations, warranties and indemnities made by each party to the other hereunder, and as provided in this subsection XI(c).

**V. Unauthorized Installation**

Unauthorized Installation- Any Unauthorized Installation that is identified by the Township as a result of comparing the Inventory of approved facilities to internal records or through any other means will be subject to the payment of Unauthorized Installation charges by Licensee. The Township shall provide written notice to Licensee of any Unauthorized Installations identified by Township staff and Licensee shall have thirty (30) days thereafter to remove same. An unauthorized installation charge will thereafter be imposed which shall be calculated by multiplying $50 per day between the period spanning from the date of discovery to the date on which the unauthorized installation is either approved pursuant to this Agreement, removed by Licensee, or removed by Township as a non-compliant installation pursuant to subsection VII(d). The total amount resulting from this calculation shall be assessed an annual interest rate of twelve (12) percent to constitute the applicable Unauthorized Installation charge.

**VI. Compliance with other Laws, Construction, Work Regulated by the Township**

a. Compliance with Law required- The scope of this Agreement is solely limited to the installation of Licensee’s equipment within the Municipal Right-of-Way. Licensee must still receive any and all necessary street opening or construction permits from the Township and any other party holding jurisdiction over same. In addition, the work done by Licensee in connection with the installation, construction, maintenance, repair, and operation of equipment within the Municipal Rights-of-Way shall be subject to and governed by all pertinent local and state laws, rules, and regulations including the Uniform Construction Code (N.J.A.C. 5:23-1 et seq.).

b. Duty to minimize interference- Construction activities and aerial installations on Poles in the Municipal Rights-of-Way shall be carried on as to minimize interference with the use of the Municipal Rights-of-Way and with the use of private property, in accordance with all regulations of the Township necessary to provide for public health, safety and convenience.

**VII. Restoration and Maintenance Activities**

a. Identification of Utility Lines- Prior to beginning any excavation or boring project on the Municipal Rights-of-Way, Licensee shall comply with the provisions of the New Jersey One Call utility locator service. Licensee has the responsibility to protect and support the various utility facilities of other providers while conducting construction, installation, and maintenance operations.

b. Licensee shall keep and maintain all equipment installed on Municipal Rights-of-Way in commercially reasonable condition and repair through the term of this ROW Agreement, normal wear and tear and casualty excepted. Licensee shall have the right to conduct testing and maintenance activities, and repair and replace damaged or malfunctioning equipment at any time during the term of this ROW Agreement.

c. Reserved.

d. Removal of Non-Compliant Installations- The Township shall have the authority at any time to order and require Licensee to remove and abate any equipment or other structure that is in violation of the Township’s code of ordinances. In case Licensee, after receipt of written notice and thirty (30) days opportunity to cure or, such extended time as granted by Licensor, fails or refuses to comply, the Township shall have the authority to remove same at the expense of Licensee, all with compensation or liability for damages to Licensee.

e. Reservation of Rights- The Township reserves the right to install, and permit others to install, equipment in the Municipal Rights-of-Way. In permitting such work to be done by others, the Township shall not be liable to Licensee for any damages caused by those persons or entities.

**VIII. Compliance with Utility Requirements, Historic Preservation and Environmental Approvals.**

a. Utility installation. Licensee shall comply with all relevant legal requirements for connecting its equipment to electricity and telecommunications service. The Township is not responsible for providing electricity or transport connectivity to Licensee.

b. Historic Preservation and Environmental Approvals- nothing in this ROW Agreement supplants or removes the need for Licensee to apply for and receive necessary state and federal historical preservation or environmental approvals to the extent same is required by state or federal law.

c. Expenses- Licensee exclusively bears the cost and expense necessary to comply with subsections (a) and (b) above.

**IX. Relocation and Removal**

a. Relocation and Removal at Licensee’s Expense- Licensee shall remove and relocate its equipment at its own expense to an alternative location made available by Licensor and acceptable to Licensee not later than one hundred twenty (120) days after receiving written notice that removal, relocation, and/or alteration of said equipment is necessary due to:

i. Construction, expansion, repair, relocation, or maintenance of a street or other public improvement project; or

ii. Maintenance, upgrade, expansion, replacement, or relocation of a street or Township traffic light poles and/or traffic signal light system; or

iii. Vacation of a right-of-way or sale of Township property; or

iv. Projects and programs undertaken to protect or preserve the public health or safety; or

v. Activities taken to eliminate a public nuisance; or

vi. Duty otherwise arising from applicable law.

Licensee’s duty to remove and relocate its equipment at its expense under this subsection IX(a) is not contingent on the availability of an alternative location acceptable for relocation. The Township will make reasonable efforts to provide an alternative site acceptable to Licensee, Licensee shall comply with the notice to remove its personal property as instructed.

b. Cooperation in Relocation- the Licensee and Licensor shall cooperate to the extent possible to assure continuity of service during relocation of Licensee’s equipment.

c. Recovery of Relocation Cost from Third Parties- Nothing in this section shall be construed as preventing Licensee from recovering the cost of removal and/or relocation of its facilities from a nongovernmental third-party responsible for removal and/or relocation.

d. Consequences of Failure to Remove and/or Relocation- If Licensee fails to remove and/or relocate its equipment to the satisfaction of the Township Engineer or their designee after one hundred and twenty (120) days from the date of notice or has not diligently commenced such removal as directed by Licensor, the Township may remove Licensee’s equipment at the expense of Licensee.

e. Duty of Care when Removing and/or Relocating- Any damage to the Municipal Rights-of-Way or adjacent property caused by Licensee that occurs during the removal and/or relocation of Licensee’s equipment shall be promptly repaired or replaced at Licensee’s sole expense. Should Licensee not make nor diligently pursue adequate repairs within thirty (30) days of receiving written notice, Licensor may make all reasonable and necessary repairs on behalf of Licensee. The cost of said repairs will be charged to Licensee. Licensee shall promptly remit payment of such costs when invoiced by Licensor.

**X. Emergency Contacts**

a. Coordination of Emergency Events- In case of any emergency interference, failure of traffic light system, or any unforeseen events, the Township will act to protect the public health and safety of its citizens, and to protect public and private property, notwithstanding any provision in this ROW Agreement. The Township will make every reasonable effort to coordinate its emergency response with the Licensee. To that end the Township will use the following emergency contacts:

i. Level One Contact: the Licensee’s network operations center may be reached 24/7 at: 888-854-7475 or through email at noc@zenfi.com

ii. Level Two Contact: in the event that the Licensee’s network operations center cannot be reached, or the network operations center staff cannot address the emergency situation, the Licensor may contact:

Nevada Menor

908-409-6922

201-888-0493

nmenor@zenfi.com

b. Licensee’s duty to maintain current emergency contacts- Licensee will maintain the emergency contact information current at all times with the Township Engineer or designee.

**XI. Indemnity**

a. General Indemnity Clause- Except to the extent resulting from the acts or omission of the Township, Licensee covenants and agrees to fully indemnify, defend and hold harmless, the Township and the elected officials, employees, officers, directors, volunteers, professionals and representatives of the Township, individually and collectively, from and against any and all costs, claims, liens, damages, losses, expenses, fees, fines, penalties, proceedings, actions, demands, causes of action, liability and suits of any kind and nature, including but not limited to, personal or bodily injury, death and property damage, made upon the Township directly or indirectly arising out of, resulting from or related to Licensee’s negligence, willful misconduct or activities under this ROW Agreement, including any acts or omissions of Licensee, any agent, officer, director, representative, employee, consultant or subcontractor of Licensee, and their respective officers, agents, employees, directors and representatives while in the exercise of the rights or performance of the duties under this ROW agreement, including, but not limited to:

i. The repair, replacement, or restoration of Township property, equipment, materials, structures, and facilities which are damaged, destroyed or found to be defective.

ii. Damages to or loss of the property of any person including, but not limited to, Licensee, its agents, officers, employees and subcontractors, the Township’s agents, officers and employees and third parties; and

iii. Death, bodily injury, illness, disease, worker’s compensation, loss of service, or loss of income or wages to any person no matter how, or to whom, the loss may occur.

b. In the event Licensee and Township are found jointly liable by a court of competent jurisdiction, liability shall be apportioned in accordance with the laws for the State of New Jersey, without, however waiving any governmental immunity to the Township under New Jersey law and without waiving any defenses of the parties under New Jersey law.

c. Licensee’s Liability for its Acts and Omissions- Licensee shall be liable for the acts and omissions of its own employees, officers, directors, and any contractors, subcontractors, representatives, agents, or any parties involved directly or indirectly in the construction, installation, maintenance, repair, removal or operation of Licensee’s equipment. Any act or omission of non-employees, officers, and directors shall be considered an act or omission of the Licensee.

**XII. Insurance Requirements**

a. Prior to the commencement of any work under this ROW agreement, the Licensee shall furnish copies of blanket additional insured endorsements and original completed certificate(s) of insurance to the Township Engineer or designee, which shall clearly be labeled “[Company Name] ROW Agreement for use of Township’s Rights-of-Way” in a description of operations block of the certificate. The original certificate(s) shall be completed by a broker and signed by a person authorized by that insurer to bind coverage on its behalf. The Township will not accept memorandum of insurance or binders as proof of insurance. The original certificate(s) or form must have the broker’s original signature, including the broker’s company affiliation, title and phone number, and be mailed, with copies of blanket additional insured endorsements, directly from the insurer’s authorized representative to the Township. The Township shall have no duty to perform under this ROW Agreement until such certificate and endorsements have been received and reasonable approved by the Township Engineer and Township Attorney.

b. The Township reserves the right to review the insurance requirements of this section during the effective period of this ROW Agreement and any extension or renewal hereof and to modify insurance coverage and their limits when deemed necessary and prudent by the Township’s risk manager based upon changes in statutory law, court decisions, or circumstances surrounding this agreement. In no instance will the Township allow modification whereupon the Township may incur increased risk. Such review and modification shall not occur more frequently than every five (5) years subject to review and approval of Licensee.

c. The Licensee’s financial integrity is of interest to the Township; therefore, the Licensee shall obtain and maintain in full force and effect for the duration of this ROW Agreement, and any extension hereof, at Licensee’s sole expense, insurance coverage written on an occurrence basis, by companies authorized or permitted to do business in the State of New Jersey, in the following types and for an amount listed below:

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| Type of Coverage | Amounts |
| 1. Employer’s Liability
 | $1,000,000 each accident/disease/policy limit |
| 1. Commercial General Liability insurance to include coverage for the following:
2. Premises/Operations
3. Independent Contractors
4. Products/Complete Operations
5. Personal and Advertising Injury
6. Contractual Liability
7. Property damage, to include Fire Legal Liability
 | Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per occurrence and General Aggregate limit of $2,000,000 |
| 1. Commercial Automobile Liability
2. Owned/Leased Vehicles
3. Non-Owned Vehicles

Hired Vehicles | Combined Single Limit for Bodily Injury and Property Damage of $1,000,000 per accident. |
| 1. Excess Liability
 | Excess Liability coverage shall be maintained over the required Employer’s Liability, Commercial General Liability and Commercial Automobile Liability policies in an amount not less than $5,000,000.00. |

d. The Licensee agrees that with respect to the above required insurance, all insurance policies are to contain or be endorsed to contain the following provisions.

i. Include the Township, its officials, employees, and volunteers as additional insured as their interests may appear under this ROW Agreement on the general liability and automobile liability policies for both ongoing and completed operations. A blanket insured endorsement will be attached to the certificate of insurance;

ii. General, automobile, and excess liability policies will provide a waiver of subrogation in favor of the Township; and

iii. Upon receipt of notice from its insurer, the Licensee will endeavor to provide Licensor with thirty (30) days prior written notice of cancellation.

e. Within thirty (30) calendar days of a suspension, cancellation or non-renewal of coverage, the Licensee shall provide a replacement Certificate of Insurance and applicable endorsements to the Township. The Township shall have the option to suspend the Licensee’s agreement. Failure to provide and maintain the required insurance shall constitute a material breach of this ROW Agreement.

f. In addition to any other remedies the Township may have upon the Licensee’s failure to provide and maintain any insurance or policy endorsements to the extent and within the time herein required, the Township shall have the right to order the Licensee to stop work hereunder until the Licensee demonstrates compliance with the requirements thereof.

g. Nothing herein contained shall be construed as limiting in any way the extent to with the Licensee may be held responsible for payments of damages to persons or property resulting from the Licensee’s or its subcontractor’s performance of the work covered under this Licensee agreement.

h. It is agreed that the Licensee’s insurance shall be deemed primary and non-contributory with respect to any insurance or self-insurance carried by the Township for liability arising out of operations under this ROW Agreement.

i. It is understood and agreed that the insurance required is in addition to and separate from any other obligation contained in this ROW agreement.

j. The Licensee and any subcontractors are responsible for all damages to their own equipment and/or property.

**XIII. Future Contingency**

a. Renegotiation for Incapacity of Contract- Notwithstanding anything contained in this ROW Agreement to the contrary, in the event that this ROW Agreement, in whole or in part, is declared or determined by a judicial, administrative or legislative authority exercising its jurisdiction to be excessive, unrecoverable, unenforceable, void, unlawful, or otherwise inapplicable, the Licensee and Township shall meet and negotiate an amended ROW Agreement that is in compliance with the authority’s decision or enactment.

b. If the Township and Licensee are unable to negotiate a new ROW Agreement within twelve (12) months of a determination by a judicial, administrative or legislative authority exercising its jurisdiction that the current ROW Agreement is excessive, unrecoverable, unenforceable, void, unlawful, or otherwise inapplicable, this ROW Agreement shall be deemed expired.

**XIV. Governing Law, Jurisdiction and Venue**

a. Governing Law- This ROW Agreement is passed in accordance with the constitutions, statutes, ordinances, and regulations of the United States, the State of New Jersey, and the Township of Bernards in effect on the date this ROW Agreement is approved, and as such local, state, and federal laws may be subsequently amended.

b. Compliance with Local Ordinances- Nothing in this ROW Agreement shall be interpreted to limit the authority of the Township Committee to adopt, from time to time, ordinances, rules and regulations it may deem necessary in the exercise of the Township’s governmental powers. Licensee shall abide by any Township ordinances that do not conflict or are otherwise preempted by state or federal law or this ROW Agreement.

c. Jurisdiction- The provisions of this ROW Agreement shall be construed under, and in accordance with, the laws of the state of New Jersey.

d. Venue- The venue for any matter arising from this ROW Agreement is the Superior Court of Somerset County, New Jersey.

**XV. Miscellaneous**

a. Waiver- None of the material provisions of this ROW Agreement may be waived or modified except expressly in writing, signed by the Licensee and Township, as authorized by the Township Committee by passage of an ordinance. Failure of either party to require the performance of any term in this ROW Agreement or the waiver by either party of any breach thereof shall not prevent subsequent enforcement of this term and shall not be deemed a waiver of any subsequent breach.

b. Severability- If any clause or provision of this ROW Agreement adjudged is illegal, invalid, or unenforceable under present or future laws effecting during the term of this ROW Agreement , then and in that event it is the intention of the parties hereto that the remainder of this ROW Agreement shall not be affected thereby, and it is also the intention of the parties that in lieu of each clause or provision of this ROW Agreement that is illegal, invalid, or unenforceable, there be added as part of this ROW Agreement a clause or provision as similar in terms to such illegal, invalid, or unenforceable clause or provision as may be possible and be legal, valid and enforceable.

c. Captions- The captions contained in this ROW Agreement are for convenience of reference only and in no way limit or enlarge the terms and conditions of this ROW Agreement.

d. Extent of Agreement- This ROW Agreement, together with its attached exhibits and authorizing ordinances, embodies the complete agreement of the parties, superseding all oral or written previous and contemporaneous agreements between the parties and relating to this ROW Agreement.

e. Authority- the signer of this ROW Agreement for the Licensee and the Township hereby represents and warrants that he or she has full authority to execute this ROW Agreement on behalf of the Licensee or the Township respectively.

f. Force Majeure- In the event Licensee’s performance of any of the terms, conditions, obligations or requirements of this ROW Agreement is prevented or impaired due to a force majeure beyond Licensee’s reasonable control, such inability to perform will be deemed to be excused and no penalties or sanctions will be imposed as a result therefore, provided Licensee took steps to mitigate damages and accepts responsibility to cure the performance breach. For the purposes of this section, “force majeure” means an act of God, a natural disaster or an act of war (including terrorism), civil emergencies and labor unrest or strikes, untimely delivery of equipment, pole hits and unavailability of essential equipment, and/or materials. In addition to relief expressly granted in this ROW Agreement, the Township may grant relief from performance of this ROW Agreement if Licensee is unable to comply or perform due to an event of force majeure. The burden of proof for the need for such relief shall rest upon the Licensee. To obtain release based upon this section, Licensee must file a written request with the Township Attorney for consideration and approval, which shall not be unreasonably denied.

h. Public Disclosure- Licensee acknowledges that this instrument is a public record within the meaning of New Jersey’s Open Public Records Act (N.J.S.A. 47:1A-1 et seq.)

Executed and Agreed

Township of Bernards Licensee

By: By:

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Carol Bianchi

Mayor, Township of Bernards

Date: Date: