

**AN ORDINANCE OF THE TOWNSHIP OF NORTH BRUNSWICK AUTHORIZING
EXECUTION OF A RIGHTS-OF-WAY AGREEMENT BETWEEN THE
TOWNSHIP OF NORTH BRUNSWICK AND
COMCAST BUSINESS COMMUNICATIONS, LLC,
TO PERMIT THE INSTALLATION, USE, AND MAINTENANCE OF
TELECOMMUNICATIONS FACILITIES WITHIN PUBLIC RIGHTS-OF-WAY
FOR PURPOSES OF PROVIDING TELECOMMUNICATIONS SERVICES**

WHEREAS, Comcast Business Communications, LLC (“CBC”), a local exchange and interexchange telecommunications services provider with offices located at 1701 JFK Boulevard, Philadelphia, Pennsylvania 19103, is authorized to provide local exchange and interexchange telecommunications services throughout the State of New Jersey pursuant to an Order dated February 15, 2001, issued by the New Jersey Board of Public Utilities (“NJBP”) in Docket No. TE00100789; and

WHEREAS, CBC has requested the consent of the Township of North Brunswick (“Township”) to occupy public rights-of-way within the Township for the purpose of constructing, installing, operating, repairing, maintaining, or replacing a telecommunications system; and

WHEREAS, it is deemed to be in the best interest of the Township and its citizenry, including in particular the commercial and industrial citizens, for the Township to grant municipal consent to CBC to occupy the public rights-of-way within the Township for this purpose; and

WHEREAS, the granting of such consent is and shall be conditional upon CBC’s compliance with all existing and future applicable ordinances of the Township and its entering into a written agreement with the Township to, *inter alia*, indemnify and hold the Township harmless as to all claims and liability resulting from any injury or damage caused by CBC which may arise from the construction, installation, operation, repair, maintenance, disconnection, replacement, and removal of its telecommunications system within certain public rights-of-way and its provision of liability insurance coverage for personal injury and property damage; and

WHEREAS, this Ordinance will authorize CBC to operate within the boundaries of the Township, and Comcast will apply for permits as necessary to construct, install, operate, repair, maintain, or replace telecommunications systems;

NOW THEREFORE, BE IT RESOLVED, by the Township Council of the Township of North Brunswick, Middlesex County, State of New Jersey:

1. That non-exclusive consent is hereby granted to CBC to occupy the public rights-of-way within the Township for the purpose of construction, installation, operation, repair, maintenance, and replacement of a telecommunications system for a period of twenty (20) years plus two (2) ten (10) year extensions;
2. That the within granted permission is conditioned upon CBC entering into the attached Rights-of-Way Use Agreement with the Township and providing liability and property damage insurance coverage;

3. That the Mayor and Municipal Clerk are hereby authorized to execute and attest to, respectively, any and all documents, including the Rights-of-Way Use Agreement in substantially similar form, attached hereto, subject to the review and approval of the Township Attorney;
4. That if any section paragraph, subdivision, clause, sentence, phrase, or provision of this Ordinance is declared unconstitutional or invalid by a court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance;
5. That a copy of this Ordinance and the executed Rights-of-Way Use Agreement shall be filed in the Office of the Municipal Clerk; and

Michael C. Hritz
Director of Community Development

Justine Progebin
Business Administrator

Ronald H. Gordon, Township Attorney
(Approved as to legal form)

RECORDED VOTE FIRST READING: NOVEMBER 4, 2024

COUNCIL MEMBER	YES	NO	ABSTAIN	NOTES
CHEDID				
MEHTA				
GUADAGNINO				
DAVIS				
SOCIO				
HUTCHINSON				
MAYOR WOMACK				

RECORDED VOTE SECOND READING: NOVEMBER 18, 2024

COUNCIL MEMBER	YES	NO	ABSTAIN	NOTES
CHEDID				
MEHTA				
GUADAGNINO				
DAVIS				
SOCIO				
HUTCHINSON				
MAYOR WOMACK				

CERTIFICATION

I hereby certify that the above Ordinance was duly adopted by the Township Council of the Township of North Brunswick, County of Middlesex, at its meeting held on November 18, 2024.

Lisa Russo, Township Clerk

EFFECTIVE DATE

This Ordinance shall take effect upon passage and publication in accordance with applicable law.

- APPROVED
- REJECTED

Francis M. Womack III, Mayor
Township of North Brunswick

Date Signed: _____, 2024

RIGHTS-OF-WAY USE AGREEMENT
BETWEEN THE TOWNSHIP OF NORTH BRUNSWICK
AND COMCAST BUSINESS COMMUNICATIONS, LLC

THIS RIGHTS-OF-WAY USE AGREEMENT (“Use Agreement”) is dated _____, 2024 (the “Effective Date”), and entered into by and between the Township of North Brunswick, Middlesex County, New Jersey, a New Jersey Municipal Corporation with a primary business address of 710 Hermann Road, North Brunswick, New Jersey (“Township”), and Comcast Business Communications, LLC (“CBC”) a Pennsylvania limited liability company with offices located at One Comcast Center, 1701 JFK Boulevard, Philadelphia, Pennsylvania 19103.

RECITALS

WHEREAS, CBC has been authorized by the New Jersey Board of Public Utilities (“NJBPU”) to provide local exchange and interexchange telecommunications services throughout the State of New Jersey by Order of Approval in Docket No. TE00100789 on February 15, 2001. Pursuant to such authority, CBC may locate, place, attach, install, operate, and maintain facilities within municipal Rights-of-Way for purposes of providing telecommunications services; and

WHEREAS, CBC proposes to place its telecommunications facilities aerially on existing utility poles or in underground conduits in the public Rights-of-Way within the Township; and

WHEREAS, the Township has determined that it is in the interest of its residents to grant consent to CBC to occupy said public Rights-of-Way within the Township for this purpose; and

WHEREAS, the Township is empowered to enter into this agreement pursuant to N.J.S.A. 48:17-10 through N.J.S.A. 48:17-12; and

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, repairing, and maintaining a Telecommunications System (as defined herein);

NOW THEREFORE, in consideration of the mutual covenants and obligations set forth, the Township and CBC agree as follows:

Section 1. Definitions.

- a. “CBC” is Comcast Business Communications, LLC, including its successors and assigns, and is the grantee of rights under this Use Agreement.
- b. “NJBPU” is the New Jersey Board of Public Utilities.
- c. “Public Utility” means any public utility defined in N.J.S.A. 48:2-13.
- d. “Rights-of-Way” means the areas devoted to passing under, over, on or through lands with public utility facilities.

- e. "Township" is the grantor of rights under this Use Agreement and is known as the Township of North Brunswick, Middlesex County, New Jersey.
- f. "Telecommunications System" consists of (i) the facilities required to provide local exchange and interexchange telecommunications services in the Township, in accordance with the NJBPU's grant of authority in its Order of Approval issued on February 15, 2001 in Docket No. TE00100789, and (ii) information services facilities, such as may be required for the provision of broadband internet, voice-over-internet-protocol ("VoIP"), and/or other information services that federal law authorizes CBC to own, construct, install, operate, repair, and maintain to the extent such services are commingled with telecommunications services.
- g. "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 CBC its municipal consent for the non-exclusive use of the public Rights-of-Way for the purpose of owning, constructing, installing, operating, repairing, and maintaining a Telecommunications System on Rights-of-Way owned by the Township. The consent granted herein shall be for the performance of work within the Rights-of-Way of the Township only. CBC shall seek consent from the County of Middlesex or State of New Jersey as appropriate for non-exclusive use of the public Rights-of-Way owned by the County of Middlesex or State of New Jersey, as appropriate.

Section 3. Public Purpose.

It is deemed to be in the interests of the Township and its residents for the Township to grant consent to CBC to occupy said Rights-of-Way owned by and located within the Township for this purpose.

Section 4. Project Description.

Any construction to be undertaken for the purposes described herein shall require prior notice by CBC to the Township. CBC shall describe the construction to be undertaken and shall coordinate and work with the appropriate Township department(s) before scheduling and commencing any construction. Prior to commencing any excavation work, CBC or its authorized contractor shall obtain any necessary permits, including road opening permits, from the Township.

Section 5. Scope of Use Agreement.

Any and all rights expressly granted to CBC under this Use Agreement, which shall be exercised at CBC'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 municipal 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 Township Rights-of-Way. Moreover, the Township shall only grant CBC usage of the Rights-of-Way owned by the Township. Nothing in this Use Agreement shall be deemed

to grant, convey, create, or vest in CBC a real property interest in land, including any fee, leasehold interest, easement, or any other form of interest or ownership.

Subject to obtaining the permission of the owner(s) of existing Utility Poles, which shall be the sole responsibility of CBC to undertake and obtain, the Township hereby authorizes and permits CBC to enter upon the Township's rights-of-way and to attach, install, operate, maintain, remove, reattach, reinstall, relocate, and replace its telecommunications and information services facilities in or on Utility Poles or other structures owned by public utility companies or to be constructed by CBC located within the Township's Rights-of-Way, as may be permitted by the public utility company or property owner, as the case may be.

CBC, in the performance and exercise of its rights and obligations under this Use Agreement, shall not interfere in any manner with the existence and operation of any and all public and private Rights-of-Way, sanitary sewers, water mains, storm drains, gas mains, poles, aerial and underground electrical and telephone wires, electroliers, cable television, and other telecommunications, utility, or municipal property, without the express written approval of the owner or owners of the affected property or properties, except as permitted by applicable law or this Use Agreement. The Township agrees to require the inclusion of the same prohibition on interference as that stated above in all agreements and franchises for use of the Township Rights-of-Way that the Township may enter into after the Effective Date of this Agreement with other persons.

Section 6. Compliance with Laws.

CBC shall comply with all applicable existing laws, rules, statutes, regulations, and ordinances of the Township, as may be amended from time to time, in the performance and exercise of its rights and obligations under this Use Agreement.

Section 7. Township Costs.

CBC agrees to pay reasonable costs incurred by the Township by reason of CBC's Telecommunications System, including, but not limited to, the Township's attorney's fees for the negotiation and preparation of this Use Agreement and accompanying resolution authorizing its execution.

Section 8. Term of Agreement.

This Use Agreement shall be effective as of the date first written above and shall extend for a term of twenty (20) years plus two (2) ten (10) year extensions from the Effective Date.

Section 9. Indemnification.

CBC, 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, contractors, designees, and invitees from and against any and all claims, demands, suits, actions at law or equity or otherwise, judgments, arbitration, determinations, damages, liabilities, or decrees of any person(s) or entities claiming to be or being harmed as a result of CBC's 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 attorney's 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 CBC's activities pursuant to the rights granted in this Use Agreement. The indemnity provided for in this paragraph shall not apply to any liability resulting or arising from the negligence of the Township or its successors, assigns, sub-contractors, agents, servants, officers, employees, designees, guests and invitees. In the event that CBC and the Township are found jointly liable by a court of competent jurisdiction, liability shall be apportioned comparatively in accordance with applicable law, without, however, waiving any defenses of the parties under State law. The Township shall give prompt written notice to CBC of any claim for which the Township seeks indemnification. CBC shall have the right to investigate, defend, and compromise these claims with prompt notice to and approval by the Township attorney, which approval shall not be unreasonably withheld, delayed, or conditioned.

Section 10. 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 CBC at:

Robert Clifton
Senior Director, Government & Regulatory Affairs
Comcast Business Communications
3800 Horizon Boulevard, Suite 300
Trevose, PA 19053-4968

To the Township at:

Notices shall be deemed given upon receipt in the case of personal delivery, three (3) days after deposit in the mail, or the next day in the case of overnight delivery. Either party may from time to time designate any other address for this purpose by written notice to the other party delivered in the same manner set forth above.

Section 11. Relocation.

CBC shall, by execution of this Use Agreement, certify its willingness to cooperate with the Township and its agents for the proper coordination of all work in connection with any planned or future Township improvements. CBC's facilities shall be relocated, adjusted, or supported as required by CBC (each such relocation, adjustment, or provision of support, a "Plant Modification") at no cost to the Township for any future improvements constructed on behalf of

the Township in the Township Rights-of-Way, excepting that, if the Township offers or would be obligated to offer funding to any Rights-of-Way user for a Plant Modification under similar circumstances, the Township shall offer to CBC the same funding opportunity on a nondiscriminatory basis. In the event that a Plant Modification is requested by the Township, the Township will use its best efforts to accommodate CBC's request for the relocation of CBC's facilities. CBC's twenty-four (24) hour emergency telephone number is 1-877-359-1821.

Section 12. Damage.

Whenever the installation, removal, repair, or relocation of CBC's facilities is required or permitted under this Use Agreement, and such installation, removal, repair, or relocation shall cause the Township Rights-of-Way to be damaged, CBC, at its sole cost and expense, shall promptly repair and return the Township Rights-of-Way to a condition as good or better than prior to the work.

Section 13. Liability Insurance

CBC shall at all times maintain a comprehensive general liability insurance policy with a single amount of at least Two Million Dollars (\$2,000,000.00) 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 (or "umbrella") policy in the amount of One Million Dollars (\$1,000,000.00). Notwithstanding the foregoing, CBC may meet the required limits of liability insurance through any combination of primary and excess liability policies. Such insurance shall be provided by an insurance company(ies) licensed to conduct business in the State of New Jersey.

Prior to the commencement of any work pursuant to this Use Agreement, CBC shall file with the Township Certificates of Insurance with endorsements required hereunder evidencing the coverage provided by said liability and excess liability policies.

The Township shall notify CBC within fifteen (15) 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 CBC's activities pursuant to the rights granted in this Use Agreement or those of CBC's sub-contractors, agents, employees, officers, servants, designees, guests, or invitees.

Section 14. Non-Exclusive Use.

CBC understands that this Use Agreement does not provide CBC the exclusive use of the Township Rights-of-Way and that the Township has the right to permit other uses or the installation of other equipment or devices in the Rights-of-Way.

Section 15. Assignment.

CBC may not assign this Use Agreement without the written consent of the Township except to a CBC affiliate, and CBC shall have the right, upon notice to the Township, to assign this Use Agreement without the Township's consent, provided, however, that such assignment is approved by the NJBPU.

Section 16. Successor 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 17. Waiver of Breach

The waiver by either party of any breach or violation of any provision of this Use Agreement shall not be deemed to be a waiver or continuing waiver of any subsequent breach or violation of the same or any other provision of this Use Agreement.

Section 18. Governing Law.

This Use Agreement shall be governed by, construed, and enforced in accordance with the laws of the State of New Jersey. If suit is brought by a party to this Use Agreement, the parties agree that trial of such shall be vested exclusively in the state courts of New Jersey in the County of Middlesex, or the United States District Court for the District of New Jersey.

Section 19. Prior Agreements Superseded.

This Use 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 understanding pertaining to any such matter shall be effective for any purpose.

Section 20. Modification of Agreement.

This Use Agreement may not be amended or modified, nor may any obligation hereunder be waived orally, and no such amendment, modifications, 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 21. Severability.

If any provision of this Use Agreement shall be held by a court of competent jurisdiction in a final judicial action to be void, voidable, or unenforceable, such provision(s) shall be deemed severable from the remaining provisions of this Use Agreement and shall not affect the legality, validity, or constitutionality of the remaining portions of this Use Agreement. Each party hereby declares that it would have entered into this Use Agreement and each provision hereof irrespective of the fact that any one or more provision(s) may be declared illegal, invalid, or unconstitutional.

Section 22. Headings

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.

The remainder of this page is intentionally left blank

IN WITNESS WHEREOF, this Use Agreement has been executed as of the date set forth below. By signing below, each signer declares that he/she is of legal age, is competent, and has the legal authority to sign and legally bind the respective entity to the terms and conditions of this agreement.

**COMCAST BUSINESS
COMMUNICATIONS, LLC**

TOWNSHIP OF NORTH BRUNSWICK

Name and Title

Name and Title

Signature

Signature

Dated: _____

Dated: _____

WITNESS

WITNESS

Name and Title

Name and Title

Signature

Signature

Dated: _____

Dated: _____