

Ordinance: #1,506
Introduced: 6/17/13
Adopted: 7/15/13
Effective: 8/4/13

ORDINANCE NO. 6-13

**AN ORDINANCE GRANTING NON-EXCLUSIVE PERMISSION AND
CONSENT TO AT&T, ITS SUCCESSORS AND ASSIGNS, TO USE ALL
OF THE VARIOUS PUBLIC RIGHTS-OF-WAY AND PARTS THEREOF IN
THE BOROUGH OF LINCOLN PARK, MORRIS COUNTY, NEW JERSEY, BOTH
ABOVE AND BELOW THE SURFACE THEREOF, FOR THE CONSTRUCTION,
INSTALLATION, OPERATION, REPAIR, MAINTENANCE AND
REPLACEMENT OF ITS TELECOMMUNICATIONS SYSTEM**

WHEREAS, AT&T Corp., through its operating subsidiaries, including AT&T Communications of New Jersey, L.P., Teleport Communications America, LLC, and Teleport Communications New York (collectively, "AT&T") is authorized by the New Jersey Board of Public Utilities (the "Board" or "BPU") per a September 14, 2005 Order of Approval by the Board (Docket Nos. TT8603271 and TX95100501) to provide local exchange and interexchange telecommunications service throughout the State of New Jersey; and

WHEREAS, AT&T has requested consent from the Borough of Lincoln Park ("Borough") to locate, place, attach, install, operate and maintain its fiber optic network facilities within the Borough public rights-of-way; and

WHEREAS, the Borough is obligated to grant AT&T said consent pursuant to 47 U.S.C. §253(a); and

WHEREAS, in response to the Borough's requests, AT&T has submitted to the Borough (1) a \$5,000.00 escrow with the Borough to cover all fees and costs incurred by the Borough in granting AT&T's request as described above, consisting of one payment of \$1,500 for the Borough's general administrative expenses and a second payment of \$3,500 for the Borough's traffic control expenses; and (2) a route map which depicts AT&T's initial planned installation route throughout the Borough; and

WHEREAS, the Borough desires to grant consent to AT&T to construct, install, operate, repair, maintain and replace its telecommunications system within the Borough's public rights-of-way.

BE IT ORDAINED, by the Governing Body of the Borough of Lincoln Park, County of Morris, State of New Jersey, as follows:

SECTION ONE. Subject to the provisions of applicable Borough Ordinances, non-exclusive permission and consent is hereby granted to AT&T, its successors and assigns, to construct, install, operate, repair, maintain, and replace its telecommunications system in, through, upon,

over, under and across all of the various public rights-of-way, and parts thereof, in this Borough.

SECTION TWO. To the extent possible, all fiber optics will be installed on existing poles and conduit. All poles, posts or pedestals hereafter to be erected, constructed, installed, reconstructed, maintained, operated and replaced shall be located and placed in back of and adjacent to the curb lines where shown by Official Maps of the Borough of Lincoln Park and within eighteen (18") inches thereof, or as may be mutually agreed to by the parties, and where there are no curb lines, at other convenient points or places upon the public rights-of-way as may be mutually agreed to by both parties.

SECTION THREE. All construction, installation, operation, repair, maintenance and replacement of AT&T's telecommunications system shall be done so as not to interfere with any public water, sanitary sewer, storm drainage or other public facilities, fixtures and appurtenances (hereinafter "Public Facilities").

AT&T shall install its telecommunications system underground to the extent required by applicable State Law or regulation of the New Jersey Board of Public Utilities.

AT&T further agrees to remove and relocate, at its sole expense, all or any part of its telecommunications system hereafter located and installed that unreasonably interfere with construction, reconstruction and maintenance of any Public Facility, except as otherwise provided by law and subject to the right of AT&T to recover the costs of such work from third parties who may be legally responsible for such costs.

Any and all rights expressly granted to AT&T under this Ordinance, which shall be exercised at AT&T'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 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 municipal rights-of-way. Nothing in this Ordinance shall be deemed to grant, convey, create or vest in AT&T 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 AT&T to undertake and obtain, the Borough hereby authorizes and permits AT&T to enter upon the municipal rights-of-way and to attach, install, operate, maintain, remove, reattach, relocate and replace its telecommunications facilities, in or on Utility Poles or other structures owned by public utility companies or to be constructed by AT&T located within the municipal rights-of-way as may be permitted by the public utility company or property owner, as the case may be.

SECTION FOUR. AT&T, its successors, assigns, sub-contractors, agents, servants, officers,

employees, designees, guests and invitees, hereby indemnify, defend and hold harmless the Borough, 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, decrees of any person(s) or entities claiming to be or being harmed as a result of AT&T 's actions under this Ordinance 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 proceeding which may arise in connection with AT&T's activities pursuant to the rights granted in the Ordinance.

SECTION FIVE. In the event that any work under this Ordinance requires road openings, AT&T shall file with the Borough of Lincoln Park prior to the start of any work, a map or plan showing the location and size of any such facilities which map or plan shall be first approved by said Mayor and Council or their authorized representatives, which approval shall not be unreasonably withheld or delayed.

AT&T shall further strictly comply with the provisions of the Code of the Borough of Lincoln Park, Chapter 185, Streets and Sidewalks, Article III, Street Openings and Excavations, Sections 185-7 through 185-24, as the same shall be lawfully amended or supplemented during the term of this Ordinance.

SECTION SIX. The surface of the public rights-of-way, and any pavement or flagging taken up or soil and/or planting disturbed by AT&T in building its telecommunications system shall be restored to as good condition as it was before the commencement of work thereon by AT&T at no cost to the Borough of Lincoln Park, except as otherwise provided by law. No public rights-of-way shall be encumbered for a longer period than shall be necessary to execute the work. Such restoration shall be subject to the approval of the Mayor and Council after an inspection by its authorized representative upon completion of the work.

SECTION SEVEN. AT&T agrees to pay reasonable costs incurred by the Borough by reason of AT&T's telecommunications system, including, but not limited to, Borough attorney's fees for the development and preparation of this Ordinance and other activity related hereto which expenses were incurred subsequent to the request for this consent made by AT&T.

SECTION EIGHT. AT&T, its successors and assigns and any other companies or corporations having legal authority to erect and maintain poles, posts or pedestals, may jointly use the same poles, posts or pedestals, provided they can agree to do so upon any of the public rights-of-way in the Borough of Lincoln Park.

SECTION NINE. The use of all public rights-of-way by AT&T shall be subject to such police and

other regulations and restrictions as may be lawfully adopted by the Governing Body of the Borough of Lincoln Park.

SECTION TEN. AT&T 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). The Borough shall be named as an additional insured under said insurance policies.

Prior to the commencement of any work pursuant to this Ordinance, AT&T shall file with the Borough Certificates of Insurance with endorsements evidencing the coverage provided by said liability and excess liability policies.

The Borough shall notify AT&T within fifteen (15) days after the presentation of any claim or demand to the Borough, either by suit or otherwise, made against the Borough on account of AT&T or any of its sub-contractors, agents, employees, officers, servants, designees, guests and invitees, activities pursuant to the rights granted in this Ordinance.

SECTION ELEVEN. Following the adoption of this Ordinance by the Borough, and acceptance thereof by AT&T, AT&T and the Borough shall execute a rights-of-way agreement which shall set forth the terms and conditions of the permission and consents granted herein. Said permission and consent shall continue and be in force for the later of fifteen (15) years from the date of such agreement or ten (10) years from the date of its approval by the New Jersey Board of Public Utilities if required by law, provided that the Borough shall have the right in accordance with applicable law to amend this Ordinance after five (5) years to reflect any significant changes in the law or communications technology, and further provided that such amendments shall be subject to the approval of the Board of Public Utilities if required by law. Throughout the full term of this Ordinance, AT&T, its successors and assigns, shall furnish safe, adequate and proper service within the Borough of Lincoln Park and keep and maintain its property and equipment in such condition as to enable it to do so.

SECTION TWELVE. Nothing herein contained shall be construed to grant unto AT&T, its successors and assigns, an exclusive right or to prevent the granting of permission and consent to other companies for like purposes on any of the public rights-of-way of the Borough of Lincoln Park.

SECTION THIRTEEN. The term "Borough" as used in this Ordinance shall be held to apply to and include any form of municipality or government into which the Borough of Lincoln Park or any part thereof may at any time hereafter be changed, annexed or merged, and the term "Borough" or any other term herein

used in referring to the Governing Body of the Borough of Lincoln Park shall be held to apply and include the Governing Body of such other form of municipality.

SECTION FOURTEEN. AT&T shall pay the expenses incurred for advertising done in connection with the adoption of this Ordinance within thirty (30) days after the date of it going into effect.

SECTION FIFTEEN. Upon adoption of this Ordinance in accordance with law, the Borough Clerk shall provide AT&T with written notice thereof by Certified Mail. AT&T shall file with the Borough Clerk, its written acceptance of said Ordinance within 30 days of the receipt of said notice.

SECTION SIXTEEN. If any section, paragraph, subdivision, clause or provision of this Ordinance shall be judged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged, and the remainder of this Ordinance shall be deemed valid and effective.

SECTION SEVENTEEN. All Ordinances or parts of Ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency only.

SECTION EIGHTEEN. This Ordinance shall take effect immediately upon adoption.

Cynthia L. Sloane, RMC, CMR, Borough Clerk

Raymond T. Kerwin, Council President

INTRODUCED:

June 17, 2013

PUBLISHED IN DAILY RECORD:

June 23, 2013

PUBLIC HEARING AND ADOPTION:

July 15, 2013

PUBLISHED IN DAILY RECORD

July 21, 2013

EFFECTIVE DATE:

August 4, 2013