

RESOLUTION
of the
BOROUGH OF NEW PROVIDENCE
Resolution No. 2016-063

Council Meeting Date: 01-25-2016

Date Adopted: 01-25-2016

TITLE: RESOLUTION AUTHORIZING MEMORANDUM OF AGREEMENT AND EASEMENT AGREEMENT WITH RESPECT TO 1783 SPRINGFIELD AVENUE, BLOCK 10, LOT 5

Councilperson Madden submitted the following resolution, which was duly seconded by Councilperson Galluccio.

BE IT RESOLVED by the Mayor and Borough Council of the Borough of New Providence, in the County of Union and State of New Jersey, that they do hereby approve and authorize a Right-of-Way Use Agreement with respect to 1783 Springfield Avenue, Block 10, Lot 1 and Union Avenue (paper street) in the Borough of New Providence, in the forms attached hereto, and they do further authorize and direct the Mayor and Borough Clerk to execute same on behalf of the Borough of New Providence.

APPROVED, this 25th day of January, 2016.

RECORD OF VOTE

	AYE	NAY	ABSENT	NOT VOTING
GALLUCCIO	X			
GENNARO	X			
KAPNER	X			
MADDEN	X			
MUÑOZ	X			
ROBINSON	X			
MORGAN			TO BREAK COUNCIL TIE VOTE	

I hereby certify that the above resolution was adopted at a meeting of the Borough Council held on the 25th day of January, 2016.

Wendi B. Barry, Borough Clerk

RIGHT-OF-WAY USE AGREEMENT

This Right-of-Way Use Agreement is dated _____ (“Effective Date), and entered into by and between the Borough of New Providence (“Borough”), a New Jersey municipal corporation having its address at 360 Elkwood Road, New Providence, New Jersey 07974, and NP ATLAS, LLC, a New Jersey corporation with offices located at 50 South Street, New Providence, New Jersey 07974.

WHEREAS, NP ATLAS, LLC has requested permission to utilize an area within a right-of-way owned by the Borough more particularly described in the attached Exhibit A for the purpose of parking, and planting and maintenance of landscaping;

WHEREAS, the granting of this request will enhance safety in and around the newly developed gasoline facility; and

WHEREAS, NP ATLAS, LLC will assume all cost for landscaping along the Springfield Avenue side of the Union Avenue right-of-way which will enhance the appearance of the area; and

WHEREAS, it is in the best interest of the Borough and its citizenry for the Borough to grant consent to NP ATLAS, LLC to utilize a public right-of-way as requested.

NOW, THEREFORE, in consideration of the mutual covenants and obligations hereinafter set forth, the Borough and NP ATLAS, LLC hereby agree and with each other as follows:

1. The Borough hereby grants NP ATLAS, LLC consent for the use of the public right-of-way within the Borough, more particularly described in the attached Exhibit A, for the purpose of parking and installation and maintenance of landscaping.

2. It is deemed to be in the best interest of the Borough and its citizenry for the Borough to grant consent to NP ATLAS, LLC to utilize the right-of-way for the purpose stated.

3. Any and all landscaping shall be installed and maintained in a manner acceptable to the Borough. In the event any landscaping is installed or subsequently maintained in a manner that is not acceptable to the Borough, NP ATLAS, LLC shall remove such landscaping or make such changes as may be required by the Borough.

4. Any and all rights expressly granted to NP ATLAS, LLC under this Agreement, which shall be exercised at NP ATLAS, LLC’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 right-of-way exclusively or concurrently with any other person

or persons, and shall be subject to all deeds, easements, dedications, conditions, covenants, restrictions, encumbrances, and claims of title of record which may effect such municipal right-of-way. Nothing in this Agreement shall be deemed to grant, convey, create or vest in NP ATLAS, LLC a real property interest in land, including any fee, leasehold, interest, easement or any other form of interest or ownership.

5. NP ATLAS, LLC shall comply with all existing ordinances of the Borough as may be amended from time to time, or with all future ordinances as may be enacted.

6. The non-exclusive consent granted herein may be revoked at any time by the Borough upon the provision of 90 days' written notice to NP ATLAS, LLC. Upon termination of consent, NP ATLAS, LLC shall cease to utilize the right-of-way.

7. NP ATLAS, LLC, its successors, assigns, subcontractors, 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 or persons or entities claiming to be or being harmed as a result of NP ATLAS, LLC's actions under this Agreement and the costs in connection therewith. This indemnification does 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 Borough in connection with any and all claims, demands, suits, actions at law or equity or otherwise, or arbitrations proceedings which may arise in connection with NP ATLAS, LLC activities pursuant to the rights granted in this Agreement.

8. Notices. All notices or other correspondence required or permitted to be given in connection with this Agreement shall be in writing and delivered personally, or by overnight carrier service, or by registered or certified mail to the parties at the following addresses:

TO THE BOROUGH at: Borough of New Providence
Attn: Borough Administrator
360 Elkwood Road
New Providence, NJ 07974

TO NP ATLAS, LLC at: NP ATLAS, LLC
50 South Street
New Providence, NJ 07974

9. NP ATLAS, LLC shall at all times maintain a comprehensive liability insurance policy with a single limit amount of at least \$1,000,000.00 covering the Borough

for any liability for any death, personal injury or property damage, or other liability arising out of the use of the right-of-way contemplated herein.

Prior to commencement of the use, NP ATLAS, LLC shall file with the Borough a certificate or certificates of insurance with endorsements evidencing the coverage provided by said liability.

10. The Borough shall notify NP ATLAS, LLC within 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 any activities of NP ATLAS, LLC or its subcontractors, agents, employees, officers, servants, designees, guests and invitees pursuant to the rights granted in this Agreement.

11. NP ATLAS, LLC may not assign this Agreement without written consent of the Borough.

12. The terms and conditions herein contained shall be binding upon and inure to the benefit of the successors and assigns and the parties hereto.

13. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of New Jersey.

14. This Agreement contains the entire understanding of the parties 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. This Agreement may not be amended or modified, nor may any obligation hereunder be waived orally, and no such agreement, modification or waiver shall be effective for any purpose unless it is in writing and signed by the party against enforcement thereof is sought.

15. 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 a manner as to preserve the validity hereof, and the substance of the transaction herein contemplated to the extent possible. 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 Agreement has been executed as of the date set forth below.

BOROUGH OF NEW PROVIDENCE

NP ATLAS, LLC

By: _____

By: _____

Al Morgan, Mayor