

# City of Philadelphia



(Bill No. 110228)

## AN ORDINANCE

Authorizing the Commissioner of Public Property to enter into a 25-year Sublicense Agreement with the Philadelphia Authority for Industrial Development (“PAID”) for the use of a certain strip of land, owned by the PECO Energy Company and licensed to PAID, approximately 16 feet wide, beginning near the intersection of Nixon Street and Shawmont Avenue, continuing northwest along the east side of the Schuylkill River, and terminating at the Montgomery County border, under certain terms and conditions.

### *THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. The Commissioner of Public Property is hereby authorized to enter into a 25-year Sublicense Agreement, substantially in the form appended hereto as Exhibit “A,” with the Philadelphia Authority for Industrial Development (“PAID”), under which the City shall obtain from PAID a sublicense for the use of a certain strip of land, licensed to PAID by PECO Energy Company, which is approximately 16 feet wide, and begins near the intersection of Nixon Street and Shawmont Avenue, continues northwest along the east side of the Schuylkill River, and terminates at the Philadelphia-Montgomery County border, as shown on the map appended hereto as Exhibit “B.”

SECTION 2. The City Solicitor is authorized to impose such terms and conditions on the transaction authorized by this Ordinance, including the agreement appended hereto as Exhibit “A,” as the City Solicitor deems necessary and proper to protect the interests of the City and to carry out the purposes of this Ordinance.

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## EXHIBIT A OF ORDINANCE

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## TRAIL SUBLICENSE

THIS TRAIL SUBLICENSE (“**Sublicense**”) made as of this \_\_\_\_ day of March, 2011, between the PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, a Pennsylvania body politic and corporate organized and established and existing under the laws of the Commonwealth of Pennsylvania (“**Authority**”) as sublicensor, and THE CITY OF PHILADELPHIA, a body politic and corporate organized under the laws of the Commonwealth of Pennsylvania (“**City**”), as sublicensee.

## **BACKGROUND**

WHEREAS, the Authority, as licensee, this day has entered into a License, a copy of which is attached hereto and made part hereof as **Exhibit “A”** (“**Master License**”) with PECO Energy Company (“**Licensor**”) for use of a certain 16-foot wide strip of land, owned by the Licensor, beginning near the intersection of Nixon Street and Shawmont Avenue in Philadelphia, Pennsylvania and continuing northwest along the east side of the Schuylkill River, and terminating at the Montgomery County Border (“**Premises**”); and

WHEREAS, the Master License contemplates the sublicensing of the Premises by the Authority to the City; and

WHEREAS, the Authority and the City wish to set forth in writing their agreements as to the sublicensing of the Premises.

NOW THEREFORE, the Authority and the City, intending to be legally bound, covenant and agree, subject to the covenants, terms, provisions and conditions of this Sublicense and the Master License, as follows:

1. Sublicense.

Authority does hereby sublicense to the City, and the City hereby accepts from the Authority the Premises for the Term (hereinafter defined) in accordance with the terms and conditions of this Sublicense. The City hereby assumes all rights, responsibilities, and obligations of the Authority under the Master License.

2. Term.

The term (“**Term**”) of this Sublicense shall be concurrent with the term of the Master License, minus one (1) day, as provided herein. This Sublicense shall only be subject to termination, upon termination of the Master License.

3. Possession.

Subject to the terms and provisions of this Sublicense, the City shall have possession of the Premises during all periods during which the Authority is entitled to possession under the Master License, minus one day.

4. Rent and Other Payments.

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The City shall pay to the Authority, or its designee at the address of the Authority set forth in Paragraph 6 of this Sublicense, or at such other place as the Authority may from time to time designate in writing, all amounts required to be paid under the terms of the Master License during the Term without any set off or deduction whatsoever.

5. Use of the Premises.

The City shall use the Premises in accordance with the requirements of the Master License, and shall satisfy all obligations of the Authority, in accordance with the terms of the Master License.

6. Notices.

(a) All notices, requests, and other communications required under this Sublicense (“**Notices**”; each a “**Notice**”) must be in writing and must be sent by **(1)** United States registered or certified mail, return receipt requested, postage prepaid, **(2)** hand delivery with receipt obtained, or **(3)** by a nationally recognized overnight courier service providing receipted proof of delivery.

(b) Each Notice must be addressed as set forth below or addressed to such other individual and or address as the party to receive Notice may from time to time designate by Notice to the other party in the manner described above described:

If to Authority:

Philadelphia Authority for Industrial Development  
2600 Centre Square West  
1500 Market Street  
Philadelphia, PA 19102  
Attn: Chairman

With a copy to:

Philadelphia Authority for Industrial Development  
c/o Philadelphia Industrial Development Corporation  
2600 Centre Square West  
1500 Market Street  
Philadelphia, PA 19102  
Attn: Vice President - Corporate Counsel

If to City:

Department of Public Property  
City Hall, Room 790  
Philadelphia, PA 19102  
Attn: Commissioner

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With copies to:

City of Philadelphia Law Department  
One Parkway 1515 Arch Street, 17th Floor  
Philadelphia, PA 19102  
Attn: Divisional Deputy City Solicitor, Real Estate

If to Licensor:

PECO ENERGY COMPANY  
2301 Market Street  
Philadelphia, PA 19103  
Attention: Director, Real Estate & Facilities

(c) Notice given under this Sublicense shall be deemed to have been received (1) in the case of registered or certified mail, on the date received or on the date delivery was refused, (2) in the case of a hand delivery with receipt obtained, the date indicated on the receipt obtained by the courier, or (3) in the case of overnight delivery, on the date received or on the date delivery was refused.

7. Sublicense Subordinate to Master License.

This Sublicense is subject and subordinate to the Master License, and the Authority and City intend that the terms and conditions of this Sublicense shall be identical to the terms and conditions of the Master License, except as to the specific matters referred to herein.

Except with regard to the payments as described herein, the obligations of the Authority, as tenant under the Master License, are incorporated herein as the obligations of the City, and the City agrees that it shall be bound by and perform all obligations of the Authority and the Authority shall have all the rights and remedies hereunder which the Licensor has as licensor under the Master License. The City agrees, however, that it shall not be relieved of any obligations set forth herein, explicitly or by reference, by reason of default or failure of the Authority hereunder.

8. Consent of Master License Licensor; Enforcement by Licensor.

By way of its acknowledgment of the Sublicense, Licensor consents to this Sublicense. In consideration of this consent, the Authority and the City acknowledge and consent to the right of Licensor to directly enforce the terms of the Master License and the Sublicense, by pursuing all remedies available to Licensor in the Master License, or available to the Authority pursuant to this Sublicense, including legal and equitable proceedings against the City, to compel performance by the City of its obligations under this Sublicense.

9. Standard City Provisions.

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Subject to the provisions of Section 7 above, the Authority agrees that in its performance under this Sublicense and the Master License it shall comply with all applicable laws, including without limitation, the “**Standard City Provisions**” set forth in **Exhibit “B”** to this Sublicense. Failure to do so shall constitute a substantial breach of this Sublicense entitling the City to all rights and remedies provided in this Sublicense or otherwise available in law or equity. In addition, it is understood that false certification or representation is subject to prosecution under Title 18 Pa. C.S.A. Section 4904.

10. Indemnification. In consideration of Authority’s undertakings pursuant to the Master License and this Sublicense, the City shall and hereby does indemnify, defend and hold harmless Authority and the Philadelphia Industrial Development Corporation (PIDC), and their respective members, officers, directors, employees, agents, successors and assigns (collectively, the “**Indemnitees**”) from and against all liabilities, losses, damages, costs, expenses (including but not limited to any and all attorneys’ fees), causes of action, suits, claims, demands or judgments of any nature, including, without limitation, all liability by reason of injury (including death) to persons and damage to any property, any liens or charges which relate to or arise out of (i) the City’s acts or omissions; (ii) this Sublicense or the Master License; and (iii) any condition, in, on or about the Premises whether or not caused by the City. Excepting for the Authority’s obligation to disburse timely payments to Licensor pursuant to the Master License provided that such funds have been timely paid by the City to the Authority, the City acknowledges and agrees that it is indemnifying the Authority and PIDC for their negligence in connection with or which may arise out of the its participation in this Sublicense or the Master License. Notwithstanding the above, nothing in this indemnity shall waive or be construed to waive the application of statutory provisions, immunities and limitations available to the City and Authority under Act No. 142, 42 Pa. C.S.A. §8501, et seq., with respect to, and in defense of, any claim or claims asserted by any person or entity. The preceding sentence is intended, without limitation, to afford the City or Authority the statutory protection to which they may be entitled in the course of defending the City or Authority against claims whether ultimately asserted against the City or Authority by direct action, by cross-action, by action over or otherwise. The City shall not indemnify the Indemnitees for their own gross negligence or willful misconduct.

11. Insurance. The City shall be responsible to comply with the insurance requirements contained in Section 13 of the Master License. The City self-insures with regard to its liability under Pennsylvania Law for negligent acts or omissions of its officers and employees and for physical loss to property, for which the City is legally liable. To that end, the City has established an indemnity fund (to support its legal liabilities) on a fiscal year basis, which is administered by the City’s Law Department and Risk Management Division. Claims involving personal injury and property damage are handled by the Risk Management Division. Nothing herein shall waive or amend any defense or immunity which the City, its officers, employees or agents may have under the Pennsylvania Political Tort Claims Act, 42 Pa.C.S.A. § 8541, et seq., as amended.

[Signature lines are on the following page]

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IN WITNESS WHEREOF, the parties hereto have executed these presents the day and year first above written and intend to be legally bound thereby.

## AUTHORITY:

Approved as to Form on behalf of  
Authority:

PHILADELPHIA AUTHORITY FOR  
INDUSTRIAL DEVELOPMENT

By: \_\_\_\_\_  
Ilene S. Burak, Esquire  
Vice President and Corporate  
Counsel, Philadelphia Industrial  
Development Corporation

By: \_\_\_\_\_  
James McManus  
Chairman

## CITY:

Approved as to Form:  
Shelley R. Smith, Solicitor

CITY OF PHILADELPHIA, through its  
Department of Public Property

By: \_\_\_\_\_  
Deputy City Solicitor

By: \_\_\_\_\_  
Joan Schlotterbeck  
Commissioner

CITY OF PHILADELPHIA, through its  
Department of Parks and Recreation

By: \_\_\_\_\_  
Mark A. Focht  
Executive Director

Acknowledgement and Consent:

PECO Energy Company

By: \_\_\_\_\_  
Name:  
Title:

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## **EXHIBIT "A"** **MASTER LICENSE**



TRAIL LICENSE AGREEMENT

**THIS TRAIL LICENSE AGREEMENT** (this "License"), made this \_\_\_\_ day of March, 2011, by and between **PECO ENERGY COMPANY**, a Pennsylvania corporation ("Licensor") and the **PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT** ("Licensee").

BACKGROUND

A. The Licensee desires to enter upon and use an approximately 16-foot wide strip of land, owned by the Licensor, beginning near the intersection of Nixon Street and Shawmont Avenue in Philadelphia, Pennsylvania and continuing northwest along the east side of the Schuylkill River, and terminating at the Montgomery County border, as more particularly described in Exhibit "A" attached hereto and made a part hereof (the "Premises"), which is now and will hereafter be used by Licensor for its corporate purposes.

B. Licensor is willing to permit Licensee so to enter upon and use the Premises upon the terms and conditions of this License.

C. Contemporaneously with Licensee's execution of this License, Licensee and the City of Philadelphia (the "City") shall enter into a trail sublicense agreement (the, "Sublicense"), attached hereto and made a part hereof as Exhibit "B", whereby Licensee will grant a sublicense to the City, and the City will accept such sublicense, transferring to the City all of the Licensee's rights, obligations, and responsibilities under this License.

**NOW, THEREFORE**, in consideration of the covenants, promises and agreements herein contained, and intending to be legally bound, the parties agree as follows:

1. Grant of License. Licensor hereby grants Licensee a License granting Licensee the right to enter onto the Premises for the purposes of constructing and maintaining a recreational trail ("Trail") for use by the general public for walking, hiking, jogging, rollerblading and bicycling ("Recreational Use").

2. Use of the Premises. Licensee shall use the Premises and Trail only in accordance with the terms of this License and in a manner acceptable to and approved by Licensor when such acceptance and approval by Licensor is required by this License. Licensee's use of the Premises shall not interfere with Licensor's full use, operation and maintenance of the Premises for its corporate purposes. Licensor reserves the right of continuous access to and from Licensor's Facilities located upon the Premises and property adjacent thereto. Licensee shall not permit the Premises, or any part thereof, to be used except as herein specifically provided. Licensee agrees to

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install signs that adequately notify and warn the public that the Premises is private property and that any use other than Recreational Use shall be considered trespassing.

3. Public Relations. Licensee is aware that there may be public concerns which may be encountered as a result of Licensee's plan to establish and use the Trail. Licensee agrees that it will meet and discuss these concerns with the property owners adjoining the Trail and actively work with them to reasonably resolve all such concerns.

4. Leases and Licenses. Portions of the Premises are subject to existing leases and licenses granted by Licensor. Licensor will notify those tenants that their leases or licenses are affected by this License. Licensee shall discuss its use of the Premises with the existing tenants of the Licensor and resolve any concerns with such tenants in a reasonable and timely manner. Any damages to crops or other property of such tenants or future tenants caused by Licensee or others shall be the sole responsibility of Licensee.

5. Licensor's Uses.

(a) This License is expressly subject to Licensor's right to erect, install, use, operate, maintain, repair, renew, add to, relocate, remove Licensor's Facilities upon, along, over, under and across the Premises or necessary for the distribution of electric, gas or telecommunications services ("Licensor's Facilities"), together with the right as Licensor shall deem necessary to cut down, trim and remove any trees, brush or other vegetation that interferes or potentially interferes with Licensor's Facilities. Upon reasonable notification from Licensor to do so, Licensee agrees to relocate a section or sections of the Trail at Licensee's expense should any section of the Trail materially interfere with Licensor's access or use of Licensor's Facilities. Licensor shall not unreasonably require such relocation and shall use reasonable efforts to access or use Licensor's Facilities without relocation of a section or sections of the Trail.

(b) Licensor reserves the right and privilege to grant easements and leases on, over, or under any part of the Premises for any purpose which does not unreasonably interfere with the Licensee's permitted use under this License.

6. Publicity and Signs. Licensee agrees to:

(a) erect and install signs and notices approved by Licensor at each end of and entrance to the Trail indicating Licensor's ownership of the Premises and the contribution of the use of Licensor's property to the development of the Trail. Licensee agrees that any signs or notices posted by it on the Premises or any pamphlets, brochures, or other informational material distributed by Licensee which involves the Premises shall so acknowledge Licensor's contribution;

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(b) provide the appropriate media releases which will inform the general public of the donation by Licensor of the use of its property for the Trail upon the execution of this License; and

(c) provide Licensor with copies of all media releases, pamphlets, brochures, and other informational material distributed by Licensee which involves the Trail.

7. Trail Design. Licensee recognizes that Licensor is concerned about the possibility of unauthorized use of the Trail and its property by motorized vehicles such as all terrain vehicles (ATV's), motorcycles, and snowmobiles. Licensee agrees to incorporate control and safety measures into its design to discourage such unauthorized use and to protect the public. Such design factors shall include, but are not limited to, signs, barricades, and deflectors around obstructions such as towers, poles and guy wires. Licensee shall be solely responsible for the design of the Trail and all improvements but will review such designs with Licensor before finalizing the designs. Licensee shall also modify the trail safety system if required in the future for improvement of safety. Licensee's trail design and subsequent construction shall not hinder Licensor's access to Licensor's property.

8. Plans.

(a) Licensee shall submit six (6) copies of detailed plans and profiles to Licensor's Real Estate & Facilities Division showing the proposed construction of the Trail, any alteration or improvements to be constructed and all proposed grading, including existing grading, fencing and grounding protection, paving, drainage facilities, landscaping, lighting fixtures, utilities and any other possible proposed alteration to the Premises in accordance with Licensor's Electric Construction Standard S-7073, a copy of which is attached hereto. LICENSEE SHALL NOT COMMENCE THE CONSTRUCTION OR INSTALLATION OF THE TRAIL OR ANY ALTERATIONS OR IMPROVEMENTS UPON THE PREMISES AT ANY TIME UNTIL LICENSEE HAS RECEIVED WRITTEN APPROVAL FROM LICENSOR OF LICENSEE'S PLANS. Licensor reserves the right to refuse to review or approve plans not in accordance with Licensor's standard. Licensee shall notify Licensor immediately upon the completion of any approved construction in order that a final inspection can be made by Licensor to insure compliance with plans approved by Licensor.

(b) Any relocation or other adjustment or modification of Licensor's Facilities, if acceptable to Licensor, to accommodate the Trail or Licensee's improvements for the Trail shall be performed by Licensor at the sole cost and expense of Licensee on a cost plus overhead basis. Licensee shall pay an estimate of the costs prior to Licensor performing such work. Any overpayment will be refunded following completion and any unpaid amount over the estimate paid by Licensee shall be paid to Licensor within thirty (30) days following Licensor's bill therefore to Licensee.

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(c) Construction of the Trail and any improvements made by Licensee shall be done at the sole cost and expense of Licensee.

9. Drainage. All work performed by Licensee shall be done in a manner that will not adversely affect the drainage upon the Premises, Licensor's property and property of others adjacent thereto. Any drainage problems created by Licensee shall be corrected at Licensee's sole cost and expense and without additional use of Licensor's property.

10. Maintenance of Premises. Licensee shall:

(a) maintain the Premises and Trail and all improvements thereon at Licensee's sole cost and expense. Licensee shall not erect, alter or remove any fences or other structures on the Premises and shall not plant, destroy, cut or remove any trees, nor remove any rock, stone, gravel, soil or other natural material or property of Licensor from the Premises without the prior written consent of Licensor. Licensee shall cut grass and trim shrubbery, cut and destroy any Canada thistles or weeds commonly known as chicory, succory or blue daisy or other objectionable or obnoxious weeds or vegetation on the Premises and shall also cut and destroy all brush in excess of three (3) feet in height on the Premises. Licensee shall also remove and properly dispose of all trash and other debris, if any, on or which may be on the Premises. Licensee may not use and expressly agrees not to use Licensor's property for disposal purposes.

(b) maintain the Trail and any improvements thereon, whether existing at the date of this License or installed hereafter, in good order and condition at all times and at its sole cost and expense;

(c) establish and enforce rules and regulations for use of the Trail, prevent unauthorized uses and obtain assistance from police when required;

(d) police and maintain all areas adjoining the Trail which are affected by the authorized or unauthorized use of the Trail; and

(e) handle all complaints from adjoining property owners and other parties relating to the Trail within a reasonable period of time upon notification of such complaints.

11. Licensor's Facilities. Licensee understands and acknowledges that the business of Licensor involves the construction, maintenance, operation and use of structures, fixtures and facilities with appurtenances, now or which may hereafter be erected on the Premises and property adjacent thereto which are used or useful in connection with the conversion, transmission or distribution of electricity, gas and communications services. Licensee shall not touch, handle, tamper with or contact, directly or indirectly any of Licensor's Facilities.

12. Indemnification of Licensor; Waiver and Release. Licensee assumes all risk of loss, injury or damage to the Trail or personal property and all risk of injury or death to its employees, contractors, workmen, or any other person or persons from any causes whatever, including but not limited to claims for injuries to employees of the Licensor Parties, Licensee or their contractors or subcontractors. To the fullest extent permitted by applicable law, Licensee shall indemnify, defend and save harmless Licensor, its officers, agents and employees ("Licensor Parties"), from and against any and all claims, actions, liability, damages, costs and expenses (including attorney's fees) in connection with loss of life, personal injury, or damage to property caused to any person in or about the Premises (including but not limited to claims for injuries to employees of Licensor, Licensee or their contractors or subcontractors) or arising out of the occupancy or use of the Premises by Licensee to the extent such damage or loss is legally caused by Licensee's use of the Premises. Notwithstanding the foregoing, the Licensee shall have no obligation to indemnify the Licensor for any Claims which may arise as a result of any (i) pre-existing condition of the Premises unrelated to this License; (ii) actions of third parties unrelated to use of the Trail or the License; or (iii) to the extent said Claims are caused by the sole negligence or willful misconduct of the Licensor or Licensor Parties and unless Licensee has been given prompt and timely written notice of the filing of any such Claims. Nothing herein shall waive or amend any defense or immunity which the Licensee, its officers, employees or agents may have under 42 Pa.C.S.A. § 8521, et seq. (Sovereign Immunity), as amended.

13. Insurance.

(a) Licensee shall require that the City insures the Premises in accordance with the terms of the Sublicense. The City self-insures with regard to its liability under Pennsylvania Law for negligent acts or omissions of its officers and employees and for physical loss to property, for which the City is legally liable. To that end, the City has established an indemnity fund (to support its legal liabilities) on a fiscal year basis, which is administered by the City's Law Department and Risk Management Division. Claims involving personal injury and property damage are handled by the Risk Management Division. Nothing herein shall waive or amend any defense or immunity which the Licensee, its officers, employees or agents may have under 42 Pa.C.S.A. § 8521, et seq. (Sovereign Immunity) or 42 Pa.C.S.A. § 8541, et seq. (Governmental Immunity), as amended.

(b) Licensee shall require all contractors and subcontractors to carry and maintain Commercial General Liability Insurance (with coverage consistent with ISO Form CG 0001 (12/04)) providing bodily injury, property damage and personal/advertising injury coverage (including but not limited to coverage for claims against Licensor for injuries to employees of Licensee or its contractors or subcontractors) with limits not less than Four Million Dollars (\$4,000,000) per occurrence with an insurance company or companies acceptable to Licensor during the

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construction, installation, maintenance, repair, renewal, removal or replacement of the Trail. Licensee shall furnish Licensor with evidence of such insurance in the form of a policy or certificate of insurance. The policy or certificate shall name Licensor, its officers, agents and employees, as additional insured, be primary insurance for all purposes, contain cross-liability provisions, and provide for a waiver of all rights of subrogation which Licensee's insurance carrier may have against Licensor.

(c) A certificate evidencing such coverage shall be forwarded to Licensor prior to commencing any work on the Premises, and contain a provision that Licensor be notified with at least ten (10) days prior notice in the event of cancellation of the insurance.

(d) Insurance coverage provided by Licensee's contractors or subcontractors under this License shall not include any of the following: any claims made insurance policies; any self-insured retention or deductible amount greater than Two Hundred Fifty Thousand Dollars (\$250,000) unless approved in writing by Licensor; any endorsement limiting coverage available to Licensor which is otherwise required by this License; and any policy or endorsement language that (1) negates coverage to Licensor for Licensor's own negligence, (2) limits the duty to defend Licensor under the policy, (3) provides coverage to Licensor only if Licensee is negligent, (4) permits the recovery of defense costs from any additional insured, or (5) limits the scope of coverage for liability assumed under a contract.

14. Recreational Act. Licensor shall have all benefits of the Act of Assembly of February 2, 1966, No. 586 S1 et seq., 68 P.S. 477-1 et seq. limiting liability of landowners to make land and water areas available to the public for recreational purposes.

15. Liens. If any lien is filed against the Premises by any contractor of Licensee for work done on the Premises, Licensee shall cause same to be discharged or satisfied within fifteen (15) days of service or upon notice of same, whichever shall be sooner. Licensee shall indemnify, defend and hold harmless Licensor against all costs and expenses (including, without limitation reasonable attorneys' fees arising out of any such liens.

16. Compliance with Laws. Licensee shall comply with all notices, rules, regulations, laws and ordinances of all governmental and regulatory agencies in its use of the Premises without expense to Licensor.

17. Term and Termination.

(a) The License shall be for a term of twenty five (25) years unless sooner terminated in accordance with the terms of this License and shall only be effective upon

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Philadelphia City Council's and the Mayor of Philadelphia's approval of an Ordinance authorizing the City to enter into the Sublicense.

(b) If Licensee abandons or ceases to use the Premises, or violates or fails to comply with any of the terms, conditions, covenants and provisions in this License (such abandonment and/or noncompliance shall be collectively referred to herein as an "Event of Default"), then Licensee shall, upon written notice from Licensor, have 90 days, or such period of days acceptable to Licensor and Licensee, in which to cure such Event of Default ("Cure Period"). If the reason for the notice has not been resolved by the Cure Period, then this License shall thereupon automatically terminate forthwith and the privileges of Licensee hereunder shall thereupon immediately cease and terminate. In the event that this License shall terminate by reason of any of the foregoing and Licensee has not vacated the Premises or has failed to remove from the Premises any improvements, property and/or materials thereon belonging to Licensee, then Licensor may serve written notice upon Licensee to vacate the Premises and/or to remove all such improvements, property and materials within five (5) days after the date of such notice.

(c) If Licensee fails to vacate the Premises and/or fails to remove Licensee's improvements, property and/or materials within the period specified in paragraphs 17 (a) and (b), then the title to such improvements, property and/or materials may, at Licensor's option, automatically be and become vested in Licensor without further or additional act or acts on the part of the Licensee or Licensor and Licensor at its option shall have the right to remove same at the sole cost and expenses of the Licensee, which cost and expense Licensee hereby agrees to pay to Licensor no later than ten (10) days after demand to do so from Licensor.

18. Notices. All notices given by either party shall be in writing served personally upon the other party; or sent by United States certified mail, return receipt requested or sent by a recognized commercial courier service, addressed to the other party at its address, which the parties agree shall be

Licensor:

PECO ENERGY COMPANY  
2301 Market Street  
Philadelphia, PA 19103  
Attention: Director, Real Estate & Facilities

Licensee:

Philadelphia Authority for Industrial Development  
c/o Philadelphia Industrial Development Corporation  
2600 Center Square West

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1500 Market Street,  
Philadelphia, Pennsylvania 19102  
Attention: Vice President - Corporate Counsel

With a Copy to:

City of Philadelphia Law Department  
Attn: Divisional Deputy City Solicitor, Real Estate  
1515 Arch Street, 17<sup>th</sup> floor  
Philadelphia, PA 19102

19. Fees. Licensee shall pay Licensor a fee of TWO HUNDRED FIFTY DOLLARS (\$250.00) annually in advance, while this License remains in effect. The first payment shall be made at signing, and all additional payments shall be made to Licensor on or before the 1st day of each November this License is in effect.

20. Taxes.

(a) Licensee shall pay all real property taxes and other charges and assessments levied upon or assessed against Licensor or Licensor's property caused by this License or the construction of the Trail or Licensee's improvements and shall save Licensor harmless from any such taxes, charges and assessments at its sole cost and expense.

(b) Licensee agrees that no charge or assessment shall be made or imposed upon Licensor or its property for the cost of installing the Trail or improvements and shall save Licensor harmless from any such charge or assessment at Licensee's sole cost and expense.

21. Licensor's Standards. In addition to the provisions set forth in this License, the Licensee further agrees to comply with all the conditions contained in Licensor's Electric Construction Standards S-7070, S-7073 and S-7074 attached hereto as Exhibit "B", as they affect Licensee's use of the Premises and as may be modified by Licensor from time to time. If any provision of this License conflicts with any provision of such Standards then Licensor shall solely determine which provision shall prevail.

22. Hazardous Material.

(a) Licensee shall not cause or permit, as a result of any act or omission on the part of Licensee, the placement or presence of any flammable or other forms of explosives, radioactive materials, petroleum and petroleum products, hazardous wastes or toxic substances, or related materials, asbestos or any material containing asbestos, or any other substance or materials as defined by any federal, state or local environmental law, ordinance, rule, or regulation now existing or hereinafter enacted ("Hazardous Materials") upon the Premises or Licensor's adjoining property.



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(b) Licensee acknowledges that during its observation of the Premises it found no physical evidence of Hazardous Materials stored thereon.

(c) If Licensee receives notice from any governmental authority regarding Hazardous Materials on, from or affecting the Premises then Licensee shall immediately notify Licensor.

(d) Licensee hereby agrees to indemnify, defend and hold harmless Licensor from any claim, investigation, litigation, damages, cost and expenses (including, but not limited to, reasonable attorneys' fees) arising out of (i) failure to comply with environmental laws; and (ii) any Hazardous Materials in, on or under the Premises arising out of or in any way related to or caused by the Licensee or Licensee's activities on the Premises. The obligations and liabilities under this section shall survive the termination of this License and shall be continuing.

23. Licensor's Mortgage. This License is subject to the lien of the First and Refunding Mortgage dated May 1, 1923, of The Counties Gas and Electric Company (to which PECO Energy Company is successor) to Fidelity Trust Company (to which US Bank, National Association, is successor) as the same has been and may hereafter be amended and supplemented for the security of presently outstanding bonds of Licensor and additional bonds which may hereafter be issued and outstanding under such mortgage as so amended and supplemented.

24. Filings. If required by law, Licensor shall file a copy of this Agreement with the Pennsylvania Public Utility Commission promptly upon the execution hereof, the 33rd day after such filing shall be the effective date hereof, unless prior to such date proceedings are instituted as provided in Section 507 of the Pennsylvania Public Utility Law, Title 66, and in the event of the institution of such proceedings, then this Agreement shall become effective as to Licensor only after approval by the Pennsylvania Public Utility Commission.

25. Miscellaneous.

(a) This License shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

(b) Licensee shall not assign its interest in this License without the prior written consent of Licensor. Notwithstanding the foregoing, Licensor hereby acknowledges and consents to the Sublicense.

(c) The waiver by Licensor of any breach of any covenant, obligation or condition of this License shall not be deemed to be a waiver of any subsequent breach of any covenant, obligation or condition.

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(d) This License shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania. Any proceeding instituted in connection with this Agreement shall be brought exclusively in the United States District Court for the Eastern District of Pennsylvania or the Court of Common Pleas of Philadelphia County.

(e) This License constitutes the entire agreement between the parties and may not be amended, altered or modified except by written instrument executed by the parties hereto.

(f) This License may be executed in counterpart copies, each of which shall constitute an original, but all of which together shall constitute one and the same instrument.

**[Remainder of the page is blank; signatures appear on the following page]**

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Executed as of the day and year first above written.

PECO ENERGY COMPANY

BY: \_\_\_\_\_  
M.A. Williams  
Director, Real Estate & Facilities

Approved as to Form:

Philadelphia Authority for Industrial  
Development

By: \_\_\_\_\_  
Ilene Burak, Esq.  
Vice President – Corporate Counsel  
on behalf of the Philadelphia  
Authority for Industrial Development

BY: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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EXHIBIT A

PREMISES



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## EXHIBIT B

### SUBLICENSE

EXHIBIT "B"

STANDARD CITY PROVISIONS

Nondiscrimination.

This Sublicense is entered into under the terms of the Philadelphia Home Rule Charter and in its performance under this Agreement, and therefore Authority shall not discriminate, nor permit discrimination, against any person because of race, color, religion, national origin or sex. In the event of such discrimination, the City may exercise rights and remedies provided to the City in this Sublicense or at law or in equity.

In accordance with Chapter 17-400 of The Philadelphia Code, Authority agrees that its payment or reimbursement of membership fees or other expenses associated with participation by its employees in an exclusionary private organization, insofar as such participation confers an employment advantage or constitutes or results in discrimination with regard to hiring, tenure of employment, promotions, terms, privileges or conditions of employment on the basis of race, color, sex, sexual orientation, gender identity, religion, national origin or ancestry, constitutes a substantial breach of this Sublicense entitling the City to all rights and remedies provided in this Sublicense or otherwise available in law or equity.

Authority agrees to include subparagraphs (a) and (b) of this Section 12, with appropriate adjustments for the identity of the parties, in all subcontracts which are entered into for work to be performed pursuant to this Sublicense.

Authority further agrees to cooperate with the Commission on Human Relations of the City of Philadelphia in any manner which such Commission deems reasonable and necessary to carry out its responsibilities under Chapter 17-400 of The Philadelphia Code. Failure to so cooperate shall, without limiting the generality of this Sublicense, constitute a substantial breach of this Sublicense, entitling the City to all rights and remedies provided in this Sublicense or otherwise available at law or in equity.

Fair Practices.

Authority agrees, in exercising its rights under this Sublicense, to comply with the provisions of the Fair Practices Ordinance of The Philadelphia Code (Chapter 9-1100) and the Mayor's Executive Order No. 4-86, as they may be amended from time to time, both of which prohibit, inter alia, discrimination against persons with AIDS in employment and services.

Certificate of Non-Indebtedness.

Authority hereby certifies and represents to the City that Authority and Authority's parent company (ies), if any, are not currently indebted to the City, and will not during the term of this Sublicense be indebted to the City, for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Authority shall require all contractors and subcontractors performing

# City of Philadelphia

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work on the Premises during the term of this Sublicense, to certify that they are not currently indebted to the City and shall not be indebted to the City during the term of this Sublicense for or on account of any delinquent taxes (including, but not limited to, taxes collected by the City on behalf of the School District of Philadelphia), liens, judgments, fees or other debts for which no written agreement or payment plan satisfactory to the City has been established. Any breach or failure to conform to the aforesaid certifications shall constitute a default by Authority and entitle the City to exercise any rights or remedies available to it under this Sublicense or otherwise available at law or in equity.

## **Audit of Affairs.**

During the Term of the Sublicense, the City Controller shall have the right to audit the affairs of the Authority to the extent required under Section 6-400 of the Home Rule Charter. In order to facilitate such an audit, upon prior reasonable notice, the Authority must provide the Controller with reasonable access to the Authority's books and financial records.

## **Americans With Disabilities Act.**

Authority understands and agrees that no individual with a disability shall, on the basis of the disability, be excluded from participation in the Sublicense or from activities or Services provided under the Sublicense. As a condition of accepting and executing the Sublicense, Authority shall comply with all provisions of the Americans With Disabilities Act (the "Act"), 42 U.S.C. §§12101 - 12213, and all regulations promulgated thereunder, as the Act and regulations may be amended from time to time, which are applicable (a) to Authority, (b) to the benefits, Services, activities, facilities and programs provided in connection with the Sublicense, (c) to the City, or the Commonwealth of Pennsylvania, and (d) to the benefits, services, activities, facilities and programs of the City or of the Commonwealth, and, if any funds under the Sublicense are provided by the federal government, which are applicable to the federal government and its benefits, services, facilities, activities, facilities and programs. Without limiting the applicability of the preceding sentence, Authority shall comply with the "General Prohibitions Against Discrimination," 28 C.F.R. Part 35.130, and all other regulations promulgated under Title II of "The Americans With Disabilities Act," as they may be amended from time to time, which are applicable to the benefits, services, programs and activities provided by the City through contracts with outside contractors.

## **Federal Laws.**

Authority shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d - 2000d.7), Section 504 of the Federal Rehabilitation Act of 1973 (29 U.S.C. § 794), The Age Discrimination Act of 1975, (42 U.S.C. §§ 6101 - 6107), Title IX of the Education Amendments of 1972 (20 U.S.C. § 1681), and 45 C.F.R. Part 92, as they may be amended from time to time, which together prohibit discrimination on the basis of race, color, national origin, sex, handicap, age and religion.



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## **No Prohibited Gifts to City Officials.**

Pursuant to Executive Order 002-04, no official or employee in the Executive and Administrative Branch of the City shall solicit or accept, directly or indirectly, anything of value, including any gift, gratuity, favor, entertainment or loan from any of the following sources:

- (1) A person seeking to obtain business from, or who has financial relations with, the City;
- (2) A person whose operations or activities are regulated or inspected by any City agency;
- (3) A person engaged, either as principal or attorney, in proceedings before any City agency or in court proceedings in which the City is an adverse party;
- (4) A person seeking legislative or administrative action by the City; or
- (5) A person whose interests may be substantially affected by the performance or nonperformance of the official's or employee's official duties.

Authority understands and agrees offering anything of value to a City official or employee under circumstances where the receipt of such item would violate the provisions of this Executive Order shall be a default of this Sublicense.

## **Duties and Covenants Pursuant to 17-1400.**

Authority shall abide by the provisions of Section 17-1400 of the Philadelphia Code in awarding any contract(s) pursuant to this Sublicense as though such contracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth at Subsection 17-1406(8) shall apply to the Authority if the Authority were listed in that Subsection.

Unless approved by the City to the contrary, any approvals required by Section 17-1400 of the Philadelphia Code to be performed by the City Solicitor shall be performed by Authority's or its agent's General Counsel; any approvals to be performed by the Director of Finance shall be performed by Authority's or its agent's Chief Financial Officer; and any approval required to be performed by the Mayor shall be performed by the Authority's Chairman.

EXHIBIT B  
OF ORDINANCE

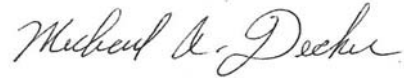


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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on May 12, 2011. The Bill was Signed by the Mayor on May 23, 2011.



Michael A. Decker  
Chief Clerk of the City Council