

City of Philadelphia



(Bill No. 090707)

AN ORDINANCE

Authorizing the Water Commissioner, on behalf of the City, to enter into an agreement for a license from the Pennsylvania Department of Environmental Protection to occupy certain submerged lands of the Commonwealth in the Schuylkill River in the vicinity of Lock Street, under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Water Commissioner is hereby authorized to enter into a license agreement with the Pennsylvania Department of Environmental Protection for a license for the City to occupy submerged lands of the Commonwealth located on the Schuylkill River in the vicinity of the dead end of Lock Street (350 feet west of Main Street) to a point approximately 525 feet north of Lock Street, for activities related to construction of a storage tank to capture combined sewage outflows, which License Agreement shall be substantially in the form set forth in Exhibit "A" attached hereto, with such changes as the City Solicitor deems necessary or appropriate to protect the interests of the City.

City of Philadelphia

BILL NO. 090707 continued

Certified Copy

EXHIBIT "A"

7-K-270D

LICENSE AGREEMENT (Commercial)

DEP File No. E51-226

THIS AGREEMENT made this _____ day of _____, 20_____, between the Commonwealth of Pennsylvania Department of Environmental Protection, hereinafter referred to as "Department", and

- A. _____, a corporation incorporated under the laws of the State of _____; or
- B. _____, a partnership; or
- C. _____, an individual; or
- D. City of Philadelphia – Water Department, (other);

with its principal place of business at 1101 Market Street, Aramark Tower, 2nd Floor,
Philadelphia, PA 19107-2994, hereinafter referred to as "Licensee".

WHEREAS, Department is authorized by the Act of November 26, 1978 (P.L. 1375, No. 325), as amended, to grant, with the approval of the Governor, licenses to occupy submerged lands of the Commonwealth on such terms and conditions as the Department shall prescribe, for the purposes set forth in said Act;

WHEREAS, Department is also authorized by said Act 325, as amended, to issue permits for the construction, operation, maintenance, modification, enlargement or abandonment of dams, water obstructions and encroachments; prior permits issued in compliance with the Act of June 8, 1907 (P.L. 496, No. 322) and the Act of June 25, 1913 (P.L. 555, No. 355) being deemed to comply with the requirements of said Act 325, as amended, and any and all said permits being the only permits referred to hereinafter;

WHEREAS, Licensee has the right to occupy riparian land abutting the Schuylkill River

(Stream) in City of Philadelphia

(Municipality), Philadelphia County,
Pennsylvania;

WHEREAS, Licensee's business on said riparian land requires a license to occupy submerged lands of the Commonwealth in the bed of said Stream below normal pool elevation or low water mark, as the case may be, adjacent to said riparian land in order to construct, repair, replace, operate, maintain and remove off line storage tank to capture combined sewer overflows

and other necessary encroachments and obstructions associated with its business, in accordance with the approved plans and specifications contained in Permit Application No. E51-226 and in any prior or future permit(s) for dams, water obstructions and encroachments within the premises licensed herein, referred to hereinafter as "Licensee's facilities"; and

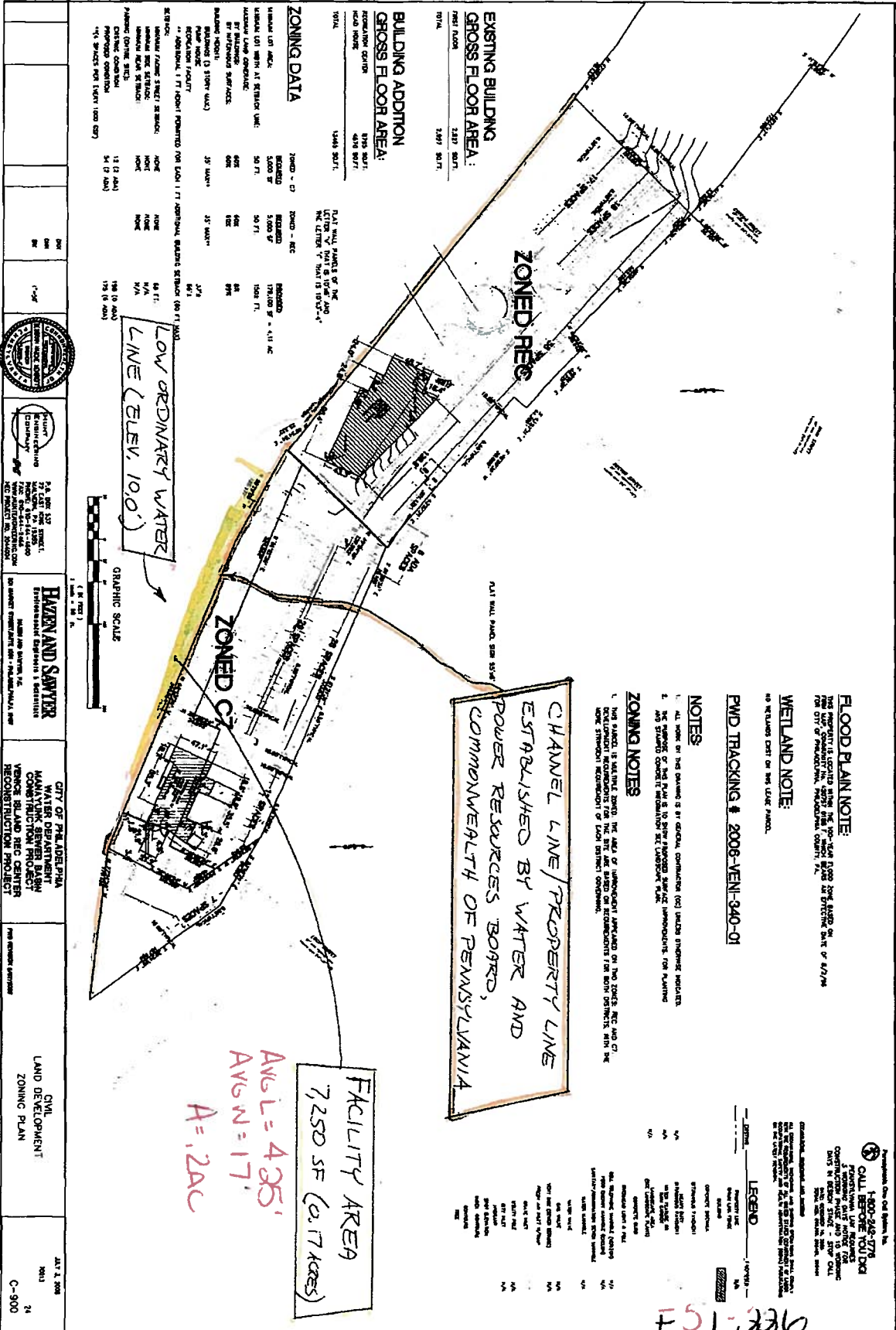
WHEREAS, Licensee's facilities are for the purpose of (check as appropriate):

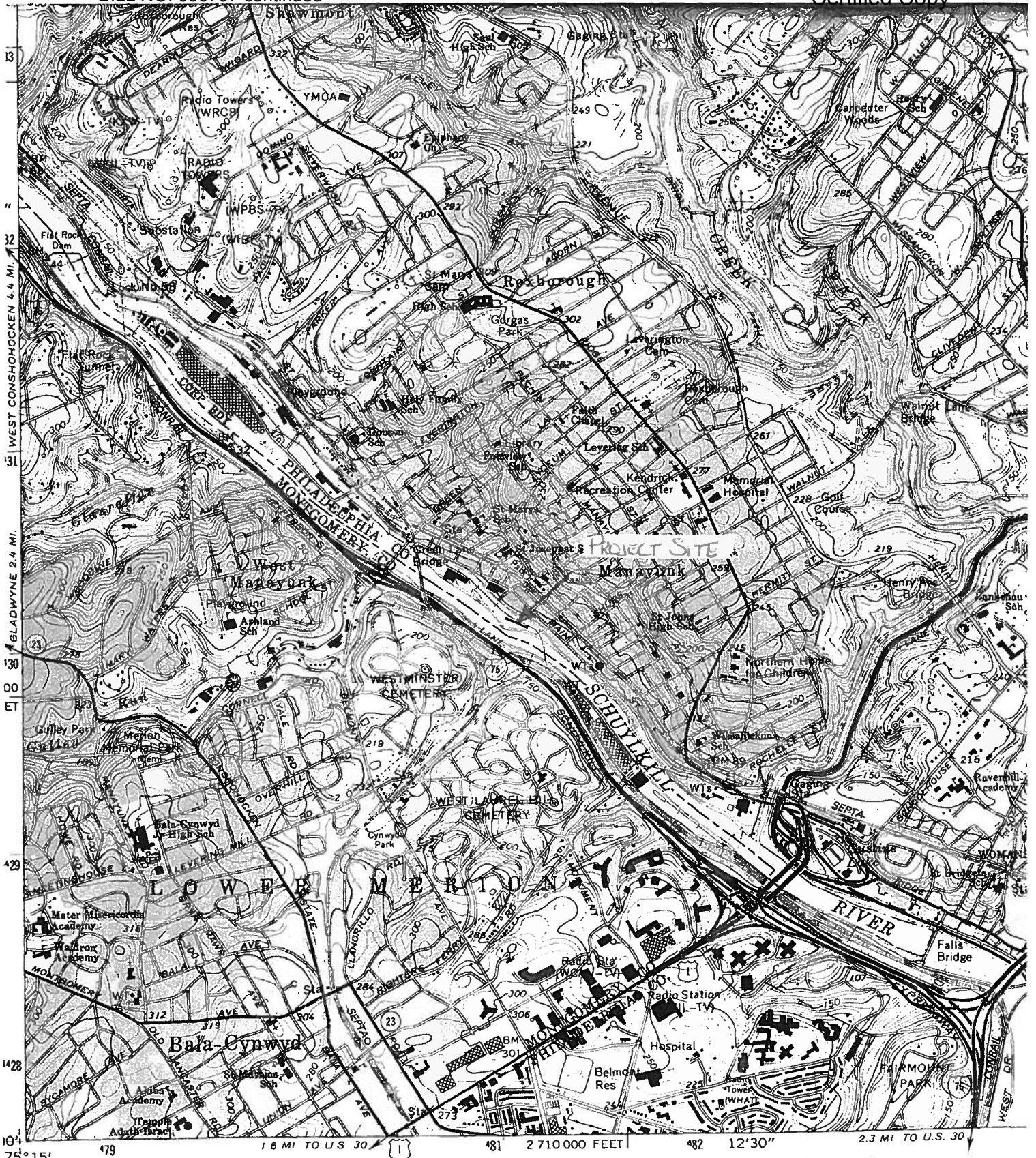
- improving navigation or public transportation;
- recreation, fishing or other public trust purposes;
- protecting public safety or the environment;
- providing water supply, energy production or waste treatment;
- other activities which require access to water;

NOW, THEREFORE, Department, in consideration of the foregoing, and the payments of Licensee of monies as hereinafter written, and the agreements, undertakings and conditions hereinafter contained, hereby grants to Licensee a license to occupy submerged lands of the Commonwealth adjacent to Licensee's riparian land for the purpose(s) set forth in paragraph(s) A below, in accordance with the approved plans and specifications contained in Permit Application No. E51-226 and in any prior or future permit(s) for dams, water obstructions and encroachments within the premises licensed herein:

A. To construct, repair, replace, operate, maintain and remove Licensee's facilities within premises referred to herein as the "Facilities Area", occupying approximately 0.2 acres (to the nearest tenth of an acre) of submerged land owned by the Commonwealth in the aforesaid Stream, Municipality and County, the location of which Facilities Area is:

- shown as the "Facilities Area" on the map or plan attached hereto and made a part hereof; or
- described by metes and bounds as attached hereto and made a part hereof.





Mapped, edited, and published by the Geological Survey in cooperation with Pennsylvania Department of Interior Affairs, Topographic and Geologic Survey
 Control by USGS, NOS/NOAA, and USCE
 Topography by photogrammetric methods from aerial photographs taken 1950. Field checked 1952. Revised from aerial photographs taken 1965. Field checked 1967
 Polyconic projection. 10,000-foot grid ticks based on Pennsylvania coordinate system, south zone
 1:204,000

11V° 1
204 MILS
0°07'
2 MILS

1000 0

6 1

B. To occupy for the mooring of vessels at Licensee's facilities, within premises, referred to herein as the "Mooring Area", occupying approximately _____ acres (to the nearest tenth of an acre) of submerged land owned by the Commonwealth in the aforesaid Stream, Municipality and County, the location of which Mooring Area is:

_____ shown as the "Mooring Area" on the map or plan attached hereto and made a part hereof; or

_____ described by metes and bounds as attached hereto and made a part hereof.

The total Facilities Area and Mooring Area being referred to herein as "Licensed Premises";

C. To dredge for construction and normal operation and maintenance within the Licensed Premises; provided that this license grants no right to dredge, excavate, remove and carry away any merchantable sand, gravel or other minerals, such activities being subject to the payment of a royalty pursuant to Sections 468(d) and 1908-A(3) of the Administrative Code of 1929, as amended.

In consideration whereof, and intending to be legally bound hereby, Licensee agrees as follows:

1. The current schedule of annual fees for Licensed Premises is as follows:

a. An annual fee of fifty (\$50.00) per tenth of an acre for premises licensed as "Facilities Area", and ten dollars (\$10.00) per tenth of an acre for premises licensed as "Mooring Area", with a minimum annual fee for Licensed Premises of two hundred fifty dollars (\$250.00).

Therefore, Licensee, upon the execution of this Agreement, shall pay to the Commonwealth the sum of N/A dollars (\$ N/A). The annual fees imposed herein may be revised upon notice from the Department to the Licensee consistent with applicable law. However, until notified otherwise, Licensee shall pay to the Commonwealth the sum of N/A dollars (\$ N/A) by the first day of N/A, _____, and so on by each succeeding first day of N/A. The annual fees shall be payable to the Commonwealth at Department's offices in Harrisburg.

2. In the event a substantial portion of any of Licensee's facilities shall be permanently discontinued or abandoned by Licensee or any of Licensee's permits issued under or complying with Act 325, as amended, or Licensee's facilities be terminated, then this Agreement, at the option of Licensee or Department shall be modified to reflect the changed conditions. Modification may include termination where the use of Licensee's facilities is essentially permanently discontinued or abandoned by Licensee or where essentially all of Licensee's

permits issued under or complying with Act 325, as amended, for Licensee's facilities be terminated.

3. Department, in addition to all other rights of termination it may have as set forth herein or generally for breach of any of the conditions, promises, agreements and undertakings by Licensee, shall also have the right to terminate this Agreement upon six (6) months written notice, whenever the Department reasonably believes that the license has become derogatory or inimical to the public interest, fails to serve the best interests of the Commonwealth or hinders a higher public use of the Licensed Premises. Such written notice shall specify the basis for the proposed termination. Termination shall become effective six (6) months after date of notice unless Licensee, within thirty (30) days after such notice, shall request in writing a hearing on the termination issue. In such hearing, due regard shall be given also to the interests of the public as served by Licensee's facilities.

If the Department, following such hearing, determines that the license has become derogatory or inimical to the public interest or fails to serve the best interests of the Commonwealth, or hinders a higher public use of Licensed Premises, then such determination and supporting facts therefor shall be mailed to Licensee. Within thirty (30) days after such determination is mailed, Licensee may appeal therefrom to the appropriate court. Termination shall be effective when the last appeal is finally heard and determined.

4. Licensee shall have the right to terminate this Agreement at any time by written notice to the Secretary of Department.

5. Should termination of this Agreement occur as of a date not falling on the first day of N/A, then the annual fee payable in advance for the remaining period or the sum refundable, as the case may be, shall be prorated in the ratio that the remaining period from the first day of N/A, bears to a year.

6. If this Agreement is terminated by operation of this Agreement or by the Department, such termination shall be confirmed by letter from the Secretary of the Department or his designee to the Licensee at the address shown above, or if termination is by Licensee, by letter from Licensee to the Secretary of the Department, at his office in Harrisburg, Pennsylvania. The letter of termination shall be acknowledged and, if this Agreement is recorded, shall likewise be recorded in the County in which this Agreement is recorded.

7. This Agreement does not supersede or waive the provisions of any Federal or Commonwealth statute, regulation or permit relevant to Licensee's operation or maintenance of its facilities. Licensee, its successors and assigns, shall at all times during the existence of this Agreement comply with all statutes, regulations and permits relevant thereto.

8. Licensee shall at all times save harmless and defend the Commonwealth, its officers and employees, from and against all losses, damages, expenses, claims, demands, suits and actions arising out of, or caused in any manner by the use of Licensed Premises by Licensee, and shall compensate the Commonwealth for any damage to it at any time resulting from the use

of Licensed Premises by Licensee; provided, however, that this paragraph shall not apply to or affect any claims, demands, suits or actions by or on behalf of officers, employees, servants or agents of the Commonwealth, or their dependents, based upon workmen's compensation or similar statutory benefits. The Department shall, at Licensee's expense, provide Licensee with such assistance as Licensee may reasonably request in writing in the defense of any claim, demand, suit or action which Licensee assumes hereunder.

9. Should Licensee default in the performance of any of the provisions of this Agreement, and such default continue or remain uncured, unsettled, unappealed or unstayed by a court of competent jurisdiction for sixty (60) days after receipt by Licensee of written notice from Department of such default, then this license shall terminate and be of no further effect; provided, however, that if Licensee has commenced substantially to cure said default within the sixty (60) day period and diligently continues such action to completion, this shall not be an event of default and Department may not terminate this license.

10. In the event this license terminates or is terminated by reason of any provision of this Agreement, or for any other reason, Licensee shall at its cost remove Licensee's facilities from Licensed Premises within such time and in such manner as Department may reasonably direct. Should Licensee fail to remove all Licensee's facilities from Licensed Premises within one (1) year after notice by Department to do so, Department may remove the same, and Licensee shall pay the costs of such removal. Notwithstanding anything to the contrary herein, Licensee shall have a period of one (1) year from the date of effective termination of the license within which to remove its facilities from Licensed Premises.

11. Licensee shall at all times perform under this Agreement in such manner as to minimize or prevent polluting the environment. Licensee shall be liable and responsible to the Commonwealth as provided by law for any pollution or other damage to any portion of the environment in or adjacent to Licensed Premises which occurs as a result or consequence of Licensee's occupation and use thereof, irrespective of whether or not such pollution or damage be due to negligence or in the inherent nature of Licensee's operations, unless the pollution or damage is the proximate result or consequence of an independent intervening cause or of force majeure. The burden of proving such independent intervening cause or force majeure shall be on Licensee. Any action for civil damages on account of such pollution brought by Department against Licensee shall not bar Department from bringing other actions under the Clean Streams Law or other pertinent law, rule, or regulation of the Commonwealth. It is understood and agreed that it is not the intention herein to impose any greater duty upon Licensee than is otherwise provided by statutory and Common law.

12. This Agreement shall be binding upon the parties, their heirs, legal representatives, successors and assigns, but shall not be assignable or transferable by Licensee without the prior written approval of the Department, which shall not be unreasonably withheld.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officials as of the date first above written.

SIGNATURES

ATTEST:

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

By _____

CHIEF
DIVISION OF WATERWAYS, WETLANDS AND
STORMWATER MANAGEMENT
BUREAU OF WATERSHED MANAGEMENT

City of Philadelphia – Water Department
Licensee's Business Name

(When Licensee is a corporation):

ATTEST:

Secretary/Treasurer

By _____
President/Vice-President

(Corporate Seal)

(When Licensee is a partnership):

Witness By _____
Partner's Signature

Witness By _____
Partner's Signature

Witness By _____
Partner's Signature

Witness By _____
Partner's Signature

(When Licensee is an individual):

Witness By _____
Licensee's Signature

APPROVED:

By _____
Governor, Commonwealth of Pennsylvania

Approved as to legality and form:

Office of Attorney General

Chief/Assistant Counsel
Department of Environmental Protection

City of Philadelphia

BILL NO. 090707 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 17, 2009. The Bill was Signed by the Mayor on January 13, 2010.



Michael A. Decker
Chief Clerk of the City Council