

TRAIL LICENSE AGREEMENT
BETWEEN
PECO ENERGY COMPANY
AND
THE CITY OF PHILADELPHIA, THROUGH ITS
DEPARTMENT OF PARKS AND RECREATION

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TRAIL LICENSE AGREEMENT

THIS TRAIL LICENSE AGREEMENT (this "License"), made this 25th day of September, 2014, by and between **PECO ENERGY COMPANY**, a Pennsylvania corporation ("Licensor") and **CITY OF PHILDELPHIA, THROUGH ITS DEPARTMENT OF PUBLIC PROPERTY and DEPARTMENT OF PARKS AND RECREATION** (the "Department") (collectively "Licensee").

BACKGROUND

A. Licensee desires to enter upon and use an irregularly shaped parcel of land which is adjacent to Licensor's Christian Street service building, Philadelphia, Pennsylvania, as more particularly shown in red on the plan attached as Exhibit "A" hereto (the "Premises"), which are 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.

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 (the "Trail") for use by the general public for activities such as 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 install signs that adequately notify and warn the public 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. The

Department 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 may be subject to existing leases and licenses granted by Licensor. Licensor will notify those tenants that their leases or licenses are affected by this License. The Department 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 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, transmission or distribution of electricity, and 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, the Department agrees to relocate a section or sections of the Trail at the Department'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. The Department agrees to (a) erect and install signs approved by Licensor indicating Licensor's contribution of the use of Licensor's property to the development of the Trail. The Department agrees that any signs posted by it on the Premises or any pamphlets, brochures, or other informational material distributed by the Department which involves the Premises shall so acknowledge Licensor's contribution;

(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. The Department 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. The Department agrees to incorporate appropriate control and safety measures into its design to discourage such unauthorized use and to protect the public. Such design factors may include if required by Licensor as a result of a result of Licensor's review of the Department's construction plans,, but are not limited to, signs, barricades, and deflectors around obstructions such as towers, poles and guy wires. The Department shall be solely responsible for the design of the Trail and all improvements but will review such designs with Licensor before finalizing the designs. The Department shall also modify the trail safety system if required in the future for improvement of safety. The Department's trail design and subsequent construction shall not hinder Licensor's access to Licensor's property.

8. Plans. (a) The Department shall submit six (6) copies of detailed plans and profiles to Licensor 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 for Licensor's approval. THE DEPARTMENT 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. The Department 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 the Department's improvements for the Trail shall be performed by Licensor at the sole cost and expense of the Department on a cost plus overhead basis. The Department 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 The Department shall be paid to Licensor within thirty (30) days following Licensor's bill therefore to Licensee.

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

9. Drainage. All work performed by the Department 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 the Department

shall be corrected at the Department 's sole cost and expense and without additional use of Licensor's property.

10. Maintenance of Premises. The Department shall (a) maintain the Premises and Trail and all improvements thereon at Licensee's sole cost and expense The Department 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 except as shown on the Licensee's construction plans approved by Licensor. The Department 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. The Department shall also remove and properly dispose of all trash and other debris, if any, on or which may be on the Premises. The Department 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 the Premises; 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. The Department 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. The Department 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. 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 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, 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 Licensee, its officers, employees or agents may have under the Pennsylvania Political Tort Claims Act, 42 Pa.C.S.A. § 8541, et seq., as amended.

13. Insurance. (a) Licensee 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 Licensee is legally liable. To that end, Licensee has established an indemnity fund (to support its legal liabilities) on a fiscal year basis, which is administered by Licensee's Law Department and Risk Management Division. Claims involving personal injury and property damage are handled by the Risk Management Division.

(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 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. The liability limits in this Section above One Million Dollars (\$1,000,000) may be met with an excess or umbrella insurance policy.

(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, and with Licensor's applicable Construction Standards S7070, 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 effective upon City Council ordinance approval.

(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 ninety (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.

(d) Notwithstanding any provision to the contrary herein, the Licensee may terminate this License for any reason, or for no reason, at any time after the fourth (4th) anniversary of the License's effective date, upon ninety (90) days prior written notice to Licensor. If terminated by Licensee in accordance with the foregoing, such termination shall be without liability to the Licensor for damages incurred or loss of profits which would have been realized without such termination. Licensee shall return the Premises in good condition to the 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
Attn: Director, Real Estate & Facilities

Licensee:

Department of Parks and Recreation
Attn: Director of Planning, Preservation, Development and
Facilities Management

1515 Arch Street, 17th Floor
Philadelphia, PA 19102

Department of Public Property
Attn: Commissioner
Room 790, City Hall
Philadelphia, PA 19107

19. **Fees.** The Department shall pay Licensor a fee of Two Hundred Fifty DOLLARS (\$250.00) per annum payable on the first day of June, while this License remains in effect.

20. **Taxes.** (a) Licensee shall pay all real property taxes and other charges and assessments (if any) 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. **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.

(b) Licensee acknowledges that during its observation of the Premises it found no physical evidence of Hazardous Materials present or stored thereon, other than as disclosed on the environmental assessments obtained by Licensee, copies of which have been sent to Licensor.

(c) If Licensee receives notice from any governmental authority regarding Hazardous Materials found 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.

22. Filings. 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.

23. 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.

(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.

(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.

EXECUTED BY THE PARTIES ON THE FOLLOWING PAGE

Executed as of the day and year first above written.

PECO ENERGY COMPANY

BY:

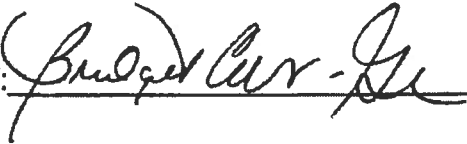


M.A. Williams
Director, Real Estate & Facilities

APPROVED
FORM

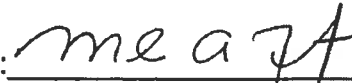

City of Philadelphia through its
Department of Public Property

BY:



City of Philadelphia through its
Department of Parks and Recreation

BY:



Approved as to Form:


Assistant City Solicitor

PE 1185
DEW

Schuylkill River Trail PECO License Agreement



PHILADELPHIA
PARKS &
RECREATION

