

RESOLUTION OF THE TOWNSHIP OF IRVINGTON, NJ

No. **DA 18-0214-3**

Date of Adoption **FEBRUARY 14, 2018**

APPROVED AS TO FORM AND LEGALITY ON THE BASIS OF FACTS SET FORTH BY

[Signature]
Legislative Research Officer
JONES

PRESENTED BY COUNCIL MEMBER **BURGESS**

SECONDED BY

AN AGREEMENT BETWEEN THE TOWNSHIP OF IRVINGTON AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY FOR THE USE OF IRVINGTON TOWNSHIP MUNICIPAL PARKING LOT LOCATED ON WASHINGTON AVE

WHEREAS, the Township of Irvington owns the Parking lot located on Washington Ave; and

WHEREAS, Public Service Electric and Gas Company will be making improvements to the roof and windows of the adjacent PSE&G Substation; and

WHEREAS; in order to facilitate the Improvements, PSEG requires a right of access for itself, its employees, agents, servants, employees, contractors, consultants and assignees over and across certain property owned by Irvington, specifically the municipal parking lot located on Washington Avenue; and

WHEREAS, Administration is willing to grant such right of access to Lessee and its contractors or subcontractors for a fee of \$1,750 per month for the first four (4) months in advance commencing with the execution of this agreement. Each \$ 1,750 payment will be due and payable on the first day of each month. The total amount payable to Irvington shall be \$7,000 for all four (4) months. After the first four months, Lessee shall compensate Irvington \$60 per day for a minimum of 5 days for any day over the four (4) months of the Right of Access Period.

NOW THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE TOWNSHIP OF IRVINGTON that an agreement between the Township and PSEG is hereby authorized for the use of Washington Ave Parking lot pursuant to the terms set forth in the attached agreement; and

BE IT RESOLVED that the Township Attorney is hereby authorized and directed to review and approve this Agreement and the Mayor and Township Clerk are authorized and directed to sign the same.

RECORD OF COUNCIL VOTE

X = Indicates Vote

N.V. = No Vote

A.B. = Absent

COUNCIL MEMBER	YES	NO	N.V.	A.B.	COUNCIL MEMBER	YES	NO	N.V.	A.B.
BURGESS, 1ST VICE PRESIDENT					INMAN				
COX	X				JONES, 2ND VICEPRESIDENT		X		
FREDERIC	X				LYONS, PRESIDENT	X			
DR. HUDLEY	X						X		

PRESIDENT OF COUNCIL *[Signature]*

MUNICIPAL CLERK *[Signature]*

DATE **FEBRUARY 14, 2018**

I hereby certify that the foregoing is a true copy of a Resolution duly adopted by the Municipal Council. In witness whereof I have hereunto set my hand and the Corporate Seal of the Township of Irvington.

MUNICIPAL CLERK *[Signature]*

DATE **FEB 14 2018**



ADMINISTRATOR ☒ ASSESSOR ☐ BLDG ☐ CFO ☒ COLLECTOR ☐ COURT ☐ EDGO ☐ ENGINEER ☐ FIRE ☐ CF ☐ HEALTH ☐ HOUSING ☐ INIC ☐
JUDGE ☐ LEGAL ☐ LIBR ☐ LICEN ☐ MAYOR ☐ NPP ☐ OCDP ☐ PARKS ☐ PAYROLL ☐ PUBLIC SAFETY ☐ DIR ☐ PUBLIC WORKS ☒ PURCHASING ☐
SEC ☐ PB/ZBA ☐ TRAFFIC ☐ ZONING ☐ OFF ☐ DLGS ☐ GNCD ☐ OTHER(S):

Lease and Right of Access Agreement

THIS AGREEMENT (the "Lease"), made this _____ day of February, 2018, between the Township of Irvington hereinafter called "**Lessor**" , and **PUBLIC SERVICE ELECTRIC AND GAS COMPANY**, a corporation of the State of New Jersey, having its principal office at 80 Park Plaza, Newark, New Jersey 07102, hereinafter called "**Lessee**".

WITNESSETH:

WHEREAS, Lessee will be constructing improvements to the roof and windows of the adjacent PSE&G Substation herein after collectively referred to as the "Improvements"; and

WHEREAS, in order to facilitate the Improvements, Lessee requires a right of access for itself, its employees, agents, servants, employees, contractors, consultants and assignees over and across certain property owned by Irvington, specifically the municipal parking lot located on Washington Avenue (hereinafter referred to as the "Washington Avenue Lot" or the "Access Area"), with such right of access requiring closure of the Access Area for approximately four (4) months; and

WHEREAS, Lessor is willing to grant such right of access to Lessee and its contractors or subcontractors, as the case may be, upon the conditions set forth herein.

NOW THEREFORE, in consideration of the covenants contained herein and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Lessee and Lessor agree as follows:

1. **Right of Access.**

A. Right of access is hereby granted to Lessee and its employees, agents, servants, employees, contractors and assignees, as the case may be, on foot and with vehicles and machinery to enter upon and over the Access Area, which includes the right to enter and re-enter the Access Area for the purpose of parking of vehicles, laydown and storage of project materials and equipment, which may be required across, over under and through the Access Area in furtherance of the Improvements to the PSE&G Substation, including, but not limited to the use of parking spots for the purpose of staging livery taxicabs, and the erecting of a temporary fence. This right of access shall include the right to enter and re-enter the Access Area without notice to Irvington.

B. The property shall not be used for any other purposes except for those contained in this Agreement.

C. The Lessor and its agents shall have full access to the Access Area in the case of an emergency or other priority municipal purpose, provided that a minimum notice of twenty-four (24) hours is provided to Lessee, or in the case of an emergency, that Lessor notifies Lessee within twenty-four (24) hours of accessing the Access Area.

D. Lessee shall maintain the Access Area in good condition in compliance with all Ordinances rules and regulations of the Township.

E. Lessee shall pay to the Township the amount of one month's rent as and for security. Said amount shall be held in escrow and returned to the Lessee at the end of the lease subject to the positive results of an inspection of the premises by the Lessee or its agent.

2. Closure of the Access Area.

A. The Lessee's right of access shall commence upon the execution of the Lease and shall remain in effect for **at least** four (4) months thereafter (the "Right of Access Period"), at which time the Access Area shall be restored to substantially the same condition that existed before said right of access began, **except that any and all potholes caused by the actions of Lessee or Lessee's use of the Access Area, shall be filled at the Lessee's expense.**

B. During the Right of Access Period, the Access Area will be closed to the public. The Lessee is authorized to erect a temporary fence around, and or within the perimeter of the Access Area **in accordance with the Township's rules and regulations.**

C. Lessor, its successors and assigns, shall not install any fence, vegetation, landscaping, structure or other impediment in or on any portion of the Access Area that would unreasonably interfere with Lessee's use of the Access Area or exercise of the rights conveyed herein.

D. Lessee shall be permitted to remove parking meter heads in a manner approved by the Lessor and shall account for their working condition and proper storage. When the Lessee has determined that it no longer requires the use of the Access Area, Lessee shall notify Irvington. Upon receiving notice that the Right of Access Period has concluded, Irvington will advise the Lessee as to the location where the parking meter heads previously removed from the Access Area can be retrieved. The Lessee agrees to pick up the parking meter heads from this location and reinstall them on the poles in the Access Area. **Lessee shall be responsible for any damage to the meters caused by Lessee's removal or reinstallation of the meters.**

E. It is expressly understood and agreed that all tools, equipment, vehicles and improvements placed upon the Access Area during the Right of Access Period shall remain the property of Lessee, its successors and assigns, employees, agents, contractors and/or designees, as the case may be, and must be removed by the Lessee, its successors and assigns, its agents, contractors, engineers, consultants and/or designees, as the case may be, within a reasonable period, **as determined by the Lessor**, after the conclusion of the Right of Access Period.

3. **Compensation.**

A. Lessee shall compensate Irvington \$1,750 per month for the first four (4) months in advance commencing with the execution of this agreement. Each \$ 1,750 payment will be due and payable on the first day of each month. The total amount payable to Irvington shall be \$7,000 for all four (4) months.

B. After the first **four months**, Lessee shall compensate Irvington \$60 per day **for a minimum of 5 days** for any day over the four (4) months of the Right of Access Period. **Said payment shall be due and payable on the first day of each week.**

C. In the event that the Right of Access Period concludes prior to the expiration of one of the aforesaid intervals, no portion of the fee paid for the then current interval shall be returned to Lessee. **Additionally, no further fee shall be payable hereunder as long as Lessee provides Lessor with notice of termination 5 days in advance.**

4. **Indemnification.**

A. Lessee shall be responsible for any and all suits, claims, losses, demands, or damages of whatever kind or nature which arise out of, or which are claimed to arise out of, any negligent act, error, or omission of its employees with regard to any activities performed while on property owned/or controlled by Lessor **or** in connection with the Improvements. The terms of this paragraph shall survive the expiration, rescission, and termination of this Agreement. Lessee shall cause its contractor(s) to indemnify, defend, protect, and save harmless Irvington, its officers, agents, and employees from and against any and all suits, claims, losses, demands, fees, costs of investigation, cost of defense, and damages of whatever kind or nature arising out of any negligent act, error or omission by the contractor(s), its subcontractor(s), or employees arising out of any activities performed while on property owned and/or controlled by Irvington in connection with the Improvements. The terms of this paragraph shall survive the expiration, rescission, and termination of this Agreement.

5. **Binding Effect.** By acceptance of this instrument, LESSEE and Irvington agree to abide by the terms and conditions herein, and the provisions of this instrument shall inure to the benefit of and be binding upon the respective parties hereto and their successors and assigns. No third-party beneficiary rights are created pursuant to this Agreement.

6. **Assignment.** This Agreement is not intended and shall not be construed to create any rights on behalf of any party other than the Lessee, its contractor or subcontractors as the case may be, and Irvington. Neither this Agreement nor any rights or duties may be assigned or delegated by either party hereto without the written consent of the other party, and any such purported assignment or delegation shall be null and void and of no force and effect.

7. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject matter hereof and supersedes all prior oral or written agreements and understandings between the parties as to the subject matter hereof this Agreement may be amended or modified only by a written agreement executed by both parties.

8. **Counterparts.** This Agreement may be executed in counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The parties agree that a scanned or electronically reproduced copy or image of this Agreement bearing the signatures of the parties hereto shall be deemed an original.

9. **Governing Law.** This Agreement shall be construed under and governed by the internal laws of the State of New Jersey.

10. **Waiver.** No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom such waiver is sought to be enforced.

11. **Notices.** Notices and any communications under this Agreement shall be in writing and sent by certified mail, return receipt requested, and shall be directed as follows, or to such other address as the party receiving such notice shall have previously specified by notice to the party sending such notice:

If to Lessee:

PSE&G

80 Park Plaza

Newark, New Jersey 07102

Attn: Roger Trudeau, Manager-Corporate Real Estate roger.trudeau@pseg.com

Attn: Ana J Murteira, Esq.

Senior Legal Counsel, Law Department ana.murteira@pseg.com

With a copy to the General Counsel at the above address.

If to Lessor:

Township of Irvington

Essex County Municipal Building Civic Square
Irvington, New Jersey 07111

Where delivery of notice in the manner described above is impractical, notification to either party shall be made by email, but receipt of this alternative method must be confirmed by an authorized representative of the parties' Law Department.

12. **Headings.** The section headings used herein are for convenience and reference only, are not a part of this Agreement and are not to affect the construction of, or be taken into consideration in interpreting, any provision of this Agreement.

13. **Severability.** If any provision of this Agreement shall be such as to destroy its mutuality or to render it invalid or illegal, then, if it shall not appear to have been so material that without it this Agreement would not have been made by the parties, it shall not be deemed to form a part hereof but the balance of this Agreement shall remain in full force and effect.

14. **Miscellaneous.**

A. No Commissioner, officer, official, agent, or employee of either party shall be held personally liable under any provision of this Agreement or because of its execution or attempted execution or because of any breach or alleged breach hereof.

B. Lessee, in entering into this Agreement, does not in any way limit its exclusive authority over all Lessee-owned rights-of-way and improvements of any nature constructed within Lessee's rights-of-way or within public rights-of-way under Lessee's jurisdiction.

C. Irvington, in entering into this Agreement, does not in any way limit its exclusive authority over all Irvington-owned rights-of-way and improvements of any nature constructed within Irvington's rights-of-way.

LESSOR – Township of Irvington

LESSEE – PSE&G
By PSEG Services Corp., Agent

(PRINTED NAME, TITLE &
ADDRESS)

Patrick Reed
Principal Real Estate Consultant
80 Park Plaza, T6B
Newark, New Jersey 07102

(DATE OF EXECUTION)

(DATE OF EXECUTION)