

ORDINANCE NO. 14-2023

BOROUGH OF ROSELAND
COUNTY OF ESSEX, STATE OF NEW JERSEY

**AN ORDINANCE AUTHORIZING THE ACCEPTANCE OF AN
EASEMENT FROM PUBLIC SERVICE ELECTRIC AND GAS
COMPANY AND THE EXECUTION OF THE GRANT OF EASEMENT
BY AND BETWEEN PUBLIC SERVICE ELECTRIC AND GAS
COMPANY, THE BOROUGH OF ROSELAND AND THE COUNTY OF
ESSEX**

WHEREAS, Public Service Electric and Gas Company ("PSEG") desires to grant to the Borough of Roseland (the "Borough") and the County of Essex (the "County") a perpetual, non-exclusive access easement over, upon and across PSEG's Right of Way, known as Block 31, Lot 100, in the Borough for purposes of permitting pedestrian and vehicular access, as more particularly described in the Grant of Easement attached hereto (the "Easement"); and

WHEREAS, the Borough is desirous of accepting said Easement;

NOW THEREFORE BE IT RESOLVED by the Mayor and Council of the Borough of Roseland as follows:

SECTION I

That said Easement from PSEG be and hereby is accepted by the Borough.

SECTION II

That said Easement shall be in accordance with the Easement Exhibit attached as Exhibit "A" to the Grant of Easement.

SECTION III

That the Mayor and Borough Clerk be and hereby are authorized to execute the Grant of Easement in form and substance similar to that which is attached hereto and made a part hereof and to execute any and all other documents necessary to effectuate the intent and purposes hereof.

SECTION IV

That said Grant of Easement shall be recorded in the Office of the Essex County Register.

SECTION V

If any section of provision of this ordinance shall be invalid in any court the same shall not affect the other sections or provisions of this ordinance except so far as the section or provision so declared invalid shall be inseparable from the remainder or any portion thereof.

SECTION VI

All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistency.

SECTION VII

This ordinance shall take effect in accordance with applicable law.

DATE OF INTRODUCTION: May 16, 2023

Motion to Introduce by: Councilman Trillo
Motion Seconded by: Councilwoman Fishman
Introduction Approved: 5-0 Voice Vote (Bardi absent)

DATE OF ADOPTION: June 20, 2023

COUNCIL	MOTION	SECOND	AYE	NAY	ABSTAIN	RECUSE	ABSENT
Councilman Bardi			X				
Councilwoman Fishman							X
Councilman Freda							X
Council President Perrotti			X				
Councilwoman Tolli	X		X				
Councilman Trillo		X	X				
Mayor Spango (In case of tie)							
VOTE:			4	0			

I hereby certify that the above Ordinance was duly adopted by the Mayor and Council of the Borough of Roseland at a meeting of Borough Council held on the 20th day of June, 2023.


James R. Spango, Mayor


Jock H. Watkins, Borough Clerk

Date of Publication: June 29, 2023, The Progress

**Exhibit “A”
Grant of Easement**

RECORD & RETURN TO:
PSEG Services Corp.
Corporate Properties
80 Park Plaza, T20
Newark, NJ 07102

Prepared by: _____

GRANT OF EASEMENT

THIS INDENTURE, made this _____ day of _____, 2023 between 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 referred to as "Grantor" or "PSE&G"), and the BOROUGH OF ROSELAND, having its principal office at 140 Eagle Rock Avenue, Roseland, New Jersey 07068 and the COUNTY OF ESSEX, having its principal address at 465 Dr. Martin Luther King, Jr. Boulevard, Newark, New Jersey 07102, (Both Borough of Roseland and County of Essex hereinafter referred to as "Grantee");

WITNESSETH:

That Grantor, for and in consideration of the sum of ONE (\$1.00) DOLLAR in lawful United States currency to it in hand paid by Grantee, receipt of which is hereby acknowledged, and in accordance with requirements set forth in that certain site plan approval Resolution bearing Application Number 2022-63-PFSPV, grants and conveys to Grantee, its successors and assigns, a perpetual, non-exclusive access easement (the "Easement") over, upon and across within and upon lands of Grantor, situate through Grantor's Right of Way, known as Block 31, Lot 100, in the Borough of Roseland, County of Essex, New Jersey, specifically for pedestrian and vehicular access only as shown on Exhibit "A," (hereinafter referred to as "the Easement Area") subject to the following terms and conditions:

1. Subject to any and all easements, rights, privileges, licenses or grants of whatever nature heretofore given by PSE&G or otherwise created, which now exist and which affect the lands, such as but not limited to drainage rights, streets, roadways, telephone lines, underground conduits, sewers, manholes, pipes or rights-of-way. It is also subject to site, surface and subsurface conditions affecting the land herein described not disclosed by any instrument recorded in the Offices of the Clerk of Essex County, as well as such state of facts as an accurate survey and a thorough inspection of the property may disclose.
2. Subject to the limitations set forth in this Agreement and municipal requirements, the Grantee shall have the right to use, occupy and enjoy the Easement Area for any lawful purpose which does not unreasonably interfere with the use of the Property by PSE&G, and may use such Easement in common with the grantees thereof.
3. Grantee, its agents, contractors or materialmen shall incur no lien for which the lands may be attached. Grantee agrees that it will assume the debt for any such lien and pay such debt in full, commencing from the date of execution of this document.

4. Grantee shall be responsible, at its sole cost and expense, for the cost of all maintenance, repairs and replacements needed to the Easement Area hereunder, other than normal wear and tear, that is attributable to the acts or negligence of Grantee, its agents, employees, contractors, invitees or visitors.
 - a. If applicable, any work to be done by Grantee, its employees, agents and/or contractors or assigns, shall be performed in accordance with all provisions of the New Jersey Statute commonly known as the "High Voltage Proximity Act," codified at N.J.S.A. 34:6-47.1 to 47.9 inclusive, as amended and supplemented, concerning safety precautions to be taken in the proximity of certain electric conductors installed above ground, and in accordance with all rules and regulations promulgated by the Commissioner of Labor and Industry of New Jersey. Such work shall also be in accordance with the provisions of the Federal Occupational Safety and Health Act of 1970 and of Subpart N, Paragraph 1926.550 of the rules and regulations issued thereunder and codified at 29 CFR 1926.550 and in accordance and in compliance with the latest edition of the National Electrical Code and applicable building codes.
 - b. Grantee, its employees, agents and/or contractors shall at all times maintain the greatest clearance between construction equipment and the energized conductors of PSE&G required by the applicable provisions of the above-cited statutes and regulations.
 - c. Any and all work done by Grantee shall comply with all applicable Department of Transportation Minimum Federal Safety Standards promulgated under the authority of the Natural Gas Pipeline Safety Act of 1968 codified at 49 App. USC 2001, et seq. and to the regulations promulgated thereunder and codified at 49 CFR, Part 192, et seq., and to the "Underground Facility Protection Act" and the penalties thereunder.
 - d. Grantee, its employees, agents and/or contractors, notifying One Call Systems, Inc. by telephone at 1-800-272-1000 at least three (3) days prior to the commencement of any work.
 - e. It is expressly understood and agreed that any review of Grantee's plans or specifications, comments thereon or monitoring of Grantee's work shall not constitute or be construed as an approval of such plans or representation or warranty on the part of PSE&G as to the adequacy or propriety of such plans or specifications or the methods of work, nor shall PSE&G be deemed to have assumed any liability to Grantee or any third party by reason of such review or monitoring or by virtue of the presence of representatives of PSE&G at the subject site.
 - f. During the performance of any work or activity on the property, Grantee shall at all times provide suitable barriers and other safety measure, including but not limited to, maintaining suitable work area protection, and shall take such other protective measures as reasonably directed by PSE&G. Grantee further warrants and agrees to conduct all subsurface work or activities in a manner so as to prevent any compromise of any existing facilities of PSE&G. Access to PSE&G's existing and future facilities shall be maintained at all times
5. Any and all work and activities on the Property shall be coordinated with and approved by PSE&G's Transmission – Right of Way Supervisor and Manager – Transmission, Construction

and Maintenance, who shall be given three (3) days' notice prior to the start of any work or activities by contacting (609) 202-0089, (201) 951-6260, and useofPSEGproperty@pseg.com. In the event that the Transmission Supervisor/Manager or his/her designee determines that Grantee's work or activities will unduly interfere with the operations of PSE&G's facilities or constitute a hazard to life or property, Grantee shall immediately suspend its work and activities until such time as PSE&G determines that the work or activities may safely resume.

6. Grantee shall at all times keep PSE&G's land free of any work-related debris and shall not allow unattended parking of vehicles or equipment on PSE&G's easement. The property shall be restored to a condition acceptable to PSE&G at the conclusion of any work and after any subsequent disturbance. Grantee shall complete all work in a prompt and diligent manner.
7. Under no circumstances will Grantee cause a wetland to be created on the property, nor permit surface water runoff from the property except into an approved detention basin or into the municipal storm sewer system. No grade changes will be permitted except as approved in writing by PSE&G. Should a drainage problem be created as a result of Grantee's use of the property, Grantee shall immediately advise PSE&G and work to remedy the problem at its sole cost and expense and to the complete satisfaction of PSE&G.
8. Grantee shall not store any hazardous or toxic wastes or substances or any materials of a dangerous or flammable nature, including but not limited to petroleum or petroleum products in any form upon, in or under the property herein described, except in the case of petroleum or petroleum products such that may be in the tanks of automotive equipment or motor vehicles traveling upon the property.
9. Any damage to any facility of PSE&G resulting from or in any way arising out of Grantee's work, activities, entry or subsequent use shall be repaired promptly by Grantee. If Grantee fails to make such repairs within a reasonable time after being requested to do so, PSE&G shall have the right to make such repairs and Grantee hereby agrees to reimburse PSE&G for all reasonable costs and expenses thereof.
10. This document shall be subject to all applicable rules, regulations and orders of any regulatory body having jurisdiction, including those federal, state, county and/or local bodies or agencies implementing various environmental and/or safety and health laws and regulations, whether now in force or adopted or enacted after the date of this document. Grantee shall, at its own cost and expense, comply with any and all rules, regulations, ordinances or laws, including subdivision and/or site plan approvals, affecting the property. PSE&G assumes no responsibility or liability in connection with any law, ordinance, rule or regulation of any public or governmental body that may limit, affect, regulate or prohibit the use of that area of its land for the purposes aforesaid.
11. Grantee shall reimburse PSE&G for the reasonable costs and expenses of personnel, inspectors, labor, materials, equipment, including the costs of any relocation, modification, repair, alteration, reconstruction or protection of any of PSE&G's facilities and all additional costs and expenses incurred in connection with any review of plans, documents or field inspection and supervision of the work.
12. Nothing contained herein shall be understood or construed to create or grant any third party benefits, rights or property interest. It is further agreed that the privileges granted and conferred

herein shall not be transferred or assigned in whole or in part without the express, prior and written consent of PSE&G.

13. Nothing contained herein is intended to grant permission to enter upon, use or occupy lands not owned by or under the jurisdiction of PSE&G, nor is it intended to relieve Grantee from its responsibility to comply with all applicable federal, state and municipal statutes and ordinances, rules and regulations, orders and directives of appropriate governmental agencies as now exist or may hereafter provide, or its responsibility to procure and maintain in effect all other requisite and applicable permissions and approvals.
14. Grantee, for itself, its agents, contractors, employees, successors or assigns, agrees to assume all risks of and liability for and to indemnify, protect and hold harmless and hereby releases PSE&G, its successors and assigns and each of its officers, agent, servants, employees, contractors and subcontractors from and against any and all liability, losses, injuries, deaths, claims, demands, actions, suits, judgments, damages, including damage or injury to real or personal property, including threatened or actual environmental harm, costs, expenses (including reasonable attorneys' fees), civil penalties, and fines which, in any way, arise out of, or are based on, related to, or connected with the activities, work, and/or use and occupancy of the property or any violation of any applicable codes, regulations, statutes, ordinances, orders, directives or standards by Grantee or any officer, servant, employee, licensee, invitee, contractors, successor, assignee, or agent of Grantee whether or not caused by or due to any actual or alleged negligent act or omission by PSE&G. Grantee does release, indemnify, and hold harmless PSE&G from any and all liability and potential liability under the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. Sec. 9601 et seq., the New Jersey Spill Compensation and Control Act, N.J.S.A. 58:10-23.11 et seq. or similar theories of liability which may arise as a result of activities, work, and/or use and occupancy of the property relative to the within document. As a part of fulfilling its obligation hereunder, Grantee waives any and all immunity rights or protections created by the Worker's Compensation Act and further agrees that its obligations to defend and indemnify PSE&G shall apply to, but not be limited to, actions and other claims brought by Grantee's own employees, agents, contractors and/or subcontractors. Grantee's duty to indemnify and hold harmless PSE&G shall exclude only those instances where the liability, loss, injury, death, damage, or harm is due to PSE&G's sole negligence.
15. Grantee shall provide and maintain, and shall require any of its contractors and/or subcontractors to provide and maintain, in effect during the term of this Letter of Consent insurance coverage against claims occurring within the Easement with carriers satisfactory (A-/VII or better in the Best's Key Rating Insurance Guide) to PSE&G including:

Workers' Compensation Insurance with statutory limits, as required by the state in which the work is to be performed, and employer's liability insurance with limits of not less than One Million (\$1,000,000) Dollars per occurrence;

Commercial General Liability Insurance providing premises liability, bodily injury, property damage, blanket contractual liability, products/completed operations, independent contractors, broad form property damage and coverage for explosion, collapse and underground hazards (XCU) with a limit of liability of not less

than Two Million (\$2,000,000) Dollars per occurrence and per project or location aggregate. The completed operations coverage shall remain in place for not less than three (3) years from the date the work is completed, if applicable;

Automobile Liability Insurance for owned, non-owned and hired automobiles with a combined single limit of not less than One Million (\$1,000,000) Dollars per accident;

Excess or Umbrella Liability Insurance with a limit of not less than Three Million (\$3,000,000) Dollars per occurrence and project or per location aggregate. These limits apply in excess of employer's liability, commercial general liability and automobile liability coverage mentioned above.

If this Grant of Easement involves or includes Grantee handling, transporting, disposing or performing work or operations with hazardous substances, contaminants, waste, toxic materials or any potential pollutants, Pollution Liability Insurance is required with a limit of not less than One Million (\$1,000,000) Dollars per occurrence.

All coverage noted above, with the exception of workers' compensation, shall name PSE&G and affiliates as an additional insured to support the contractual obligations assumed by Grantee and provide that this coverage is primary to any other insurance carried by PSE&G, contains the standard cross-liability provisions, and provides for a waiver of all rights of subrogation which Grantee's insurance carrier might exercise against PSE&G.

All insurance policies noted above shall not include claims-made insurance policies, any self-insured retention or deductible amount greater than Two Hundred Fifty Thousand (\$250,000) Dollars unless approved in writing by PSE&G, any endorsement limiting coverage available to PSE&G which is otherwise required by this Paragraph 24, and any policy or endorsement language that: (i) negates coverage to PSE&G for PSE&G's own negligence; (ii) limits the duty to defend PSE&G under the policy; (iii) provides coverage to PSE&G only if Grantee is negligent; or (iv) permits the recovery or defense costs from any additional insured.

Grantee shall provide evidence of the required insurance coverage and file with PSE&G a Certificate of Insurance acceptable to PSE&G prior to the commencement of the work, if applicable, or the execution of this Grant of Easement. The insurance policies required by this Paragraph 24 shall contain a provision that coverage afforded under the policies will not be cancelled, allowed to expire, or the limits in any manner reduced until at least thirty (30) days prior written notice (ten [10] days in the case of non-payment of premium) has been given to PSE&G. PSE&G may inspect any or all policies of insurance at any time.

16. Grantee shall notify PSE&G immediately by telephoning 1-973-430-7000 and in writing within twenty-four (24) hours after the occurrence thereof, of all accidents arising out of

Grantee's occupancy of the Property. Such notice shall not relieve Grantee of its obligations under this Agreement, and shall not be construed to be other than a mere notification.

17. If Grantee maintains a self-insurance program, Grantee may request, upon written notice to PSE&G, to provide all or part of the insurance coverages required herein under its self-insurance program. It is PSE&G's sole discretion to accept self-insurance in lieu of the commercial insurance specified in this Attachment.
18. None of the requirements contained herein as to types, limits or PSE&G's approval of insurance coverage to be maintained by Grantee are intended to, and shall not in any manner limit, qualify or quantify the liabilities and obligations assumed by Grantee under this Grant of Easement, any other agreement with PSE&G, or otherwise provided by law.
19. This Agreement and the boundaries and terms of the Easement may be modified only by a recorded document executed by the Parties.
20. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New Jersey. Any action to enforce the provisions of this Agreement shall be brought in a court of competent jurisdiction in the State of New Jersey.

The provisions of this Indenture shall inure to the benefit of and be obligatory upon the respective parties hereto and their successors and assigns.

Signature Page to Follow

The Grantor and the Grantee agree to the terms of this Grant of Easement by signing below. If a party is a corporation, this Grant of Easement is signed by its proper corporate officers and its seal is affixed.

Grantor:
PUBLIC SERVICE ELECTRIC AND GAS
COMPANY
By: PSEG Services Corporation, its Agent

By

Name: Roger J. Trudeau
Title: Manager – Corporate Real Estate
Transactions

WITNESS:

STATE OF NEW JERSEY)
: SS.
COUNTY OF _____)

BE IT REMEMBERED, that on this _____ day of _____, 2023, before me, the subscriber, a Notary Public of the State of New Jersey, personally appeared ROGER J. TRUDEAU, Manager-Corporate Real Estate Transactions of PSEG Services Corporation, Agent for PUBLIC SERVICE ELECTRIC AND GAS COMPANY, the corporation named in and which executed the foregoing instrument, and he acknowledged that said instrument was made by said corporation and sealed with its corporate seal as the voluntary act and deed of said corporation, being fully authorized to do so.

BOROUGH OF ROSELAND

Title: _____

WITNESS/ATTEST:

Print Title: _____

COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 20__, before me, the subscriber, a Notary Public of the State of NEW JERSEY, personally appeared _____, who, I am satisfied, is _____ of THE BOROUGH OF ROSELAND, the MUNICIPAL entity named herein, and which who executes the foregoing instrument, and is the person who signed said instrument as such officer for and on behalf of said MUNICIPAL entity, as the voluntary act and deed of said MUNICIPAL entity, being fully authorized to do so.

Grantee:
COUNTY OF ESSEX

By: _____
Print Name: _____
Title: _____

WITNESS/ATTEST:

Print Name: _____
Print Title: _____

STATE OF NEW JERSEY)
)
 : SS.
COUNTY OF _____)

BE IT REMEMBERED, that on this ____ day of _____, 20__, before me, the subscriber, a Notary Public of the State of NEW JERSEY, personally appeared _____, who, I am satisfied, is _____ of THE COUNTY OF ESSEX, the governmental entity named herein, and which who executes the foregoing instrument, and is the person who signed said instrument as such officer for and on behalf of said governmental entity, as the voluntary act and deed of said governmental entity, being fully authorized to do so.

EXHIBIT A



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