

# City of Philadelphia



(Bill No. 250487)

## AN ORDINANCE

Authorizing the Procurement Commissioner, on behalf of the City, to enter into an agreement with the Philadelphia Energy Authority to purchase electricity and certain attributes and benefits related to the generation of such electricity from Abes Run Solar, LLC, for use in connection with City facilities, all under certain terms and conditions.

WHEREAS, the Pennsylvania Electricity Generation Customer Choice and Competition Act made it possible for the City and all consumers of electricity to have direct access to the competitive market for the generated supply of electricity; and

WHEREAS, the City has established the policy goal of utilizing 100% renewable electricity by 2030 for City; and

WHEREAS, the Philadelphia Energy Authority is authorized by the Municipality Authorities Act and City ordinances to enter into contracts for the supply of electricity; and

WHEREAS, the City's Office of Sustainability and the Procurement Department requested that the Philadelphia Energy Authority enter into a selection process to identify a highly qualified supplier to provide electricity from renewable sources with certain attributes and benefits related to the generation of such electricity for use by City facilities with a proposed contract term of up to twenty (20) years; and

WHEREAS, Abes Run Solar, LLC was selected as the Solar Electricity Seller through a competitive process which included a Request for Proposals; and

WHEREAS, the City's contract with the Philadelphia Energy Authority would require the Authority to enter into a contract with Abes Run Solar, LLC or its affiliates and undertake certain obligations, and the City will undertake certain obligations of the Authority; now therefore

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

SECTION 1. The Procurement Commissioner, on behalf of the City, is hereby authorized to enter into an agreement with the Philadelphia Energy Authority for the supply of solar electricity and certain attributes related to the generation of such electricity for use at City facilities, based substantially on the terms of a contract between the Philadelphia Energy Authority and Abes Run Solar, LLC, or its affiliates, acting as the Solar Electricity Seller. The contract between the Authority and the Solar Electricity Seller shall require the Solar Electricity Seller to provide electricity from solar energy sources for use at the City's facilities in

# City of Philadelphia

*BILL NO. 250487 continued*

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coordination with the City's licensed service provider of electricity. The contract shall be substantially consistent with the terms set forth in the document attached hereto as Exhibit "A."

SECTION 2. The City Solicitor is hereby authorized to review and to approve the agreements necessary to effectuate this Ordinance, and to impose such terms and conditions on them as the City Solicitor may deem necessary and proper to protect the interests of the City of Philadelphia and to carry out the purpose of this Ordinance.

# City of Philadelphia

BILL NO. 250487 continued

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## EXHIBIT A

### INTERGOVERNMENTAL SOLAR POWER PURCHASE AGREEMENT

THIS INTERGOVERNMENTAL SOLAR POWER PURCHASE AGREEMENT ("Agreement") is dated as of \_\_\_\_\_, 2025 (the "Contract Effective Date") by and between THE CITY OF PHILADELPHIA ("City") acting through its Procurement Department and THE PHILADELPHIA ENERGY AUTHORITY, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania ("Authority" or "PEA").

#### RECITALS

WHEREAS, the Authority is a body corporate and politic organized under the provisions of the Municipalities Authorities Act of 2001 (the Act of June 19, 2001, P.L. 287, No. 22, as amended) pursuant to ordinances of the Council of the City; and

WHEREAS, the Authority is authorized by an Ordinance approved on July 29, 2010 (Bill No. 100163-AA), as amended by an Ordinance approved on January 3, 2019 (Bill No. 181007) to take actions concerning the purchase or facilitation of energy supply and energy services on behalf of the City; and

WHEREAS, the Authority is authorized by an Ordinance approved on July 29, 2010 (Bill No. 100163-AA), as amended by Ordinances approved on January 3, 2019 (Bill No. 181007) and February 22, 2022 (Bill No. 220294), to take actions concerning the development or facilitation of energy efficiency and conservation projects on behalf of the City; and

WHEREAS, the City has requested that the Authority enter into a Solar Power Purchase Agreement (the "PPA") with Abes Run Solar LLC (together with any successors or assigns, the "Vendor"), to purchase all of the solar-generated energy and RECs produced by the Vendor's solar resource (the "System") for the benefit of the City's operations and to help meet the City's commitment to procure a renewable energy project that reduces greenhouse gas emissions and helps meet the City's goal to utilize 100% renewable electricity by 2030; and

WHEREAS, the Council of the City of Philadelphia enacted an ordinance, Bill No. \_\_\_\_\_, approved by the Mayor on \_\_\_\_\_, 2025, duly empowering the City and the Authority to enter this Agreement and Exhibits thereto; and

# City of Philadelphia

BILL NO. 250487 continued

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WHEREAS, by resolution dated \_\_\_\_\_, 2025, the Board of Directors of the Authority has authorized its Chairman, Vice-Chairman or its President & CEO to, among other things, execute this Agreement and the PPA; and

WHEREAS, the Vendor and the Authority propose to enter into the PPA, in the form attached hereto as Exhibit A, contemporaneously with this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and agreements contained herein and for other valuable consideration, the City and the Authority (collectively, the “Parties”), intending to be legally bound, hereby agree as follows:

**1. Definitions.**

Capitalized terms used and not defined in this Agreement shall have the meanings ascribed to them in the PPA.

**2. Term.**

The term of this Agreement shall commence on the Contract Effective Date and shall terminate one day after the expiration or termination of the PPA; provided that to the extent that any obligations of the Authority under the PPA survive expiration or termination of the PPA, the City’s corresponding obligations under this Agreement shall remain in effect and be enforceable following such expiration or termination.

**3. Obligations of the Authority.**

- (a) Authority shall provide all required administrative services necessary to fulfill its obligations to the Vendor and the City for the prompt and timely submission of any required representations and documents required under the PPA (the “Administrative Obligations”).
- (b) The Authority shall provide the City with copies of any notices received by the Authority from the Vendor, unless the Authority shall have determined by reasonable means that the City received a copy of such notice directly from such party.
- (c) The Authority shall provide the City with copies of any notices received from any governmental authority with respect to the System in relation to the performance or transactions contemplated by this Agreement, the PPA, or the other operative documents.

# City of Philadelphia

*BILL NO. 250487 continued*

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- (d) The Authority shall not amend, modify, alter or otherwise change the PPA, once fully executed, without the prior written consent of the City.
- (e) The Authority shall not assign the PPA once fully executed, without the prior written consent of the City.
- (e) The Authority shall pay over to the City any payments due from the Vendor with respect to the PPA other than payments such as indemnities of PEA that are intended for the direct benefit of PEA.
- (f) The Authority shall transfer all rights and ownership to the City of all Metered Output, Renewable Energy Credits, or other assets or payments obtained from the Vendor in accordance with the PPA; provided that PEA may retain copies of all documents related to the administration of the PPA.

## 4. Obligations of the City

With the exception of Administrative Obligations, the City assumes and shall perform all other non-financial obligations of the Authority to the Vendor under the PPA. The City shall make timely payments to the Vendor for all invoices submitted for the Metered Output and shall make payments to the Authority for all invoices submitted to the City by the Authority for other payments required to be made to the Vendor under the PPA including, damages, termination payment, indemnification, charges, reimbursements, or any other payment of any kind, in each case payable by the Authority under the PPA.

- (a) The City shall timely and promptly review all required representations and documents, and shall confirm the accuracy of any representations and provide timely approvals of all documents required under the PPA.
- (b) The City shall perform all of the Authority's obligations to the Vendor under the PPA which it has obligated itself to undertake herein in a prompt and timely manner.
- (c) The City will promptly furnish information as needed by the Authority to comply with this agreement or the Vendor to perform the PPA.

## 5. Indemnification.

# City of Philadelphia

BILL NO. 250487 continued

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Subject to the provisions and limitations of this Section and to the extent permitted at law, the City hereby indemnifies and holds harmless the Authority and each member, officer, and employee of the Authority against any and all claims, losses, damages or liabilities, joint and several, to which the Authority or any member, officer or employee of the Authority may become subject, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of this Agreement or the PPA, unless the losses, damages or liabilities arise from an adjudication of gross negligence, bad faith, fraud or deceit of the member, officer or employee of the Authority. In the event any claim is made or action brought against the Authority, or any member, officer, or employee of the Authority, the Authority may request that the City assume the defense of the claim and any action brought thereon and pay all reasonable expenses incurred therein; or the Authority may assume the defense of any such claim or action, provided, however, that counsel selected by the Authority shall be approved by the City and the City shall reimburse the Authority's associated reasonable costs of such defense, and further provided that the City may engage its own counsel to participate in the defense of any such action. The defense of any such claim shall include the taking of all actions necessary or appropriate thereto. The City's obligations to the Authority under this indemnity survive any termination of this Agreement or assignment to a Successor Authority (as defined below).

## 6. Successor Authority.

In the event that the Authority ceases to exist or otherwise does not perform its obligations hereunder, or the City chooses to cause the Authority to assign the PPA to another authority, the City shall have the right to appoint and substitute a successor authority (the "Successor Authority") to succeed to the rights and assume the obligations of the Authority hereunder, in which event, the City shall cause such Successor Authority to assume all obligations and liabilities of the Authority under the PPA. The City's foregoing right to appoint a Successor Authority shall be a continuing right and shall not be exhausted by the exercise thereof. Notwithstanding the foregoing, upon any termination of an Authority, (a) the City shall enter into a new Agreement, substantially in the form hereof, with any such Successor Authority that succeeds to the rights of or assumes the obligations and liabilities of the Authority under the PPA; and (b) all obligations of the City to a terminated Authority that accrued prior to termination shall survive termination and shall be owed to (i) the Authority to the extent of expenses incurred by the Authority, and (ii) to the Successor Authority that assumes the obligations and liabilities of the terminated Authority under the PPA to the extent they represent unpaid obligations to the Vendor.

# City of Philadelphia

BILL NO. 250487 continued

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## 7. Limitation of Liability: Special Obligations of the Authority.

Notwithstanding anything contained in this Agreement to the contrary, the payment obligations of the Authority arising under the PPA are special obligations of the Authority, payable solely from payments received from the City. The Authority will do all things within its power to timely request funds from the City to fulfill its payment obligations.

The City's obligations under this Agreement shall not create any indebtedness of the City within the meaning of any constitutional or statutory provision relating to the incurrence of debt by the City.

## 8. Tort Claims Act.

Nothing in this Agreement or the PPA shall waive or be construed to waive or amend, or be deemed to waive or amend, any tort immunity which the City or the Authority, or their officials, members, officers, agents, employees or representatives, may have under Title 42, Chapter 85 of the Pennsylvania Consolidated Statutes Annotated, as applicable, or other Applicable Law.

## 9. Representations and Warranties of Authority.

The Authority represents and warrants that:

(a) The Authority is a body corporate and politic, validly existing under the Constitution and laws of the Commonwealth of Pennsylvania with full legal right, power and authority to enter into and perform the obligations under this Agreement.

(b) The Authority has duly authorized the execution and delivery of this Agreement. This Agreement has been duly executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority enforceable against the Authority in accordance with its terms

(c) Neither the execution nor the delivery by the Authority of this Agreement nor the performance by the Authority of its obligations hereunder nor the consummation by the Authority of the transactions contemplated hereby (1) conflicts with, violates or results in a breach of any Applicable Law in effect on the date as of which this representation is being made or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.

# City of Philadelphia

BILL NO. 250487 continued

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(d) (1) The Authority will execute the PPA. The Authority is duly authorized to execute and deliver the PPA. The PPA will constitute legal, valid and binding obligations of the Authority, enforceable against the Authority in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, receivership, moratorium and other laws affecting creditors' rights generally; and (2) the City was allowed to review and approve the form of the PPA prior to its execution, in the form executed by the Authority and the Vendor.

(e) There is no action, suit or other proceeding as of the Contract Effective Date, at law or in equity, before or by any court or governmental authority, pending or, to the Authority's best knowledge, threatened against the Authority which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution or delivery of this Agreement or the validity or enforceability of the PPA or any other agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby.

(f) The Authority has complied with the provisions of Chapter 17-1400 of The Philadelphia Code, including the provisions of Subsection 17-1404(3), in awarding the PPA as though such agreement was directly subject to the provisions of Chapter 17-1400.

## 10. Representations and Warranties of the City.

The City hereby represents and warrants that:

(a) The City is a body corporate and politic validly existing under the Constitution and laws of the Commonwealth of Pennsylvania with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) The City has duly authorized the execution and delivery of this Agreement and the taking of any and all actions as may be required on its part to carry out and to give effect and to consummate the transactions contemplated by this Agreement and this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as such enforcement may be limited by laws relating to bankruptcy, insolvency, reorganization, receivership, arrangement, moratorium and other laws affecting creditors' rights, by equitable principles, whether considered at law or in equity, and by the exercise of judicial discretion in appropriate cases.



# City of Philadelphia

BILL NO. 250487 continued

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(c) Neither the execution nor the delivery by it of this Agreement, nor its performance of its obligations in connection with the transactions contemplated hereby nor its fulfillment of the terms or conditions hereof (1) conflicts with, violates or results in a breach of any Applicable Laws in effect on the date as of which this representation is being made, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default thereunder.

(d) There is no action, suit or other proceeding as of the Contract Effective Date, at law or in equity, before or by any court or governmental authority, pending or, to the City's best knowledge, threatened against the City having a material adverse effect on the right of the City to execute this Agreement or its ability to comply with its obligations under this Agreement.

(e) The City has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the City of this Agreement and the transactions contemplated hereby.

## 11. Effect of City Approval.

Review, approval or acceptance by either party of any documents submitted by the other party or the Vendor under or in connection with the Agreement or the PPA shall not constitute approval otherwise required under Applicable Law by any and all City departments, boards or commissioners, or by any other federal, state, or local governmental authority having jurisdiction.

## 12. No Merger.

The rights and obligations of the Parties under this Agreement shall remain in effect and shall not merge, even if the same party holds rights of both Parties hereunder, unless such party terminates this Agreement in writing.

## 13. Severability.

In the event that any of the provisions, or portions or applications thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall

# City of Philadelphia

*BILL NO. 250487 continued*

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negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

14. Notice.

Any notice required to be given by City to the Authority hereunder shall be in writing and shall be addressed to:

The Philadelphia Energy Authority  
City Hall, Room 566  
1400 JFK Boulevard  
Philadelphia, PA 19107  
Attention: President & CEO

Any notice required to be given by the Authority to the City hereunder shall be in writing and shall be addressed to:

City of Philadelphia Office of Sustainability  
1515 Arch Street, 13th Floor  
Philadelphia, PA 19102  
Attention: Energy Manager

with a copy to:

City of Philadelphia Law Department  
One Parkway Building  
1515 Arch Street, 16th Floor  
Philadelphia, PA 19102  
Attention: Chief Deputy City Solicitor – Regulatory Law

All notices under this Section shall be delivered in person, sent via certified mail with a return receipt requested or sent via facsimile or electronic mail and shall be effective when received at the address specified above. The Parties hereto, by like notice in writing, may designate, from time to time, another address or facsimile number to which notices may be given pursuant to this Agreement.

15. Entire Agreement.

# City of Philadelphia

BILL NO. 250487 *continued*

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This Agreement contains the entire agreement between the Parties hereto and supersedes any and all prior written and oral agreements, proposals, negotiations, understandings and representations pertaining to the subject matter hereof.

16. Amendments.

The parties acknowledge that from time to time the Agreement may require amendments to support the Parties' interests and obligations under the PPA. Such requests for amendment from either party shall not be unreasonably denied or delayed. However, no amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by a duly authorized representative of the party against which enforcement is sought.

17. No Third-Party Rights.

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other person.

18. No Conflict.

To the extent of any conflict between the terms and conditions set forth in this Agreement, notwithstanding the City's assumption of the Authority's obligations in Section 4 of this Agreement, and the PPA, the terms and conditions of the PPA shall govern.

**[Signature pages follow]**

# City of Philadelphia

*BILL NO. 250487 continued*

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**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the date first above written.

APPROVED AS TO FORM:  
Renee Garcia, City Solicitor

By:

\_\_\_\_\_

Laura Antinucci  
Deputy City Solicitor

**THE CITY OF PHILADELPHIA**, acting  
through its Procurement Department

By:

\_\_\_\_\_

Ronald Hovey  
Commissioner

**THE PHILADELPHIA ENERGY AUTHORITY**

By:

\_\_\_\_\_

Emily Schapira President & CEO

# City of Philadelphia

*BILL NO. 250487 continued*

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 5, 2025. The Bill was Signed by the Mayor on June 13, 2025.

A handwritten signature in black ink, reading "Elizabeth McCollum". The signature is fluid and cursive, with the first name "Elizabeth" and last name "McCollum" clearly distinguishable.

Elizabeth McCollum  
Chief Clerk of the City Council