

# City of Philadelphia



(Bill No. 170206)

## AN ORDINANCE

Authorizing and approving the execution and delivery of a Service Agreement between the City of Philadelphia and the Philadelphia Authority for Industrial Development relating to the financing of the City of Philadelphia's Rebuild program, approving the issuance by the Philadelphia Authority for Industrial Development of bonds, notes or other evidences of indebtedness in one or more series to finance or refinance such program and authorizing and approving the obligation of the City of Philadelphia to pay in full when due the Service Fee and other amounts payable under the Service Agreement; authorizing certain City officers to take certain actions required to issue such bonds, notes or other evidences of indebtedness; covenanting that the City of Philadelphia will make necessary appropriations in each of the City's fiscal years to provide for, and will make timely payments of, the Service Fee and other amounts due under the Service Agreement; and authorizing City officials to take necessary or appropriate actions, all under certain terms and conditions.

WHEREAS, The City of Philadelphia (the "City") and the Philadelphia Authority for Industrial Development ("PAID") have determined that PAID will, at the direction and with the cooperation of the City, undertake pursuant to the Service Agreement (as defined herein) to provide financial services to the City through the financing or refinancing of improvements to, and construction, demolition, renovation and equipping of, the City's parks, libraries, playgrounds, recreation centers and other related facilities, and related costs such as workforce diversity and inclusion programs, community engagement and program administration (collectively, the "Project"), under the City's program generally referred to as "Rebuild;" and

WHEREAS, The Council of the City (the "Council") has, by this Ordinance, determined that it is in the best interests of the City to: (i) authorize and approve the execution and delivery of a Service Agreement (the "Service Agreement") by and between the City and PAID; (ii) approve the issuance by PAID of bonds, notes or other evidences of indebtedness in such amount and for such purposes as described in Section 1 herein in one or more series, either as taxable or tax-exempt obligations; and (iii) authorize and approve the performance by the City of its obligation to pay in full when due the Service Fee (as defined in the Service Agreement) and other amounts payable under the Service Agreement; and

WHEREAS, The City is authorized to enter into the Service Agreement to enable the financing and refinancing of the Project; now, therefore

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

SECTION 1. The Council hereby: (i) authorizes and approves the execution and delivery of the Service Agreement, which shall be substantially in the form of Exhibit A hereto, with PAID; (ii) approves the issuance from time to time by PAID of bonds, notes or other evidences of indebtedness (the “Obligations”) in an aggregate principal amount not to exceed Three Hundred Million Dollars (\$300,000,000), net of original issue discount, plus amounts necessary for costs of issuance, amounts necessary to effect any refunding of Obligations, interest on the Obligations and costs of credit or liquidity enhancement, at any one time outstanding, in one or more series, either as taxable or tax-exempt obligations, to finance or refinance improvements to, and construction, demolition, renovation and equipping of, the City’s parks, libraries, playgrounds, recreation centers and other related facilities, and related costs such as workforce diversity and inclusion programs, community engagement and program administration (collectively, the “Project”), in connection with the City’s program generally referred to as “Rebuild,” interest on the Obligations, costs of credit or liquidity enhancement, amounts necessary to effect any refunding, and the costs of issuing the Obligations; and (iii) authorizes and approves the performance by the City of its obligation to pay in full when due the Service Fee payable under the Service Agreement (the “Service Fee”) and other amounts payable under the Service Agreement; provided, that all expenditures of proceeds of the Obligations on the Project shall be subject to Section 2 of this Ordinance and the program guidelines attached hereto as Exhibit B. Section 2 of this Ordinance shall be controlling in the event of any conflict between the provisions of Section 2 and the program guidelines attached hereto as Exhibit B.

SECTION 2. The Service Agreement and Intergovernmental Cooperation Agreement authorized by this Ordinance shall provide that no proceeds of Obligations shall be used and no interest in City-owned real estate shall be conveyed except in accordance with the provisions of this Section 2; and shall further provide that City Council is an intended beneficiary of such provisions and may sue for their specific enforcement.

(a) The Mayor shall submit to Council for its approval by resolution the following items:

(i) A detailed Project Statement setting forth plans for expenditure of proceeds of Obligations, the conveyance of interests in City-owned real estate and any other source of funds or resources to be used for the Project and the component projects (“Rebuild Projects”) for the up-coming fiscal year. At least sixty days before the Mayor submits the Project Statement to Council for its approval by resolution, the Mayor shall send to each member of Council a preliminary Project Statement in the same detail that will be contained in the final Project Statement for which the Mayor will request approval of Council.

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(ii) An Economic Opportunity Plan (“EOP”) for the participation of minority and female workers, Minority-Owned Disadvantaged Business Enterprises, Female-Owned Disadvantaged Business Enterprises and Disabled-Owned Disadvantaged Business Enterprises (“M/W/DBE/DSBE”), in all work to be performed as part of the Project. Such Plan shall provide for the selection by the President of Council of a person or organization to monitor compliance with the EOP.

(b) Prior to each operating year of the Project, the Mayor shall submit to Council for its approval by resolution an annual line-item budget setting forth proposed Projects and expenditures, and proposed transfers of interests in City-owned real estate for the up-coming year, in such form and detail as is acceptable to Council. Such line-item budget shall be consistent with the Project Statement approved pursuant to subsection (2)(a)(i), and shall include provision for a City Council Project Manager. After it is approved, the annual line-item budget may be amended only with the approval of Council by resolution.

(c) Prior to each operating year of the Project, the Mayor shall submit to Council for approval an ordinance listing the sites to be leased to PAID for the purposes of sublease to qualified Project grantees and lessees (“Project Users”). Subleases shall have terms consistent with the time necessary to implement the Rebuild Project at the subleased site, and shall terminate upon the completion of the Rebuild Project.

(d) A Project Review Team is hereby created, consisting of one member to be appointed by the Mayor and one member to be appointed by the President of Council, each of whom shall serve at the pleasure of the appointing authority. Whenever this Ordinance requires the approval of the Project Review Team, such approval shall consist only of the written approval of both members of the Project Review Team. Before approving or disapproving any matter for which the approval of the Project Review Team is required, the member of the Project Review Team appointed by the President of Council shall first provide each District Councilperson whose district is directly affected by such matter the immediate opportunity to meet with the Project Review Team, at the discretion of the District Councilperson, in order for the District Councilperson to review, comment upon and make recommendations concerning such matter, and the Council President’s appointee shall not approve any matter for which the approval of the Project Review Team is required without first obtaining written authorization from each District Councilperson whose district is directly affected by such matter.

(e) No proceeds of any Obligations may be expended for the Project, or for the funding of required reserves, if any, or for payment of costs of issuance until all approvals required under Section 2(b) have been obtained except:

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(i) With the approval of the Project Review Team, expenditures may be made at variance with an approved annual line-item budget, provided such changes do not affect more than ten percent (10%) of any line-item.

(ii) Start-up expenditures of \$10 million may be made prior to approval of the first annual line-item budget, provided that the expenditures are accompanied by an itemized budget and provisions of subsections 2(f) and 2(g) shall apply to such expenditures as if they were being made under an approved annual line-item budget.

(f) No grant shall be awarded for any such work (including to any Project User) without the approval of the Project Review Team. No grant application for the funding of construction shall be approved unless applicant submits information regarding the size and estimated cost of bid packages.

(g) No interest in city-owned real estate shall be conveyed by the City and no interest in real estate shall be acquired by the City, or PAID on behalf of the City, unless Council shall have specifically approved such conveyance or acquisition by resolution or ordinance. The approval of the Project Review Team shall not be required for any conveyance or acquisition of an interest in real estate in accordance with this Sub-section 2(g).

(h) PAID shall submit a quarterly report to the Project Review Team summarizing all expenditures by budget category and real estate transactions made during the previous quarter.

(i) The provisions of this Section 2 are not severable from the remaining provisions of this Ordinance, but are essentially and inseparably connected with all other provisions of this Ordinance. It is hereby declared to be the legislative intent of Council that Council would not have enacted this Ordinance or any portion of this Ordinance unless all provisions of this Section 2 were a valid part of such enactment. No proceeds of any Obligations of any series shall be spent unless there is full compliance with the approval process set forth in Section 2 of this Ordinance, and all required approvals are obtained. Provided that to the extent that PAID has issued Obligations in reliance upon this Ordinance, the covenants and representations of this Ordinance, and the Service Agreement are fully enforceable upon the City. The Council of the City of Philadelphia is an intended beneficiary of the requirements of this Section 2. Council shall have standing to sue for specific enforcement of the requirements of this Section 2, and the City and PAID agree not to challenge the standing of Council in any action for such specific enforcement. No violation of Section 2 shall effect the legality, validity or enforceability of any other Section of this Ordinance.

(j) Any of the submissions required by Section 2 to be made prior to each operating or fiscal year of the Project, with respect to the first operating or fiscal year of

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the Project, may be made during or prior to the first operating or fiscal year of the Project, and may include expenditures to be made before the first operating or fiscal year of the Project.

SECTION 3. The Director of Finance is hereby authorized to execute and deliver, on behalf of the City, the Service Agreement in substantially the form of Exhibit A hereto, with such changes as the City Solicitor shall advise and the Director of Finance shall approve, consistent with the terms of this Ordinance. No amendment or supplement to the Service Agreement which permits the aggregate principal amount of Obligations (at any one time outstanding) described in Section 1 hereof to be exceeded shall be executed unless first approved by ordinance of the Council.

SECTION 4. The issuance of Obligations to refund outstanding Obligations (whether at maturity, through redemption or otherwise) is hereby authorized, and the Director of Finance is hereby authorized to execute and deliver, on behalf of the City, any required amendment or supplement to the Service Agreement in such form as the City Solicitor shall advise and the Director of Finance shall approve, consistent with the terms of this Ordinance; provided that no amendment or supplement to the Service Agreement shall permit the issuance of Obligations which cause the aggregate principal amount (at any one time outstanding) described in Section 1 hereof to be exceeded unless first approved by ordinance of the Council.

SECTION 5. The Service Agreement authorized by this Ordinance (and any required amendment or supplement thereto) shall be executed in conjunction with the issuance by PAID of its Obligations in an aggregate principal amount (at any one time outstanding) that does not exceed that set forth in Section 1 hereof to be applied for the purposes described in Section 1 hereof. The Obligations shall not be executed or delivered until the Director of Finance has approved the terms thereof.

SECTION 6. The City covenants to budget and make appropriations beginning in Fiscal Year 2018 and in each and every fiscal year thereafter in such amounts as shall be required in order to make timely all Service Fee payments due and payable and to pay timely all other amounts due and payable under the Service Agreement.

SECTION 7. As long as the Obligations issued by PAID are outstanding, the City covenants unconditionally to make all Service Fee payments and all other amounts due as provided for under the Service Agreement directly to any trustee and/or other entity (the "Trustee") to which the Service Fee may be assigned as security for payment of the Obligations, any other payments due to a lender or holder with respect to any Obligations, and the obligations of PAID under any credit facility and/or liquidity facility securing the Obligations, only out of current revenues of the City, which payments shall not be suspended, abated, reduced, abrogated, waived, diminished or otherwise modified in any manner or to any extent whatsoever and regardless of any rights of set-off, recoupment or counterclaim that the City may have against PAID or

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the Trustee or any holder of Obligations or any other party or parties and regardless of any contingency, act of God, event or cause whatsoever and notwithstanding any circumstances or occurrence that may arise after the date thereof.

SECTION 8. The City agrees to be bound by each and every provision, covenant and agreement set forth in the Service Agreement.

SECTION 9. The Director of Finance and all other proper officials of the City are hereby authorized, jointly and severally, on behalf of the City, to execute all documents (including without limitation one or more continuing disclosure agreements, a letter of representations, and an intergovernmental cooperation agreement with PAID and/or other appropriate parties, as directed by the Director of Finance) as may be necessary in order to accomplish the intent and purpose of this Ordinance and the Rebuild program, and to take all actions as may be required by the Constitution and the laws of the Commonwealth of Pennsylvania in order to effectuate the financing approved hereby and the issuance of the Obligations.

SECTION 10. The Council reasonably expects that the proceeds of each series of tax-exempt Obligations will be expended for the Project within three years of the issuance of each such series and will not take any action or omit to take any action which would cause the expenditure of the proceeds of tax-exempt Obligations for the Project to proceed other than with due diligence.

SECTION 11. In accordance with Treasury Regulations §1.150-2, the City hereby states its intention that a portion of the proceeds of the Obligations will be used to reimburse itself or PAID for expenditures for costs of the Project paid prior to the date of issuance of one or more series of the Obligations. The maximum principal amount of Obligations expected to be issued for the Project is \$300,000,000.

SECTION 12. This Ordinance shall take effect immediately.

EXHIBIT A

SERVICE AGREEMENT

BETWEEN

PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT

AND

THE CITY OF PHILADELPHIA, PENNSYLVANIA

Dated as of \_\_\_\_\_, 20\_\_

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## SERVICE AGREEMENT

This Service Agreement made and entered into as of the \_\_\_ day of \_\_\_\_\_, 20\_\_\_, between PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, a public body and a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania (the "Authority"), and the CITY OF PHILADELPHIA, PENNSYLVANIA, a corporation and body politic, and city of the first class of the Commonwealth of Pennsylvania (the "City").

### WITNESSETH:

WHEREAS, the Authority is a public body and a body corporate and politic existing under the laws of the Commonwealth of Pennsylvania (the "Commonwealth") and organized pursuant to the Pennsylvania Economic Development Financing Law, Act No. 102 of the General Assembly of the Commonwealth approved August 23, 1967 (P.L. 251), as amended and supplemented (the "Act"); and

WHEREAS, under the Act, the Authority has all powers necessary or appropriate to carry out and effectuate the purposes and provisions of the Act, including, among others, the power to finance the costs of public facilities and to issue its bonds, notes or other evidences of indebtedness for any of its corporate purposes; and

WHEREAS, the Authority desires to provide financial services to the City through the financing of the Project (as defined below); and

WHEREAS, the Authority and the City have determined, in accordance with the Ordinance (hereinafter defined), that: (i) the Authority will, at the direction and with the cooperation of the City, by entering into this Service Agreement undertake to provide financial services to the City through the financing of the Project (as defined below); (ii) the Authority will issue its revenue bonds, notes or other evidences of indebtedness to finance a project (the "Project") consisting of financing improvements to, and construction, demolition, renovation and equipping of, the City's parks, libraries, playgrounds, recreation centers and other related facilities, and related costs such as workforce diversity and inclusion programs, community engagement and program administration, under the City's program generally referred to as "Rebuild;" and (iii) the City will pay to the Authority the Service Fee described herein; and

WHEREAS, the City Council of the City (the "City Council"), by Ordinance (Bill No. 170206), adopted \_\_\_\_\_, 2017, and approved by the Mayor on \_\_\_\_\_, 2017 (the "Ordinance") has: (i) authorized and approved the execution and delivery of this Service Agreement; (ii) approved the issuance from time to time by the Authority of bonds, notes or other evidences of indebtedness in an aggregate principal amount not to exceed the amount described in the Ordinance, net of original issue discount, plus amounts necessary for costs of issuance, amounts necessary to effect any refunding of Obligations (as defined in the Indenture described below), interest on Obligations and costs of credit or liquidity enhancement, at any one time outstanding, in one or more series, either as taxable or tax-exempt obligations, to finance or refinance the Project, interest on the Obligations, costs of credit or liquidity enhancement, amounts necessary to effect any refunding, and the costs of issuing the Obligations; and (iii) authorized and approved the performance by the City of its obligation to pay in full when due the Service Fee (as defined herein) and other amounts payable hereunder; and

WHEREAS, at the request of the City, the Authority has determined to provide financing for the Project by issuing the 20\_\_ Obligations (as defined in the Indenture described below) as Obligations under the Indenture for the purpose of financing a portion of the Project together with costs of issuance of the 20\_\_ Obligations (together, the "20\_\_ Project"); and

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WHEREAS, the Authority is entering into a trust indenture of even date herewith (as supplemented from time to time in accordance with the terms thereof, the “Indenture”) between the Authority and the Trustee (as defined herein) for the purpose of issuing the Obligations and securing the payment thereof; and

WHEREAS, to secure the payment of the Obligations, any Related Obligations (as defined in the Indenture) and any Credit Facility Payment Obligations (as defined in the Indenture), on such basis as is further provided in the Indenture, the Authority will assign to the Trustee all of its right, title and interest in and to this Service Agreement, as amended and supplemented from time to time (except for the Reserved Rights, as defined herein), for the equal and ratable benefit of holders from time to time of Obligations, persons entitled to payment under any Related Obligations and, to the extent provided in the Indenture, any Credit Issuer (as defined in the Indenture), including the Authority’s right to receive the payments of the Service Fee due from the City hereunder; and

WHEREAS, the execution and delivery of this Service Agreement and the performance of their respective obligations hereunder has been in all respects duly and validly authorized by the Authority and the City;

NOW, THEREFORE, in consideration of the mutual agreements hereinafter contained, the parties hereto, intending to be legally bound, agree as follows:

## Article I DEFINITIONS

Section 101. Definitions of Terms. Unless otherwise defined herein, all words and terms defined in the recitals hereto and in Article I of the Indenture shall have the meanings set forth therein and herein. All references herein to the “Debt Service Fund” and the “Revenue Fund” shall mean the Funds so designated which are established with the Trustee pursuant to the Indenture. Capitalized terms used herein and not defined herein shall have the meanings ascribed to such terms in the Indenture. In addition, the following terms shall have the following meanings unless the context otherwise requires:

“Administrative Expenses” shall mean the reasonable fees and expenses of the Authority (including the Authority’s initial fee) and the Trustee and any paying agent, remarketing agent or other fiduciary or agent appointed under the Indenture, including reasonable legal fees and expenses, in connection with the funding and administration of the Project, the issuance of any Obligations, the administration of the Indenture, the performance of the Authority’s obligations under this Service Agreement, or in connection with inquiring into, or enforcing the performance of, the City’s obligations under this Service Agreement or the Indenture.

“Annual Debt Service Requirement” shall mean, with respect to each Fiscal Year, the sum of the amounts required to be paid by the Authority in such Fiscal Year for (i) the payment of principal and mandatory sinking fund redemption of and interest on the Obligations, (ii) payments under any Related Obligations and (iii) the payment of any Credit Facility Payment Obligations.

“Code” shall mean the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations thereunder, as the same may be amended from time to time. Reference herein to any specific provision of the Code shall be deemed to refer to any successor provision of the Code.

“Costs” shall mean all costs of the Project which the City or the Authority or either of them is authorized to incur under applicable law (including the Act) and includes Costs of Issuance.

“Event of Default” shall mean any of the events described in Section 601 hereof.

“Fiscal Year” shall mean the annual accounting year of the City, which currently begins on July 1 of each year.

“Reserved Rights” shall mean the rights of the Authority to receive payments of Administrative Expenses under subsections 404(a), 404(b) and 404(c) hereof and the rights of the Authority under Sections 505, 507 and 710 hereof, and the right to enforce each of the same.

“Service Fee” shall mean the Service Fee payable from the City hereunder as set forth in Section 401 hereof.

“Trustee” shall mean \_\_\_\_\_, as trustee under the Indenture, and its successors as trustee thereunder.

## Article II REPRESENTATIONS AND WARRANTIES

Section 201. Representations and Warranties of the Authority. The Authority hereby represents and warrants as follows:

(a) it is a public body and a body corporate and politic duly organized and existing under the laws of the Commonwealth with the power to enter into this Service Agreement and to carry out its obligations hereunder and has duly authorized the execution and delivery of this Service Agreement, the 20\_\_ Obligations and the Indenture;

(b) the issuance and sale of the 20\_\_ Obligations, the execution and delivery of this Service Agreement and the Indenture by the Authority and the performance of all covenants and agreements of the Authority contained in this Service Agreement and of all other acts and things required under the Constitution and laws of the Commonwealth to make this Service Agreement a valid and binding obligation of the Authority in accordance with its terms, are authorized by the Act and have been duly authorized by proceedings of the Authority adopted or passed at meetings thereof duly called and held;

(c) the Project will further the public purposes of the Act and the purposes for which the Authority was created and continues to exist and the financing of the Project will be a “project” within the meaning of that term as defined in the Act; and

(d) this Service Agreement has been duly executed on behalf of the Authority by its duly authorized officers and is the legal, valid and binding obligation of the Authority, enforceable against the Authority in accordance with its terms, except as enforcement may be limited by bankruptcy, reorganization, insolvency, moratorium, arrangement or other similar laws or legal or equitable principles affecting creditors’ rights generally.

Section 202. Representations and Warranties of the City. The City hereby represents and warrants as follows:

(a) it is a corporation and body politic and a city of the first class of the Commonwealth duly organized and existing under the laws of the Commonwealth with the power to enter into the transactions contemplated by this Service Agreement and to carry out its obligations hereunder

and, pursuant to the Ordinance, has duly authorized the execution and delivery of this Service Agreement and has duly approved the 20\_\_ Obligations and the Indenture;

(b) the authorization and undertaking of the Project, the execution and delivery of this Service Agreement by the City and the performance of all covenants and agreements of the City contained in this Service Agreement and of all other acts and things required under the Constitution and laws of the Commonwealth to make this Service Agreement a valid and binding obligation of the City in accordance with its terms, are authorized by the Philadelphia Home Rule Charter and the Act and have been duly authorized by the Ordinance duly adopted by the City Council and approved by the Mayor; and

(c) this Service Agreement has been duly executed on behalf of the City by its duly authorized Director of Finance and is the legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as enforcement may be limited by bankruptcy, reorganization, insolvency, moratorium, arrangement or other similar laws or legal or equitable principles affecting creditors' rights generally.

### Article III THE PROJECT

Section 301. Funding of the Project. Upon the issuance of the 20\_\_ Obligations, the Authority shall cause the proceeds thereof to be deposited in the funds and accounts established under the Indenture as set forth therein. Proceeds of any Additional Obligations shall be applied as set forth in the applicable Supplemental Indenture or in an Authority Certificate approved by the Director of Finance.

Section 302. The Project.

(a) The City and the Authority hereby agree to undertake the Project. In undertaking the Project, the Authority will act at the direction of and with the cooperation of the City. The Authority agrees to cooperate with the City and take all actions which are reasonably necessary to facilitate the Project.

(b) Proceeds of the 20\_\_ Obligations shall be applied to pay or reimburse costs of the 20\_\_ Project in accordance with the Indenture, the Act and the Ordinance.

Section 303. Compliance with Ordinance. Notwithstanding any other provision of this Agreement to the contrary, no proceeds of any Bonds of any series shall be spent unless there is full compliance with the approval process set forth in Section 2 of the Ordinance, and all required approvals are obtained. The Council of the City of Philadelphia ("Council") is an intended beneficiary of the requirements of this Section 303. Council shall have standing to sue for specific enforcement of the requirements of this Section 303, and the City and the Authority agree not to challenge the standing of Council in any action for such specific enforcement.

Section 304. Additional Obligations. Upon the written request of the Director of Finance of the City, the Authority may issue Additional Obligations to refund Outstanding Obligations and to finance Costs of the Project, including amounts necessary for Costs of Issuance of such Additional Obligations, costs of credit or liquidity enhancement, and other amounts necessary to effect any refunding and may also incur Related Obligations. In connection with the issuance of Additional Obligations and any incurrence of Related Obligations, the Authority and the City shall enter into an appropriate supplement to this Service Agreement, subject to the provisions of the Ordinance.

## Article IV SERVICE FEE

Section 401. Service Fee. In consideration of the undertakings by the Authority under this Service Agreement with respect to the Project, the City agrees to pay as a Service Fee in each Fiscal Year directly to the Trustee, as the assignee of the Authority, the following sums:

(a) The Annual Debt Service Requirement for such Fiscal Year, payable as follows:

(i) On the business day immediately preceding the date such amount is required to be paid to the Holders of the Obligations, the amount which is equal to the principal or redemption price of the Obligations becoming due on such principal maturity date or mandatory sinking fund redemption date, subject to credit for other available funds in the manner provided in the Indenture.

(ii) On the business day immediately preceding each Interest Payment Date, the amount which is equal to interest on the Obligations becoming due on such Interest Payment Date, subject to credit for other available funds in the manner provided in the Indenture.

(iii) On the dates specified in any Related Obligations, any other amounts due to the person entitled thereto (to the extent not duplicative of those set forth in clauses (a)(i) and (ii) above) on the due date for such amounts.

(iv) On or before the dates specified in any Credit Facility, the amounts which are equal to any Credit Facility Payment Obligations becoming due on such dates, subject to credit for other available funds in the manner provided in the Indenture.

(b) Notwithstanding any other provision of this Service Agreement, an acceleration of the Authority's payment obligations with respect to the Obligations, any Related Obligation or any Credit Facility Payment Obligation shall not cause an acceleration of the payment of the Service Fee hereunder.

(c) In lieu of the portion of the payments due under subsection (a)(i) above, the City, or at its written direction, the Trustee, may purchase for cancellation Obligations of the series and term next becoming due at maturity or upon mandatory sinking fund redemption, subject to the applicable requirements set forth in the Indenture.

The Service Fee shall be payable only out of the current revenues of the City, and the City agrees to provide for the payment of the Service Fee and include the same in its annual operating budget for each Fiscal Year. If the current revenues are insufficient to pay the total Service Fee in any Fiscal Year as the same becomes due and payable, the City covenants to include amounts not so paid in its operating budget for the ensuing Fiscal Year in order to provide sufficient current revenues to pay in each ensuing year such balance due in addition to the amount of Service Fee due for such ensuing year.

The City covenants to make appropriations in each of its Fiscal Years in such amounts as shall be required in order to make all Service Fee payments due and payable hereunder in each of the City's Fiscal Years.

The Authority agrees to give the notice required under Section 2.07(d) of the Indenture of payments due with respect to any Related Obligation.

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Section 402. No Set-Off. The obligation of the City to make the payments required under this Service Agreement shall be absolute and unconditional. The City will pay without suspension, abatement, reduction, abrogation, waiver or diminution all payments required hereunder regardless of any cause or circumstance whatsoever, which may now exist or may hereafter arise, including, without limitation, any defense, set-off, recoupment or counterclaim which the City may have or assert against the Authority, the Trustee, any Holder of the Obligations, any person entitled to payments under Related Obligations, any Credit Issuer or any other person.

Section 403. Prepayment. The City shall be permitted, at any time and from time to time, to prepay all or any part of the amounts payable under Section 401 hereof together with such other amounts as shall be sufficient to pay all or a portion of the Obligations of any series in accordance with the provisions of the Indenture.

Section 404. Other Payments by City. The City shall make the following payments:

- (a) contemporaneously with the execution and delivery hereof, the Authority's closing fee with respect to the 20\_\_ Obligations;
- (b) the Authority's other Administrative Expenses incurred from time to time; and
- (c) directly to the Trustee, on behalf of the Authority, upon invoice therefor, the Administrative Expenses of the Trustee as provided in Section 10.04 of the Indenture.

The Administrative Expenses shall be payable only out of the proceeds of the Obligations or the current revenues of the City, and the City agrees to provide for the payment of the Administrative Expenses and include the same in its annual operating budget for each year to the extent not otherwise provided for. If the current revenues are insufficient to pay the total Administrative Expenses in any Fiscal Year as the same become due and payable, the City covenants to include amounts not so paid in its operating budget for the ensuing Fiscal Year in order to provide sufficient current revenues to pay in each ensuing year such balance due in addition to the amount of Administrative Expenses due for such ensuing year.

The City covenants to make appropriations in each of its Fiscal Years in such amounts as shall be required in order to make all Administrative Expense payments due and payable hereunder in each of the City's Fiscal Years.

Section 405. Assignment of Service Agreement. The Authority hereby notifies the City that all the Authority's right, title and interest in and to this Service Agreement, including its rights to receive the above payments (except for the Reserved Rights), shall be irrevocably assigned by the Authority to the Trustee as security for the Obligations, Related Obligations and Credit Facility Payment Obligations, as provided in the Indenture, and in furtherance of said assignment the Authority hereby irrevocably assigns all payments by the City hereunder (except for the Reserved Rights) to the Trustee for deposit or application in accordance with this Service Agreement and the Indenture. The City hereby consents to such assignment. The Authority consents to the payment by the City of, and directs the City to pay, all such assigned amounts directly to the Trustee.

Section 406. Excess Funds. After all of the Obligations, Related Obligations and Credit Facility Payment Obligations have been paid or payment thereof has been provided for and all interest and applicable premium, if any, due thereon and all other amounts required to be paid under the Indenture have been paid or provision for such retirement and payment has been made in accordance with the



Indenture, excess moneys in the funds and accounts established under the Indenture from whatever source derived will be paid to the City. This paragraph shall survive the termination of this Service Agreement.

## Article V FURTHER AGREEMENTS

Section 501. Compliance With Laws. The City covenants that all actions heretofore and hereafter taken by the City or by the Authority upon the request of any officer of the City in connection with the Project, including the making of contracts, have been and will be in full compliance with all pertinent laws, ordinances, rules, regulations and orders applicable to the City. The City acknowledges that any review by the Authority's staff or counsel of any action heretofore or hereafter taken by the City has been or will be solely for the protection of the Authority. Such reviews shall not prevent the Authority from enforcing any of the covenants made by the City.

Section 502. Investments. The City and the Authority agree that all moneys in any fund or account established by the Indenture may be invested in such Investment Securities as the City may direct in writing, as provided in the Indenture.

Section 503. City to Perform Certain Covenants Under Indenture. The City acknowledges that it has received an executed copy of the Indenture, and that it is familiar with its provisions, and agrees to be bound to the fullest extent permitted by law to all provisions thereof directly or indirectly relating to it, and that, in consideration of the service of the Authority rendered to the City under this Service Agreement, it will take all such actions as are required of it under the Indenture to preserve and protect the rights of the Trustee, the Holders of the Obligations, persons entitled to payments under Related Obligations and Credit Issuers thereunder and that it will not take or effect any action which would cause a default thereunder or impair such rights. The City hereby assumes and agrees to perform all of the covenants and other obligations of the Authority under the Indenture, excepting only any approvals or consents required to be given by the Authority thereunder, and those covenants contained in the Indenture which are not within the control of the City.

Section 504. Provisions Related to Tax-Exemption. Each of the City and the Authority covenants that it, with respect to any Obligations which are initially issued with the expectation that the interest thereon will be federally tax-exempt: (i) will neither make nor instruct the Trustee to make any investment or other use of the proceeds of the Obligations, the interest on which is intended to be excludable from gross income of the Holders thereof, which would cause such Obligations to be "arbitrage bonds" (as defined in Section 148(a) of the Code); (ii) will comply with the requirements of the Code throughout the term of such Obligations so that the interest on such Obligations shall be excludable from gross income for federal income tax purposes; and (iii) will not apply the proceeds of such Obligations in such a manner as would result in the loss of the exclusion of interest on such Obligations from gross income of the Holders for federal tax purposes. The City further covenants that it will calculate and pay directly to the United States the amount of arbitrage rebate with respect to any such Obligation payable to the United States Treasury under the Code. The Authority agrees to cooperate with the City's undertaking to comply with the arbitrage rebate rules.

Section 505. No Personal Recourse Against Authority; Assumption of Financial Responsibility.

(a) In the exercise of the power of the Authority and its members, officers, employees and agents under this Service Agreement or the Indenture including (without limiting the foregoing) the application of moneys and the investment of funds, neither the Authority nor its members,

officers, employees or agents shall be accountable to the City for any action taken or omitted by it or them except actions constituting bad faith, willful misconduct, gross negligence, fraud or deceit of the Authority or of any member, officer, employee or agent. The Authority and such other persons shall be protected in its or their acting upon any paper or document believed by it or them to be genuine, and it or they may conclusively rely upon the advice of counsel and may (but need not) require further evidence of any fact or matter before taking any action. No recourse shall be had by the City for any claims against any member, officer, employee or agent of the Authority alleging personal liability on the part of such person based on this Service Agreement or on the Indenture or based on the Authority's participation in the Project.

(b) To the extent authorized by applicable law, and in consideration of the service being rendered by the Authority to the City pursuant to the Act, the City agrees to indemnify, defend and hold harmless the Authority and each of its directors, officers, employees, agents and representatives (each an "Indemnified Party" and collectively, the "Indemnified Parties"), against any and all suits, claims or causes of action (collectively, "Claims"), and all liabilities, losses, costs, expenses, judgments and amounts paid in settlement (including without limitation, reasonable attorneys' fees) of every kind (collectively, "Losses"), relating to or arising in connection with the Authority's entering into this Service Agreement, the Indenture or any other documents executed by the Authority in connection with the transactions contemplated in connection with the Project, the performance of any of the Authority's obligations hereunder or thereunder, any acts or omissions with respect to the Authority's interest under this Service Agreement, the Indenture or any other documents executed by the Authority in connection with the transactions contemplated thereby, or any other acts or omissions relating to the Authority's involvement in the Project; except in each case to the extent that the Claims and Losses are attributable to the willful misconduct, gross negligence, bad faith, fraud or deceit of any such Indemnified Party.

(c) In the event any such Claim is made or action brought against any Indemnified Party, the City shall assume the defense of the Claim and any action brought thereon and the City shall pay all expenses incurred therein; or the Authority, with the consent of the City Solicitor, may assume the defense of any such Claim or action, the reasonable costs of which shall be paid by the City; provided, however, that Counsel selected by the Authority to conduct such defense shall be approved by the City and further provided that the City may engage its own Counsel to participate in the defense of any such action.

(d) The City shall have the right to control the defense of any legal proceedings involving any Claims (other than Claims relating to the inherent powers of the Authority), but shall keep the Authority advised as to all material developments in such proceedings. Notwithstanding anything herein to the contrary, the City shall not be required to indemnify or defend any Indemnified Party against any Claims or Losses to the extent such Claim or Loss is the result of the willful misconduct, bad faith, gross negligence, fraud or deceit of the Authority or such Indemnified Party; provided, however, the Authority's taking of any action, or the failure to take any action, which it is permitted to take under the terms of this Service Agreement, the Indenture or any of the documents involved in the Project, shall under no circumstances be deemed to constitute willful misconduct, bad faith, gross negligence, fraud or deceit; and furthermore, the taking of any action by the Authority at the written direction of the City or the Trustee shall not under any circumstances be deemed to constitute willful misconduct, bad faith, gross negligence, fraud, or deceit.

(e) The City shall not be obligated under Section 505(b), (c) or (d) of this Service Agreement unless the Indemnified Party has given the City prompt and timely notice of matters contemplated by Section 505 (b), (c) or (d); provided however, the failure to so notify the City will not relieve the City from any obligation under Section 505(b), (c), or (d) except to the extent such failure has materially injured the ability of the City to defend such matter successfully or to minimize the economic



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exposure resulting therefrom. Nothing in this Section 505 shall be deemed to preclude the City from asserting any claim against an Indemnified Party for expenses arising from such Indemnified Party's willful misconduct, bad faith, gross negligence, fraud or deceit.

Section 506. Liabilities of the Trustee. The City shall at all times assume complete financial responsibility for all liabilities, losses, claims, causes of action and reasonable costs and expenses (including, without limitation, reasonable attorneys' fees and expenses, including the actual and reasonable allocated costs and expenses of in-house counsel) incurred by, imposed upon or asserted against the Trustee, including its officers, directors, employees and agents, or any of them, for following any instruction or direction upon which the Trustee is authorized to rely pursuant to the terms of this Service Agreement, the Indenture, the Obligations, any Related Obligations or any Credit Facility Payment Obligations, or which arise on account of or result from any actions taken or omitted to be taken by the Trustee, except as a result of its or their gross negligence or willful misconduct, relating to or arising out of this Service Agreement, the Indenture, the Obligations, any Related Obligations or any Credit Facility Payment Obligations.

Section 507. No Waiver of Immunity. Nothing herein shall waive or amend any defense or immunity which the City or the Authority, their officers, employees or agents may have under the Pennsylvania Political Subdivision Tort Claims Act, 42 Pa. C.S.A. §8541 et seq. or the Commonwealth Agency Law, 42 Pa. C.S.A. §8521 et seq.

Section 508. Non-Competitively Bid Contract Bidding Requirements. Pursuant to Section 17-1408 of the Philadelphia Code, the Authority shall abide by the provisions of Philadelphia Code Chapter 17-1400 in awarding any contract(s) pursuant to this Service Agreement as though such contracts were directly subject to the provisions of Chapter 17-1400, except that the exception set forth at Subsection 17-1406(8) shall apply to the Authority as if the Authority were listed in that subsection.

Unless approved by the City to the contrary, any approvals required by the Philadelphia Code Chapter 17-1400 to be performed by the City Solicitor shall be performed by the Authority by its General Counsel; any approvals required to be performed by the Director of Finance shall be performed by the Authority by its Senior Vice President for Financing Services; and any approvals required to be performed by the Mayor shall be performed by the Authority by its President.

Section 509. Nondiscrimination/Sexual Harassment Clause. During the term of this Service Agreement, the City agrees as follows:

(a) In the hiring of any employee(s) for the performance of work, or any other activity required under this Service Agreement or any contract for the construction or acquisition of the Project, the City, its contractors, or any person acting on behalf of the City or its contractors shall not, by reason of gender, race, creed, or color, discriminate against any citizen of the Commonwealth who is qualified and available to perform the work to which the employment relates.

(b) Neither the City nor any of its contractors for the Project nor any person on their behalf shall in any manner discriminate against or intimidate any employee involved in the performance of work or any other activity required under this Service Agreement on account of gender, race, creed, or color.

(c) The City and its contractors for the Project shall establish and maintain a written sexual harassment policy and shall inform their employees of the policy. The policy must contain a notice that sexual harassment will not be tolerated and employees who practice it will be disciplined.

(d) The City shall not discriminate by reason of gender, race, creed, or color against any subcontractor or supplier who is qualified to perform the work relating to the property to which the contracts relates.

(e) The City and each of its contractors for the Project shall furnish upon request all necessary employment documents and records to and permit access to their books, records, and accounts by the Pennsylvania Department of Community and Economic Development, for purposes of investigation, to ascertain compliance with provisions of this Nondiscrimination/Sexual Harassment Clause. If the City or its contractors for the Project do not possess documents or records reflecting the necessary information requested, the City or its contractors for the Project shall furnish such information on reporting forms supplied by the Pennsylvania Department of Community and Economic Development.

(f) The City shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every contract for the Project so that such provisions will be binding upon each contractor for the Project.

(g) In the event of a violation of the terms and conditions of this Nondiscrimination/Sexual Harassment Clause, the Pennsylvania Department of Community and Economic Development may proceed with debarment or suspension and may place the City in the Contractor Responsibility File.

Section 510. Authority Audits. The Authority shall furnish to the City, upon request, a copy of its annual audited financial statements, and, if requested, shall permit any duly authorized representative of the City to make reasonable examinations of its accounts and records relating to the Project, this Service Agreement and the Indenture.

Section 511. Additional Information. The City agrees, whenever reasonably requested by the Authority, to provide and certify or cause to be provided and certified such information concerning the Project and the City as the Authority reasonably considers necessary to enable it to make any reports or supply any information required under the provisions of the Indenture, applicable law or governmental regulation, or otherwise.

## Article VI EVENTS OF DEFAULT AND REMEDIES

Section 601. Events of Default. Each of the following shall constitute an Event of Default hereunder:

(a) The failure of the City to make any payment to the Trustee of the Service Fee due pursuant to Section 401(a) of this Service Agreement;

(b) The failure of the City to make any other payment or to perform any other covenant, condition or agreement herein on its part to be performed; and

(c) If the City proposes or makes an assignment for the benefit of creditors or a composition agreement with all or a material part of its creditors, or a trustee, receiver, executor, conservator, liquidator, sequestrator or other judicial representative, similar or dissimilar, is appointed for the City or any of its assets or revenues, or there is commenced any proceeding in liquidation, bankruptcy, reorganization, arrangement of debts, debtor rehabilitation, creditor adjustment or insolvency, state or federal, by or against the City and if such is not vacated, dismissed or stayed on appeal within sixty (60) days (provided that any such assignment, agreement, appointment or proceeding commenced under the

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First Class City Revenue Bond Act or the Municipal Utility Inventory and Receivables Financing Act, and/or any acceleration of the payment obligations in respect of any bonds, notes or other evidence of indebtedness issued under either aforementioned Act, shall not be an Event of Default hereunder).

Section 602. Notice of Defaults; Opportunity to Cure Such Defaults. No default under Section 601(b) hereof shall constitute an Event of Default until actual notice of such default by registered or certified mail shall be given to the City by the Authority or the Trustee and the City shall have had 30 days after receipt of such notice to correct the default and shall not have corrected it; provided, however, if the default cannot be corrected within such 30-day period, it shall not constitute an Event of Default if corrective action is instituted by the City within the period and diligently pursued until the default is corrected.

Section 603. Remedies. If any Event of Default shall occur and be continuing, the Authority (or the Trustee as assignee of the Authority) may at its option exercise any one or more of the following remedies: (a) by mandamus, or other suit, action or proceeding at law or in equity, enforce all rights of the Authority, and require the City to perform its duties and obligations under this Service Agreement; (b) by action or suit in equity require the City to account as if it were the trustee of an express trust for the Authority; or (c) by action or suit in equity enjoin any acts or things which may be unlawful or in violation of the rights of the Authority.

In no event (including an acceleration of the Authority's payment obligations under the Obligations or with respect to any Related Obligations or Credit Facility Payment Obligation) shall the due dates for payments of the Service Fee hereunder be accelerated.

Section 604. No Remedy Exclusive. No remedy herein conferred upon or reserved to the Authority is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Service Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Authority or the Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be herein expressly required.

Section 605. No Additional Waiver Implied by One Waiver. In the event the breach of any agreement contained in this Service Agreement should be waived by either party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

## Article VII MISCELLANEOUS

Section 701. Notices.

(a) Except as otherwise permitted herein and in the Indenture, all communications hereunder shall be in writing and, unless otherwise required under this Service Agreement, shall be sufficiently given or made if delivered personally to the Person who is to receive the same or if mailed to such person by certified mail, return receipt requested, addressed as follows:

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- (i) if to the Authority:  
Philadelphia Authority for Industrial Development  
2600 Centre Square West  
1500 Market Street  
Philadelphia, PA 19102  
Attention: Chairman
  
- (ii) if to the City:  
City of Philadelphia  
c/o Director of Finance  
1401 John F. Kennedy Boulevard  
MSB - Room 1330  
Philadelphia, PA 19102-1693
  
- With a copy to:  
Law Department  
City of Philadelphia  
1515 Arch Street, 17th Floor  
Philadelphia, PA 19102-1595  
Attention: City Solicitor
  
- (iii) if to the Trustee:

Section 702. Severability. If any provision of this Service Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 703. Redemption of Obligations. The Authority, at the written direction of the City, at any time the aggregate moneys in the funds or accounts created under the Indenture are sufficient to effect such redemption in whole or in part, and if the same are then redeemable under the provisions of the Indenture, shall forthwith take steps that may be necessary under the applicable provisions of the Indenture to effect redemption of all or as many of the then Outstanding Obligations on such redemption date as may be specified in writing by the City.

Section 704. Counterparts. This Service Agreement may be executed in any number of counterparts, each of which shall be an original and all of which together shall constitute but one and the same Service Agreement.

Section 705. Benefit of Service Agreement. This Service Agreement shall inure to the benefit of and shall be binding upon the Authority, the City and their respective successors and assigns. In addition, the agreements and representations of the City and the Authority herein contained shall inure to, but only to, the Trustee for the benefit of the Holders from time to time of all Obligations issued and Outstanding under the Indenture, persons entitled to payments on any Related Obligations and any Credit Issuers secured pursuant to the Indenture, and to the Trustee for its own benefit.

Section 706. Termination. This Service Agreement shall terminate on such date as the principal of and interest on all Obligations and all other amounts required under the Indenture to be paid and all other expenses payable by the City hereunder shall have been paid (or provision for such payment

shall have been made as provided in the Indenture) and all other conditions of this Service Agreement and the Indenture shall have been fully satisfied. Notwithstanding the foregoing, the City's obligations under Sections 505 and 506 hereof shall survive any such termination.

Section 707. Governing Law. This Service Agreement shall be governed by, and construed in accordance with, the substantive laws of the Commonwealth.

Section 708. Entire Agreement. This Service Agreement constitutes the entire agreement and supersedes all prior agreements and understandings, both written and oral, between the Authority and the City with respect to the subject matter hereof.

Section 709. Amendments and Supplements.

(a) The parties hereto from time to time may enter into any written amendments or supplements hereto (which thereafter shall form a part hereof) as shall not adversely affect the rights of or the security of the Holders of the Obligations or persons entitled to payments on Related Obligations, only for the following purposes: (i) to cure any ambiguity, defect, or inconsistency or omission herein or in any amendment hereto; (ii) to grant to or confer upon the Authority or the Trustee any additional rights, remedies, powers, authority or security that lawfully may be granted to or conferred upon the Authority or the Trustee; (iii) to reflect a change in applicable law; (iv) as appropriate in connection with the issuance of Additional Obligations; or (v) to provide terms not inconsistent with the Indenture or this Service Agreement; provided, however, that this Service Agreement as so amended or supplemented shall provide at least the same security for Holders of the Obligations and persons entitled to payments on Related Obligations as the Service Agreement in this form.

(b) All other amendments must be approved by the Trustee and, to the extent required by the Indenture, by the Holders of the Obligations or other persons entitled to payments on Related Obligations, in the manner as is set forth in Section 11.05 of the Indenture.

(c) Any amendment or supplement to this Service Agreement (other than an amendment or supplement pursuant to Section 709(a)(i) through (v) hereof) shall be approved by ordinance of the City Council and a copy of any such amendment or supplement, together with a copy of such ordinance, certified by the Clerk of the City Council, shall be filed with the Trustee.

Section 710. Limitation on Liability of the Authority. No provision of this Service Agreement shall be construed so as to give rise to a liability of the Authority or any of its members, officers or employees, or to give rise to a charge upon the general credit of the Authority or such members, officers or employees, including without limitation in respect of general liability for repayment of the Obligations, Related Obligations or Credit Facility Payment Obligations; any liability hereunder of the Authority shall be limited exclusively to its interest in this Service Agreement and the lien of any judgment shall be restricted thereto.

Section 711. Construction; Conflict with Ordinance. If any provision of this Service Agreement conflicts with the provisions of the Ordinance, the Ordinance shall control.

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IN WITNESS WHEREOF, the parties hereto have executed and delivered this Service Agreement, all as of the day and year first above mentioned.

PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT

By: \_\_\_\_\_  
Name:  
Title:

CITY OF PHILADELPHIA, PENNSYLVANIA

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to Service Agreement]

## Exhibit B

### REBUILDING COMMUNITY INFRASTRUCTURE GRANT PROGRAM

The City of Philadelphia (“City”) working with and through the Philadelphia Authority for Industrial Development (“PAID”) desires to support the design and construction of certain necessary expansions, renovations, improvements, repairs, construction, and demolition (collectively, the “Rebuild Improvements”) by certain qualified organizations (“Project Users”) to the several buildings, parks, libraries, recreation centers, open spaces and public places which comprise the City’s parks and recreation facilities and the Free Library System of Philadelphia (each a “Facility” and, collectively, the “Facilities”) to provide greater recreational and educational opportunities for the citizens of the City, such initiative being commonly known as “Rebuilding Community Infrastructure” or “Rebuild” (the “Program”).

The City has developed the following Program requirements which apply to the disbursement of grant funds for Rebuild Improvements. No proceeds of Obligations, of any series, shall be granted or expended unless there is full compliance with the approval process set forth in Section 2 of this Ordinance, and all required approvals are obtained.

The Rebuild office, under the supervision of the Managing Director, will have the day to day responsibility for Project management. The Rebuild office will work in coordination with City departments, including the Office of the Director of Finance, Department of Parks & Recreation (“PPR”) or the Free Library of Philadelphia (“FLP”), and other staff as appropriate and determined by the Managing Director. Project management includes responsibilities in the areas of Rebuild Project delivery, Rebuild Project monitoring, financial controls, diversity and inclusion and community engagement.

Rebuild projects will be delivered by Project Users except when the District Councilmember where the project is located, chooses an alternative project delivery method. Such alternatives may include PPR’s skilled trades “capital squad,” PPR or Department of Public Property (“DPP”) capital projects staff, or the Philadelphia Redevelopment Authority.

A Rebuild Oversight Board will be established comprising the following standing members or their representatives: two members appointed by the Council President; the Chair of Council’s Committee on Parks and Recreation; the Managing Director; Commissioner of Parks and Recreation; Free Library of Philadelphia President; Director of Planning and Development; Director of Finance; Chief Integrity Officer. The Oversight Board will also include the following members: the EOP Oversight Committee chair; two community/civic leaders; and up to five experts in design and construction, workforce development and/or M/W/DBE/DSBE support, community engagement or philanthropy. The Oversight Board will receive and evaluate reports on Project performance and progress, as well as provide a forum for members of the public to address Project concerns and issues. The Oversight Board will also provide recommendations for operational changes to the Project.

In accordance with the requirements and limitations of Executive Orders 4-94 and 2-08, Rebuild will be subject to a compliance and monitoring program administered by the Inspector General and Office of the Chief Integrity Officer designed to prevent waste, fraud and abuse. The program will include monitoring, educational resources and training, compliance support, and mechanisms for confidential reporting.

## 1. Qualifications of Project Users

Applicants for grant funding for Rebuild Improvements shall be prequalified prior to submitting any application for funding.

- A. Applicants must be non-profit organizations based in Philadelphia County and may apply for qualification with support of another non-profit or for-profit entity. Qualified non-profit organizations may be subject to recertification or revocation of their qualifications based on changed circumstances, performance or other factors including non-compliance with EOP participation requirements. Applicants must have the following qualifications:
- (1) Project experience: successful completion of design and construction on projects in excess of \$1 million.
  - (2) Community outreach/engagement: experience working successfully with communities in the support and development of projects.
  - (3) Capacity development: experience working with organizations to support community advocacy, fundraising, program development/management and similar initiatives (community outreach/engagement and community development are collectively referred to as “Program Activities”).
  - (4) Project relationship: a current or proposed relationship with one or more Program-eligible facilities.
  - (5) Fiscal responsibility: demonstrated capability to successfully and responsibly manage government or foundation grant funds in excess of \$1 Million; documented plan for compliance with program financial management requirements as described in section 5(f).
  - (6) Diversity and inclusion: demonstrated ability to implement an Economic Opportunity Plan; evidence of an organizational commitment to diversity and inclusion.

## 2. Eligible Project Sites

Qualified applicants may choose facilities from the City’s list of eligible sites that have been determined by the District Council person pursuant to Section 2 hereof to be priority locations for Rebuild Improvements. The list of eligible sites shall be the projects and/or locations approved by Council pursuant to Section 2(c) of the Ordinance. The City shall maintain the list based on criteria, including:



- A. High neighborhood need as measured by poverty, drug/narcotics offenses, and health data;
- B. Neighborhood potential for economic growth as measured by household growth, residential building permits, and the Reinvestment Fund's Market Value Analysis (e.g., steady or transitional neighborhoods);
- C. Physical state of site and the relative need for investment;
- D. Proximity to other civic assets (i.e., other Rebuild sites; schools/ community schools; health centers; PAL centers; KEYSPOTS, high-quality Pre-Ks);
- E. The prioritization of sites in City plans and in programs such as Promise Zones and Choice Neighborhoods;
- F. Information provided by the members of Philadelphia City Council and the community;
- G. Information provided by staff of the Department of Parks and Recreation, Department of Public Property and the Free Library of Philadelphia;
- H. Prior investments by City Departments and City Council; and
- I. Stormwater management planned investments or opportunities.

### 3. Eligible Improvements

The City has various kinds of information about the physical conditions of the eligible sites, and this information will be made available on a site by site basis to applicants. Applicants shall submit applications based on those assessments and the applicant's own preliminary assessments, with the understanding that the design and community engagement process may identify additional and different Rebuild Improvements that are necessary or important for the Facilities.

### 4. Application Process

Qualified applicants must submit Rebuild Grant Applications for eligible sites on forms provided by PAID and following the guidance documents developed by the City. The City's Rebuild Office and the Project Review Team established pursuant to Section 2(d) of the Ordinance shall review the application for Rebuild Improvements and the proposed implementation of Program Activities for consistency with the guidance documents and the Project User Responsibilities listed in Section 5. The Rebuild Office and the Project Review Team shall determine whether the Applicant has met the criteria for approval and inform PAID.

- A. Stages of application process. Qualified applicants are encouraged to structure grant applications in two phases, as follows:
  - (1) In phase one, the Project User would seek funding and authorization to undertake schematic design and initial community engagement work, based on preliminary information provided by the City.
  - (2) In phase two, subject to the approval of the firm scope of work and a cost estimate developed during phase one, the Project User would submit its

final design, construction documents and, subject to approval thereof, proceed with the construction and commissioning of the project.

## 5. Project User Responsibilities

Project Users shall be responsible for the implementation of the Program Activities and Rebuild Improvements for an approved project site or sites (“Project Site”) subject to Section 2 of the Ordinance:

### A. Selection of project team

- (1) Project Users will contract directly with owner’s representatives (as appropriate), design professionals, community engagement partners and construction managers or general contractors for the execution of all work for the Rebuild Improvements at the Project Site subject to the approval process in Section 2 of the Ordinance.
  - a. Open and transparent selection process. Project Users will follow Program guidance for ensuring that consultants and contractors are selected in a fair and open process that is consistent with Rebuild policies of accountability, transparency, integrity, diversity, and inclusion.

Project Users will develop and inform potential designers, contractors and consultants of minimum qualification standards designed to determine whether companies have the professional qualifications, relevant experience, and resources to perform the work and consistent with the goals and standards of the Rebuild initiative. Evaluation and selection requirements will include, but will not be limited to, the following:

1. Establishing a diverse selection committee including members with relevant and appropriate expertise
2. Developing an open and competitive process that results in sufficient information to make informed decisions about team members
3. Publicizing contract opportunities broadly in order to maximize the number and diversity of firms/ teams submitting responses;
4. Evaluating potential consultants and contractors based on an agreed-upon set of clear criteria with scores and weights
5. Implementing a process for reasonably verifying information provided in qualification statements (e.g., verifying ownership and checking for outstanding tax obligations; interviewing references; verifying completion of past projects and track record on workforce inclusion and diversity)

6. Creating a written record of the open and competitive process, e.g., a record of how opportunities were advertised, a list of all respondents, and summary reasons that firms were or were not determined to be qualified
  
- b. Selection criteria. Project Users will be required to adhere to minimum qualification standards of owner's representatives, design teams and construction managers/ general contractors. The standards are to ensure that Rebuild work is accomplished effectively and efficiently; to accomplish Rebuild design excellence standards; and to maximize the diversity and inclusion of minorities and women in Rebuild work.

Project Users will develop and inform potential designers, contractors and consultants of minimum qualification standards designed to determine whether companies have the relevant experience, professional qualifications, commitment to diversity and inclusion, community engagement partners and resources to perform the work and consistent with the goals and standards of the Rebuild initiative. For vendors that are being considered for a prime contracting role, Project Users will be required to evaluate information in the following areas, at a minimum:

1. Experience:
  - i. Number of years in business (as a firm and key personnel);
  - ii. Size and scope of completed projects;
  - iii. Demonstrated experience completing work within established schedule and budget; experience facilitating effective design and construction solutions while controlling costs and meeting schedule requirements; experience effectively resolving problems in the field;
  - iv. Experience with similar sites and/or in similar neighborhood context;
  - v. Ability to partner with other firms to achieve project goals; and
  - vi. Ability to navigate permitting and approval processes required for projects on City of Philadelphia property.
  
2. Commitment to diversity and inclusion:
  - i. Diversity of staff and other evidence of commitment to these principles in the practices and activities of the firm;

- ii. Commitment to offering employment opportunities on Rebuild Projects to participants and graduates of pre-apprenticeship programs including the Diversity Apprenticeship Program (DAP), the PHA Apprenticeship Program, the School District of Philadelphia CTE Program, the Construction Apprentice Preparatory Program (CAPP), PowerCorps, PennAssist, Apprentice-ready and YouthBuild;
- iii. Track record of significant and meaningful participation by minority and women in the firm’s construction workforce and minority, woman and disabled-owned businesses on prior contracts;
- iv. Ability to think creatively about how to further the Rebuild initiative goal of growing the number, size, and capacity of minority, woman and disabled-owned businesses in Philadelphia; and
- v. Participation in the supports for firms owned by Minorities, Women and Disabled Persons (“M/W/DSBEs”) coordinated by the Rebuild office.

3. Qualifications:

- i. Successful experience managing relevant projects (e.g., demolition, renovation, and new construction; historic structures; recreation centers, libraries, parks, pool facilities, etc.);
- ii. Ability to balance innovative design and traditional operating practices, including tested, durable materials and ease of maintenance and operation; ability to incorporate existing design and construction guidelines and specifications;
- iii. Experience working effectively in low-income Philadelphia neighborhoods and/or in diverse neighborhoods; cultural competence;
- iv. Understanding of and commitment to design excellence, urban spaces that enrich the city, and interior and exterior spaces that will engage users and inspire pride in city architecture;
- v. LEED certification/ experience and sustainable design experience;
- vi. Knowledge of green stormwater infrastructure (“GSI”);
- vii. Commitment to safety and accessibility beyond code compliance; and

- viii. Competitiveness of hourly rates; billing and budgeting philosophy.
- 4. Resources:
  - i. Size of staff;
  - ii. Evidence of volume and size of projects that can be managed at one time;
  - iii. Appropriate insurance coverages;
  - iv. Financial stability, e.g., as evidenced by timely tax and loan payments, audited financial statements, bonding capacity, etc.; and
  - v. Ability to commit to timely payment to subcontractors (as applicable).
- c. Project Users will have access to information regarding participants and graduates of pre-apprenticeship programs (including those referenced in 5(A)(1)(b)(2)(ii) above) and minority and women-owned businesses that have expressed an interest in working on Rebuild projects. In their selection process, Project Users will take into account the supports that are available to consultants and construction managers/ contractors through the Rebuild initiative.
- d. Project Users are encouraged to attract new talent and promote innovation on Rebuild projects by providing opportunities for less experienced firms and smaller firms. For example, firms could demonstrate relevant experience on the part of proposed personnel rather than on the part of the firm.
- e. Project Users will require consultants and contractors to refer to and comply with standards established by *Green City, Clean Waters*, the City's stormwater management plan; *Greenworks*, the City's sustainability plan; and standards/ specifications of the Free Library and Department of Parks and Recreation and the Department of Public Property.
- f. Project Users will be required to participate in the Rebuild Diversity and Inclusion plan as described below.
- g. Project Users are encouraged to develop an efficient process and structure for contracting with design teams and construction managers/contractors if they expect to apply for grants for multiple Rebuild projects.

## B. Community engagement

- (1) Each Project User shall agree to: participate in and adhere to the standards and expectations of the Rebuild Engagement Program which will seek to ensure that residents in communities where Rebuild projects are located have a say in the physical improvements and potential future programming at the site. Project Users will propose community engagement activities and these may vary by site and by Project User. Depending on the site, responsibilities may include:
  - a. Take a leadership role, in coordination with the Rebuild Office, District Councilmember, Department of Parks and Recreation, the Free Library of Philadelphia, and other potential City staff or external stakeholders, in the creation and implementation of a program of community engagement in those communities where Project User is constructing Rebuild Improvements.
  - b. Contract with community based organizations to co-design, inform, manage, or help carry out all or portions of the engagement plan for specific sites for which the Project User has an approved Rebuild Grant Application.
  - c. Develop productive relationships and coordinate with District Councilmembers and their staff members, as appropriate and desired by the District Councilmember.
  - d. Develop productive relationships and coordinate with friends groups, recreation advisory councils, community organizations and stakeholders.

## C. Design development

- (1) Design Excellence. Project Users shall participate in the Rebuild Design Excellence Program to ensure that the design process and resulting design meets and exceeds the needs of community residents and results in the highest functioning, highest-performing, and environmentally sustainable facilities. Design excellence means that facilities should satisfy residents, users and operations/ maintenance personnel over a long period of time; operating costs should go down, stormwater pollution should be reduced, and the facilities themselves should contribute to improved health outcomes for users and neighbors.

The design of Rebuild projects will be subject to Art Commission review, as required for all City properties. In addition, Rebuild projects that involve significant changes in facility appearance or in user experience, or are issued as “design challenges” intended to apply

to multiple sites across the system, will receive an extra level of review through an Art Commission sub-committee created specifically to ensure high quality design on these projects. This Rebuild Design Excellence Sub-Committee is anticipated to consist of a minimum of two Art Commission members and two to three volunteer non-art commission members who are from a design or design-related field. The fields include architecture, landscape architecture, interior design, city planning, and related fields. Members should be individuals who are regularly involved in the design of the physical environment. Two of the non-art commission members shall be appointed by the Council President.

- (2) Quality Control. Project Users shall be held to a high standard of performance in the management of the Rebuild Improvements. Designs will be subject to review by City departments, including but not limited to the Rebuild Office, Philadelphia Parks and Recreation, and the Free Library of Philadelphia, at regular intervals such as the schematic, design development, and construction document milestones. Projects must be effectively managed so the schedules and budgets are met barring unforeseen circumstances. Improvements must be designed to the highest industry standards, resulting in facilities that are sustainable for many years.

#### D. Construction management/ oversight

- (1) Design team and construction manager/ contractor cooperation. Project Users are encouraged to have design teams working in partnership with construction managers/ contractors for more effective coordination, such as identification of more cost-effective design solutions earlier in the design process, and identification of more construction contract opportunities for minority and women-owned businesses.
- (2) Quality Control. Project Users shall be held to a high standard of performance in the management of the Rebuild Improvements. Projects must be effectively managed so that schedules and budgets are met, barring unforeseen circumstances. Projects will be subject to a departmental review and approval at certain milestones. Improvements must be constructed to the highest industry standards, resulting in facilities that are sustainable for many years.

E. Diversity and inclusion

(1) Workforce and contract goals.

- a. Project Users will include workforce diversity and contract participation plans in their grant application, including percentage of workforce goals and contract participation goals. Agreements between Project Users and contractors shall include contract provisions and job specifications that acknowledge and provide for the employment of pre-apprenticeship program participants and graduates, referenced in 5(A)(1)(b)(2)(ii) above and any participants of job training programs established pursuant to section 3(a) below.
- b. Workforce diversity and contract participation plans will be reviewed by PAID and the Rebuild office in cooperation with the City of Philadelphia's Office of Economic Opportunity. Plans will be reviewed in the context that the goals for each Rebuild Project are:
  - (i) Professional services contracts 25-30% minority and 15-20% women; construction contracts 30-35% minority and 15-20% women;
  - (ii) Workforce diversity: total minority laborer and skilled workforce hours 45% (African American journeypersons 27%, Hispanic journeypersons 14%, and Asian journeypersons 3%); total minority workforce hours for laborers, 60% and total minority workforce hours for skilled, 40%; total women laborer and skilled workforce hours 5%; total women workforce hours, 5% laborer and 5% skilled.
  - (iii) Local construction workforce: 50-60%.
- c. Project Users will be subject to real-time diversity and inclusion monitoring by a third party under contract with the City of Philadelphia. Project Users will be required to allow the City's monitor full access to contracts, job sites and all data needed to verify performance as compared to the approved application. The monitor will be empowered to assist consultants and contractors with achieving workforce and contract participation goals as necessary.



- d. Grant agreements will include provisions related to failure to achieve workforce diversity commitments, and will require that the agreements between Project Users and contractors allow the Project Users to terminate agreements if those commitments are not being met. In addition, other terms may be required, such as liquidated damages. Agreements may also include incentives to achieve higher rates of workforce diversity.
- e. EOP Oversight Committee.
  - (i) Members of the EOP Oversight Committee will include Councilmembers, City department representatives and non-governmental experts in workforce development and development of M/W/DBE/DSBEs. The EOP Oversight Committee shall oversee the performance of the Project diversity and inclusion goals, including EOPs, supports provided to M/W/DBEs/DSBEs, and activities pursuant to the Rebuild Memorandum of Understanding with the Building Trades, if any. The EOP Oversight Committee shall select one more persons or organizations to monitor compliance with the Plan.
  - (ii) The compliance monitor shall determine for each contract for Rebuild when twenty-five percent (25%) of total projected labor hours are complete, and when twenty-five percent (25%) of the total contract value has been expended. At that point, the compliance monitor will determine whether the contractor or sub-contractor is on track to meet workforce and contract participation goals. The results of that determination will be shared with the Rebuild office and the district Councilmember.
- (2) Project labor agreements. Project Users, in consultation with the City, may review proposed Projects consistent with Executive Order 8-15 to determine whether such Projects would benefit from a project labor agreement (“PLA”).
- (3) Rebuild apprentice-ready and other programs.
  - a. Union Agreement for apprentice-ready program and Project Labor Agreements. The City and the Philadelphia Construction and Building Trades Council (“Unions”) have entered or expect to enter into a Memorandum of Understanding (“MOU”) that establishes a pre-apprentice training program leading to Union

membership and apprenticeships. The MOU refers to the apprentice-ready program as the Union Building Trades Council Community Training Initiative. Pursuant to the MOU, project specifications and contracts shall acknowledge and provide for the employment of the apprentice-ready program participants in building and construction projects. The Rebuild office will provide support to the Project Users in the placement of apprentice-ready and other pre-apprenticeship participants and graduates, from programs referenced in 5(A)(1)(b)(2)(ii) above. The Rebuild Office may also provide financial support to job training providers including, but not limited to, those referenced in 5(A)(1)(b)(2)(ii) above, to fund the creation of additional seats with those providers and to support employment opportunities on Rebuild Projects for participants of said job training programs.

- b. Continuous work. Project Users are encouraged to seek ways to provide ongoing work opportunities for graduates of the apprentice-ready program and for businesses participating in the Rebuild program of business supports.

(4) M/W/DSBE participation

- a. Payment within 30 days. Prompt payment of consultants, contractors, and sub-contractors is a priority for Rebuild projects. Project Users will be expected to demonstrate how they will be able to work with Rebuild invoice review and approval processes and achieve payment to the sub-contractor level within 30 days.
- b. Maximizing M/W/DSBE participation. Given the MBE and WBE participation goals for Rebuild, Project Users are expected to be creative in the development of contract packages in order to maximize M/W/DSBE participation rates, including potential inversion of traditional prime/ subcontractor roles. Project Users are encouraged to coordinate with the Rebuild office on the development of contract packages.
- c. Supports available for Rebuild consultants, contractors and sub-contractors. Consistent with the goal of Rebuild to support the development of M/W/DSBE businesses, the Rebuild office will coordinate a set of supports available to M/W/DSBEs working on Rebuild projects, such as technical assistance, back office support, mentoring and/ or peer support, and bonding assistance. Project Users are encouraged to consider contracting with M/W/DSBEs

that are accessing supports coordinated by the Rebuild office. Project Users are also encouraged to refer businesses with contracts for Rebuild projects to the Rebuild office.

- d. Continuous work. Project Users are encouraged to seek ways to provide relatively uninterrupted work opportunities for contractors and sub-contractors that are accessing Rebuild business supports.
- e. Remedies and incentives. Grant agreements will include provisions related to failure to achieve M/W/DSBE commitments, and will require that the agreements between Project Users and contractors allow the Project Users to terminate agreements if those commitments are not being met. In addition, other terms may be required, such as liquidated damages. Agreements may also include incentives to achieve higher rates of M/W/DSBE participation.

## F. Financial Management

- (1) Oversight and compliance training. Prior to receiving Rebuild grant approval, Project Users must participate in a compliance monitoring training provided by the City (Office of the Inspector General/Chief Integrity Officer). Project Users will be instructed about grant and invoicing documentation and other financial management requirements.
  - a. Compliance training sessions will be provided for all Project Users (with PAID and Rebuild Office participation)
  - b. A compliance and control guide (“the Rulebook”) will be provided by the City as a guide for all parties, including the Rebuild office. The purpose of this document will be to provide clear step-by-step instructions for meeting the Rebuild initiative financial management requirements.
    - i. The Rulebook will establish a process that will enable subcontractors working on Rebuild projects to be paid within 30 days.
  - c. The City Controller’s office will conduct reviews of contracts, pre-audit reviews of expenditures, and post-audit financial reviews of all Rebuild-related expenditures. The City Controller will also have the right to observe invoicing vendors during Rebuild construction activities, provided that such observation does not unreasonably interfere with the construction process.

- (2) Contracting. Project Users may not enter into contracts for the design and construction of Rebuild projects until they have entered into grant agreements with PAID, and have followed the requirements for the selection of professionals and contractors referenced in Section 2 of the Ordinance and Section 5 A.
  - a. Contracts must incorporate all relevant Program financial and performance requirements including the diversity and inclusion requirements in Section 5.E.
  - b. Contracts must specify invoicing format and any other information (bills or other supporting documents) and level of detail required, as defined by the Rulebook or otherwise required by the City.
- (3) Grant requests/invoicing
  - a. Project budgets – Project Users must provide an itemized budget for the entire project to PAID and the City before any Rebuild grant funds for construction are released.
  - b. Grant requests will be reviewed by PAID and the City, and must be supported by appropriate documentation.
  - c. Invoices, bills, and other supporting documents must be submitted in a timely manner to support the Rebuild requirement of timely payments to subcontractors. Project users will be required to ensure that payments are made to consultants, contractors and subcontractors on a schedule consistent with the timelines, and subject to such review, as established in the Rulebook.
  - d. Final invoices must be submitted within 90 days of the completion of the designer or contractor's services.
- (4) Project budget revisions/change orders
  - a. Project budgets will be subject to amendment in accordance with Section 2 of the Ordinance only when documented change orders have been identified by a contractor, reviewed and submitted in writing by the Project User, and approved by PAID and the City. Only change orders which meet the criteria established in the Rulebook will be approved.
- (5) Reports and other Rebuild financial controls
  - a. Project Users will provide updates no less frequently than monthly to the Rebuild office and the Project Review Team on all projects for which they have entered into a grant agreement with PAID to

carry out a Rebuild project. Updates will include the following information:

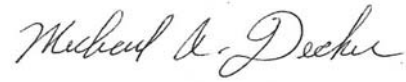
1. Project-by-project encumbrances, budgeted vs actual expenditures, and unencumbered balance for the period and since project inception; change orders and use of contingency funds
  2. Project status and baseline vs actual completion schedules for all contracts
  3. Contractor/subcontractor diversity and workforce participation data
  4. Project narrative describing progress, project challenges and accomplishments
- b. City access to data – Project Users and contractors must make all project-related data available to the Rebuild office, the Project Review Team and the City Controller’s office upon request.
- (6) Records retention. Project Users will be required to keep all financial and other records as required by Rebuild for a period of three years following the final grant payment and have them available for inspection by the City or PAID.

# City of Philadelphia

BILL NO. 170206 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 22, 2017. The Bill was Signed by the Mayor on June 28, 2017.



Michael A. Decker  
Chief Clerk of the City Council