

City of Philadelphia



(Bill No. 041041)

AN ORDINANCE

Authorizing the Commissioner of Public Property and the Director of Commerce, on behalf of the City of Philadelphia (the "City"), to enter into a Ground Lease Agreement (the "Library Ground Lease") with the Philadelphia Authority for Industrial Development ("PAID") providing for the leasing by the City to PAID of certain parcels of land and the improvements thereon owned or to be acquired by the City, and further authorizing said officers to enter into a Prime Lease (the "Library Prime Lease") between PAID and the City providing for the subleasing by PAID to the City of all or a portion of such land and certain improvements to be renovated and constructed thereon, including renovations to the existing Central Library of the Free Library of Philadelphia, a library facility expanding the current Central Library and accessory and related amenities, improvements and infrastructure ("Central Library Project") and the payment of certain costs for such library facilities and further authorizing said officers to enter into a Lease-back/Lease Agreement (the "Library Leaseback") between PAID and the City providing for the sub-subleasing of said land as improved back from the City to PAID; covenanting to be bound by the terms of the aforementioned Library Ground Lease, Library Prime Lease and Library Leaseback; and requesting PAID to finance a portion of the costs of the acquisition of such land in connection with the Central Library Project, demolition, site preparation, improvements and infrastructure in connection therewith and any and all other costs incurred in connection with the Central Library Project, and the issuance of bonds by PAID to provide such financing; imposing a limitation on the aggregate amount of bonds which are to be issued by PAID to finance or refinance the project; covenanting to make appropriations in each of the City's fiscal years to provide for rental payments due under the Library Prime Lease; authorizing the Director of Finance and other officials of the City to take all actions necessary to accomplish the intent and purpose of this Ordinance and the Library Ground Lease, Library Prime Lease, Library Leaseback and a Library Lease and Development Agreement between the Free Library of Philadelphia Foundation Inc. and PAID containing the terms and conditions substantially as approved herein; and authorizing approval of all of the terms of the aforementioned Leases and other documents and amendments thereto by the Director of Finance and/or the City Solicitor.

WHEREAS, the City of Philadelphia ("City") has determined that it is necessary and appropriate to provide for the expansion and renovation of the Central Library Facility of the Free Library of Philadelphia by providing for a portion of the costs of a project consisting of the acquisition of certain land adjacent to the current Central Library Facility, demolition, site preparation, construction and renovation of improvements and infrastructure in connection therewith and accessory and related amenities ("Central Library Project"); and

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WHEREAS, it is expected that additional public funding for the Central Library Project will be provided primarily from the Commonwealth of Pennsylvania and federal grants and the balance of the funds will be provided by the Free Library of Philadelphia Foundation, Inc. ("Foundation") through private grants and contributions; and

WHEREAS, the City has authorized the acquisition of fee simple title to certain parcels of land for lease to the Philadelphia Authority for Industrial Development ("PAID") and lease by PAID to the Foundation; and

WHEREAS, it is expected that PAID and the Foundation will enter into a lease and development agreement for the Central Library Project ("Library Lease and Development Agreement") containing substantially the terms and conditions approved in Section 8 of this Ordinance and annexed to this Ordinance as Exhibit "D" and made a part hereof; and

WHEREAS, the City has requested that PAID assist the City in financing a portion of the costs of the Central Library Project as a public facility by taking a leasehold interest in certain parcels of land and improvements, and simultaneously subleasing such land as further improved back to the City; and issuing bonds to finance such portion of the costs; and

WHEREAS, PAID is willing to undertake the Central Library Project as a public facility pursuant to its statutory powers; and

WHEREAS, the City is willing to enter into the Library Prime Lease with PAID for a specified term under terms and conditions requiring the City, *inter alia*, to make rental and other payments sufficient to pay: (i) principal of or maturity value, premium, if any, and interest on any bonds, notes or other form of indebtedness issued from time to time by PAID for the purpose of financing or refinancing the costs of acquisition of certain parcels of land, demolition, site preparation, improvements and infrastructure in connection therewith and any and all other costs incurred in connection with the Central Library Project; (ii) obligations of PAID, if any, incurred in connection with obtaining any credit or liquidity facility, other enhancement or any swap, relating to such financing or refinancing; (iii) the establishment of reserves, if any, in connection therewith; and (iv) the fees, costs and all other liabilities of PAID incurred in connection with such financing or refinancing, the leasing of the properties for the Central Library Project, the administration of documents executed in connection with the Central Library Project, and any other transactions required in connection with the Central Library Project, all as further provided in the Library Prime Lease; and

WHEREAS, PAID will be required to assign certain of its rights under the Library Prime Lease to a trustee under an indenture (the "Indenture") and the City will be

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required to make some or all of its rental payments under the Library Prime Lease directly to such trustee; now therefore:

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Commissioner of Public Property and the Director of Commerce, on behalf of the City, are hereby authorized to enter into (a) a Ground Lease Agreement (the "Library Ground Lease") with PAID providing for the leasing by the City to PAID of the Library Site (defined in Section 9 below), (b) a Prime Lease (the "Library Prime Lease") between PAID and the City providing for the subleasing of the Central Library Project Premises (as defined in the Library Prime Lease) back from PAID to the City and the payment by the City of lease payments and certain other costs, if any, for the Central Library Project, and (c) a Lease-back/Lease Agreement between PAID and the City providing for the sub-subleasing of the Central Library Project Premises back from the City to PAID (the "Library Leaseback"; together with the Library Ground Lease and the Library Prime Lease, the "Library Leases"), all for the purpose of PAID's financing or refinancing a portion of the costs of the Central Library Project. The Library Leases shall be substantially in the form of Exhibit "A" as to the Library Ground Lease, Exhibit "B" as to the Library Prime Lease, and Exhibit "C" as to the Library Leaseback, each attached hereto and hereby made a part hereof.

SECTION 2. The City agrees to be bound by each and every provision, covenant and agreement set forth in the Library Leases.

SECTION 3. The Library Leases herein authorized shall be made in connection with the issuance at any time or from time to time by PAID of bonds, notes or other forms of indebtedness for the purpose of financing or refinancing a portion of the costs of the Central Library Project (the "Bonds") in an aggregate principal amount not to exceed Thirty Million Dollars (\$30,000,000) net of original issue discount, plus amounts necessary for any reserves, capitalized interest, costs of issuance, and amounts necessary to effect any refunding, at any one time outstanding.

SECTION 4. The City covenants to make appropriations in each of its fiscal years during the term of the Library Prime Lease in such amounts as shall be required in order to timely make all rental payments due and payable thereunder, and to timely pay all other obligations of the City under the Library Prime Lease.

SECTION 5. The City covenants unconditionally to timely pay all of its rental payments due under the Library Prime Lease which have been assigned to the Trustee directly to the Trustee to which certain rights under the Library Prime Lease will be assigned, all as provided in the Indenture, some or all of which will be part of the security for payment of the Bonds issued under the Indenture and as security for PAID's obligations under a credit facility and/or liquidity facility securing the Bonds, if any, or swap agreement, if any, and to pay all other obligations of PAID as required under the

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Library Leases, if any, and to make additional rental payments to PAID for any and all other costs, if any, for the Central Library Project, all of 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 setoff, recoupment or counterclaim that the City may have against PAID or the Trustee 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 effective dates of the Library Leases.

SECTION 6. The Director of Finance and all other proper officials of the City are hereby authorized to execute all documents and to take all actions, including the execution of the Library Ground Lease, Library Prime Lease and the Library Leaseback, and the execution of a continuing disclosure agreement, as may be necessary, in order to accomplish the intent and purpose of this Ordinance and of the Library Leases and are further authorized to amend the Library Leases and any other documents in any manner consistent with the terms of this Ordinance. The City Solicitor is hereby authorized to include in the Library Leases such other terms and provisions as he shall deem necessary or appropriate in connection with the Central Library Project and to make any other changes consistent with the terms of this Ordinance.

SECTION 7. All terms of the Bonds, the Indenture, any credit facility and/or liquidity facility and/or reimbursement agreement and swap agreement, if any, shall be subject to the approval of the Director of Finance.

SECTION 8. The Director of Finance and City Solicitor are hereby authorized to consent to the execution and delivery by PAID of the Library Lease and Development Agreement containing substantially the terms and conditions set forth in Exhibit "D" attached hereto and hereby made a part hereof. The City Solicitor is hereby authorized to consent to the inclusion in the Library Lease and Development Agreement, and the other instruments contemplated therein and in Exhibit "D", of such other terms and provisions as he shall deem necessary or appropriate in connection with the transactions contemplated thereby and to make any other changes consistent with the terms of this Ordinance.

SECTION 9. The term "Library Site" shall mean certain parcels of land and the improvements thereon as further described in Exhibit "E" attached hereto and hereby made a part hereof.

SECTION 10. The City Solicitor shall file copies of the executed Library Ground Lease, Library Prime Lease and Library Leaseback and all amendments thereto with the Clerk of City Council.

SECTION 11. The Clerk of City Council shall keep on file for public inspection all Exhibits referred to in this Ordinance.

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This Ordinance shall take effect immediately.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 16, 2004. The Bill was Signed by the Mayor on January 25, 2005.



Patricia Rafferty
Chief Clerk of the City Council