



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

BILL NO. 090326

Introduced April 23, 2009

Councilmembers Green, Reynolds Brown, Jones and Sanchez

**Referred to the
Committee on Finance**

AN ORDINANCE

Authorizing and approving (i) the execution and delivery of a Service Agreement between the City of Philadelphia and the Philadelphia Authority for Industrial Development relating to a comprehensive loan program to advance the City's goal of becoming the "Greenest City in America" by providing up-front capital needed to make comprehensive energy-efficient improvements to residential and commercial real estate in Philadelphia; (ii) 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 (for debt service savings) the costs of the program; and (iii) the obligation of the City 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 bonds, notes or other evidences of indebtedness; covenanting that the City will make necessary appropriations in each of the City's fiscal years to provide for the Service Fee and other amounts due under the Service Agreement; and covenanting that the City of Philadelphia will make timely payments of the Service Fee and other amounts due under the Service Agreement; 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 a comprehensive loan program titled "Financing Investments in Residences and Small-business Throughout Philadelphia ("FIRST Philadelphia Program") to provide Philadelphia homeowners and small-business owners with access to up-front capital for energy-efficient real estate improvements; and

WHEREAS, The City is authorized to enter into agreements with PAID respecting action to be taken by the City; to make such appropriations to PAID as are deemed necessary to assist PAID in carrying out its public purposes; and to designate PAID as the City's agent to perform any specified activity or to administer any specified program which the City is authorized by law to do, including, without limitation, redevelopment, renewal,

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rehabilitation, conservation, urban beautification and comprehensive programs in furtherance of the improvement and betterment of the City; and

WHEREAS, The Council of the City has, by this Ordinance, determined that it is in the best interests of the City to authorize and approve (i) the execution and delivery of a Service Agreement (the "Service Agreement") by and between the City and PAID; (ii) 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) 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 and to undertake the Program (as defined below); now, therefore,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Council (the "Council") of the City of Philadelphia (the "City") hereby authorizes and approves: (i) the execution and delivery of a Service Agreement (the "Service Agreement"), substantially in the form of Exhibit A hereto, with the Philadelphia Authority for Industrial Development ("PAID"); (ii) 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 Fifty Million Dollars (\$50,000,000) net of original issue discount, if any, plus amounts necessary for any reserves, costs of credit or liquidity enhancement, and amounts necessary to effect any refunding, at any one time outstanding, in one or more series, either as taxable or tax-exempt obligations, to finance or refinance (for debt service savings) the costs of implementing the "Financing Investments in Residences and Small-business Throughout Philadelphia" comprehensive loan program ("FIRST Philadelphia Program" or "Program") so to: (a) advance the City's goal of becoming the "Greenest City in America" by providing the up-front capital needed to make comprehensive energy-efficiency improvements to residential and commercial real estate in the City; (b) leverage and complement the federal and state subsidies for weatherization and solar energy projects that are, or will be, available to low-income homeowners and small-business owners, but are capped at a dollar amount that may not enable these property owners to undertake the full range of needed repairs; (c) provide access to low-interest funding for energy-efficiency home improvements for the significant population of middle-income Philadelphia homeowners who are not eligible for federal or state grants; (d) provide Philadelphia homeowners with access to a longer-term loan than is typically available via home equity loans or other lines of credit; (e) protect homeowners and small-businesses in the City from dramatic price increases when utility rate caps expire in 2011; (f) preserve the City's existing residential and commercial real estate stock; and (g) create "green jobs" that pay a living-wage to

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residents of the City of Philadelphia and help build transferable skills needed for sustained employment in the 21st Century economy and stimulate our local economy; together with amounts necessary for any reserves, costs of issuance and costs of credit or liquidity enhancement and financial derivatives products, and amounts necessary to effect any refunding (collectively, the "Program"); and (iii) 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. The FIRST Philadelphia Program is further described in Exhibit "B" hereto.

SECTION 2. 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 causes the amount described in Section 1 hereto to be exceeded shall be executed unless first approved by ordinance of the Council.

SECTION 3. The Service Agreement authorized by this Ordinance shall be executed in conjunction with the issuance by PAID of its Obligations for the purpose of financing or refinancing (for debt service savings) the Program in an amount that does not exceed that set forth in Section 1 hereof. The proceeds of such Obligations shall be applied to finance or refinance (for debt service savings) the costs of the Program. The Obligations shall not be executed or delivered until the Director of Finance has approved the terms thereof. No series of Obligations shall mature later than thirty years after the date of execution and delivery of the Service Agreement.

SECTION 4. The City covenants to make appropriations beginning in Fiscal Year 2010 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 5. As long as Obligations issued by PAID to finance or refinance costs of the Program 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 other entity (the "Trustee") to which the Service Fee may be assigned as security for payment of the 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 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.

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SECTION 6. The City agrees to be bound by each and every provision, covenant and agreement set forth in the Service Agreement.

SECTION 7. 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 one or more continuing disclosure agreements and a letter of representations) as may be necessary in order to accomplish the intent and purpose of this Ordinance and to take all actions as may be required by the Constitution and the laws of the Commonwealth of Pennsylvania (the "Commonwealth") in order to effectuate the Program and the issuance of the Obligations.

SECTION 8. The Service Agreement authorized by this Ordinance shall provide that proceeds of Obligations shall be spent only in accordance with the provisions set forth in this Section 8 and Exhibit "B" hereof, and shall further provide that the Council is an intended beneficiary of such provision and may sue for its specific enforcement.

(a) No later than ninety (90) days prior to each fiscal year of the Program, the Mayor or the Director of Finance shall submit to the Council for its approval by ordinance an annual budget setting forth proposed Program expenditures for the upcoming fiscal year by budget category. If the ordinance or a form thereof is not enacted within ninety (90) days of submission, the Mayor, in consultation with the President of the Council, is authorized to, and shall, expend the proceeds of the Obligations in accordance with an annual budget as agreed upon by the Mayor and the President of the Council or, in the event no such agreement is reached, in accordance with the annual budget as set forth in the ordinance submitted to the Council.

(b) Annually, the City shall submit a report to the Council summarizing all expenditures related to the Program made during the previous fiscal year. This report will also contain a report on the progress with respect to the Qualified Contractor List and Economic Opportunity Plan described in Exhibit "C" hereto.

(c) The provisions of this Section 8 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 the Council that the Council would not have enacted this Ordinance or any portion of this Ordinance unless all provisions of this Section 8 were a valid part of such enactment.

SECTION 9. The Council reasonably expects that the proceeds of the Obligations will be expended for the Program within three (3) years of the issuance of the Obligations and will not take any action or omit to take any action which would cause the expenditure of the proceeds of the Obligations for the Program not to proceed with due diligence.

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SECTION 10. This Ordinance shall take effect immediately.

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EXHIBIT A FORM OF SERVICE AGREEMENT

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The Form of Service Agreement shall be provided to Council upon completion, prior to the bill being reported out of Committee.

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EXHIBIT B PROGRAM DESCRIPTION

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Exhibit B

Financing Investments in Residences and Small-businesses Throughout Philadelphia (“FIRST Philadelphia”) Program

I. Program Purposes:

The FIRST Philadelphia Program is a comprehensive strategy to achieve the City of Philadelphia’s goal of becoming the “Greenest City in America” by providing the up-front capital to residents and small-businesses needed to make comprehensive energy-efficiency improvements to residential and commercial real estate in Philadelphia. The Program will:

- A. Leverage and complement the federal and state subsidies for weatherization and solar energy projects that are, or will be, available to low-income homeowners and small-business owners but are capped at a dollar amount that may not enable these property owners to undertake the full range of needed repairs;
- B. Provide access to low-interest funding for energy-efficient home improvements for the significant population of middle-income Philadelphia homeowners who are not eligible for federal or state grants (i.e., those with household income greater than the 200% federal poverty level cap for federal assistance and the 150% area median income cap for state assistance);
- C. Provide Philadelphia homeowners with access to a longer-term loan than is typically available via home equity loans or other lines of credit.
- D. Protect Philadelphia homeowners and small-business owners from dramatic price increases when utility rate caps expire in 2011 as anticipated;
- E. Preserve Philadelphia’s existing residential and commercial real estate stock; and
- F. Create “green jobs” that pay a living-wage to residents of Philadelphia, help build transferable skills needed for sustained employment in the 21st Century economy, and stimulate our local economy.

II. Program Process:

- A. The City and the Philadelphia Authority for Industrial Development (“PAID”) will enter into an agreement relating to a comprehensive loan program

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titled “Financing Investments in Residences and Small-businesses Throughout Philadelphia” (“FIRST Philadelphia Program” or “Program”) to provide Philadelphia homeowners and small-business owners with access to up-front capital for energy-efficient real estate improvements, including comprehensive weatherization and solar panel installation.

B. PAID will be authorized to issue a series of bonds in an aggregate principal amount not to exceed \$50 million, with each bond not to exceed \$10 million, to provide funding for the Program.

C. The City will make the necessary appropriations from the General Fund each year to pay the service fee and any other amounts due under the agreement with the PAID, but will recoup its expenditures from property owners participating in the FIRST Philadelphia Program.

D. As a condition of receiving funding from the FIRST Philadelphia Program, property owners will agree to pay a special assessment on their property taxes to repay the amounts received. The special assessment will be based upon (1) the cost of the repairs; (2) the interest rate paid by the City on the bonds; and (3) administrative charges incurred by the City or the Entity related to the Program.

E. The repayment mechanism is a special assessment, rather than a traditional loan, in order for the City to take first lien position automatically, thereby providing additional security for bondholders that the City will recoup its expenditures in the event of a default by the property owner.

F. The loan term will be twenty (20) years. The interest rate for the loans will be determined primarily based upon the interest rate at which the underlying bonds are sold to investors, and will be a fixed rate not to exceed a percentage to be determined by the City.

G. Under the special assessment model – which is based upon the innovative Berkeley FIRST program – the obligation to pay the assessment stays with the property in the event that the property is transferred or sold during the repayment period.

H. Application and contracting process:

1. The application and contracting process will be coordinated by the Mayor’s Office and may involve multiple City agencies, including:

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- a. Mayor's Office of Sustainability
- b. Office of Housing and Community Development
- c. Philadelphia Housing Development Corporation
- d. Commerce Department, including the Office of Neighborhood and Business services.

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III. Loan Eligibility Criteria; Disbursement Policy:

A. Loan Eligibility Criteria:

All applicants will be required to apply to all available state, federal, and utility company funding sources (grants, rebates, reimbursements, tax credits, home energy audits, etc.) for the energy-efficiency improvements at the time they apply for FIRST Philadelphia Program funding. Program staff will assist applicants in making these additional applications.

1. Residential homeowners: Criteria will be based on criteria developed by the Commonwealth of Pennsylvania Department of Environmental Protection (DEP) for its residential energy-efficiency grant program. Criteria will include:

- a. Individual applicants must be owner-occupant of home containing three or fewer units;
- b. condominium associations will be eligible to participate in the Program and will be funded from the below-described tranche dedicated to homeowners with household income over 150% of area median income (AMI);
- c. owner must be current on mortgage and property taxes and not be subject to a tax lien within the past two (2) years;
- d. energy assessment of the property must demonstrate that proposed repairs will reduce the applicant's energy costs by amount satisfying the "performance standards" developed by DEP for "consumer energy conservation project;" and
- e. owner must agree to sign utility bill release form at the time of loan origination in order to enable measurement of the impact of the Program on reducing energy usage and costs.

2. Small-business owners: The eligibility criteria will mirror those for DEP's "Small Business Energy Efficiency Grant Program" (available at www.depweb.state.pa.us, keyword: Small Business Energy Efficiency Grant). These criteria include, inter alia:

- a. That the annual energy savings for the project must be at least 20% of the annual energy costs for the system being replaced, or

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20% of the business' total energy consumption, and the project must save the business at least \$1,000 per year in energy costs;

b. the use of Energy Star rated equipment is required for all installations covered under the Energy Star program; and

c. that all applications for projects involving insulating energy-efficient improvements – i.e., windows, doors, roofs, and insulation – include an energy assessment of the property that projects the anticipated energy savings from the planned work, such assessment to be performed by a qualified professional.

B. Loan Disbursement Policy:

1. Under the FIRST Philadelphia Program, property owners will be loaned funding from bond proceeds and, as a condition of the loan, shall agree to a repayment schedule. The amount of the loan will be based upon (1) the cost of the repairs; (2) the interest rate paid by the City on the bonds; and (3) administrative charges incurred by the City or PAID related to the program.

2. Within each FIRST Philadelphia Program bond issuance, the bond proceeds shall be allocated based on the loan requestor's demonstrated capacity to repay the loan, and their willingness and ability to begin and complete an energy efficiency project within six (6) months of receipt of loan funding. In addition, loan funding shall be distributed into the following four tranches:

- a. 10% to homeowners with household income of up to 50% of area median income (AMI);
- b. 60% to homeowners with household income of 50-150% AMI;
- c. 10% to homeowners with household income over 150% AMI; and
- d. 20% to small business owners (employing fewer than 100 full-time employees) who own their business locations.

3. The maximum funding amount per homeowner will be \$25,000.

4. The maximum funding amount per small businesses will be \$35,000.

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5. If a particular tranche is undersubscribed – meaning that 100% of the funding allocated to that tranche is not applied for and approved for dispersal within a time period to be determined by the Entity, but not to exceed nine (9) months of the funding becoming available – the balance of the funding allocated to that tranche shall be reallocated to the other tranches on a pro rata basis until all of the available funding is disbursed.

6. Repaid loan funds shall be recycled back into a funding pool so that additional loan funding may be available under the Program.

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IV. Employment Opportunity:

Recipients of FIRST Philadelphia funding will be required to select from a list of approved and qualified contractors (“Qualified Contractor’s List”), selected by a selection committee through a Request for Qualifications issued by the City.

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EXHIBIT C EQUAL OPPORTUNITY PLAN

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The Equal Opportunity Plan shall be provided to Council upon completion, prior to the bill being reported out of Committee.

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