

# City of Philadelphia



(Bill No. 130226)

## AN ORDINANCE

Authorizing the Commissioner of Public Property of the City of Philadelphia, on behalf of the City of Philadelphia and in cooperation with the Philadelphia Municipal Authority, to undertake a Project to promote the health, safety and welfare of the residents of the City of Philadelphia; authorizing and approving (i) the Project, (ii) the entering into, execution and delivery of an amendment to an existing Lease between the City of Philadelphia and the Philadelphia Municipal Authority, (iii) the issuance by the Philadelphia Municipal Authority of bonds in one or more series to pay the costs of the Project, (iv) the assignment of the amendment to such Lease to a trustee, and (v) the obligation of the City of Philadelphia to pay rent under the Lease, as amended, when due; authorizing the Commissioner of Public Property, on behalf of the City of Philadelphia, to enter into the amendment to such Lease with the Philadelphia Municipal Authority; authorizing the Director of Finance and other officers of the City of Philadelphia to take such other actions as may be necessary or appropriate to accomplish the intent and purpose of this Ordinance; agreeing to be bound by each and every provision, covenant and agreement set forth in the Lease, as amended; covenanting that the City of Philadelphia will make necessary appropriations in each of the City's fiscal years to provide for rental payments due under the Lease, as amended; covenanting that the City of Philadelphia will make rental payments due under the Lease, as amended; and authorizing and approving a New Lease between the City of Philadelphia and the Philadelphia Municipal Authority under certain circumstances; all under certain terms and conditions.

WHEREAS, In order to provide for the health, safety and well-being of the citizens of the City of Philadelphia (the "City") it was necessary for the City to undertake a project consisting of the acquisition, construction and equipping of detention and correctional facilities and parking improvements on certain real estate situated at 8301 State Road, Philadelphia, to house and provide services to the prison population of the City (the "Philadelphia Industrial Correctional Center Facility"), and the Philadelphia Municipal Authority (the "Authority") by the issuance of \$64,500,000 of its bonds (the "1984 Bonds") financed the such project; and

WHEREAS, In order to induce the Authority to cause the acquisition, construction and equipping of the Philadelphia Industrial Correctional Center Facility, the City leased the Philadelphia Industrial Correctional Center Facility from the Authority pursuant to a lease (the "1984 Lease") between the Authority and the City; and

WHEREAS, In order to induce the Authority to refund the 1984 Bonds, the City and the Authority terminated the 1984 Lease, and the City leased the Philadelphia Industrial Correctional Center Facility from the Authority pursuant to a new lease (the "1987 Lease") between the Authority and the City, and the Authority by the issuance of \$66,500,000 of its bonds (the "1987 Bonds") refunded the 1984 Bonds; and

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WHEREAS, In order to induce the Authority to refund the 1987 Bonds, the City and the Authority terminated the 1987 Lease, and the City leased the Philadelphia Industrial Correctional Center Facility from the Authority pursuant to a new lease (the “1993 Lease”) between the Authority and the City, and the Authority by the issuance of \$71,615,000 of its bonds (the “1993D Bonds”) refunded the 1987 Bonds; and

WHEREAS, In order to provide for the health, safety and well-being of the citizens of the City, it was necessary for the City to undertake a project consisting of the acquisition by the Authority of a fee interest in certain real estate situated at 1301 Filbert Street, Philadelphia (the “Filbert Street Property”) and the construction and equipping of a proposed Criminal Justice Center, including court, detention, correction and rehabilitation facilities on the Filbert Street Property, certain demolition of buildings thereon and the architectural design of the Criminal Justice Center (the “Original Criminal Justice Center Facility”), and the Authority by the issuance of \$165,000,000 of its bonds (the “1986 Bonds”) financed such project; and

WHEREAS, In order to induce the Authority to cause the acquisition, construction and equipping of the Original Criminal Justice Center Facility, the City leased the Original Criminal Justice Center Facility from the Authority pursuant to a lease (the “1986 Lease”) between the Authority and the City; and

WHEREAS, In order to induce the Authority to refund the 1986 Bonds, the City and the Authority terminated the 1986 Lease, and the City leased the Original Criminal Justice Center Facility from the Authority pursuant to a new lease (the “1988 Lease”) between the Authority and the City, and the Authority by the issuance of \$170,000,000 of its bonds (the “1988 Bonds”) refunded the 1986 Bonds; and

WHEREAS, The Authority by the issuance of \$54,540,000 of its bonds (the “1993C Bonds”) refunded a portion of the 1988 Bonds; and

WHEREAS, In order to provide for the health, safety and well-being of the citizens of the City, it was necessary to undertake a project consisting of (a) the construction of a new Criminal Justice Center, including court rooms, judges' chambers, offices and court holding facilities on the Filbert Street Property, (b) the acquisition of furniture and equipment for use in connection with the new Criminal Justice Center (together with (a) and the Original Criminal Justice Center Facility, the “Criminal Justice Center Facility”), (c) the acquisition of a fee interest in certain real property situated at 7901 State Road, Philadelphia (the “Curran-Fromhold Correctional Facility Property”), (d) the construction on the Curran-Fromhold Correctional Facility Property of a prison complex, including a 500 cell/1000 bed detention center and central food service facility and (e) the acquisition of furniture and equipment for use in connection with (d) (together with the Curran-Fromhold Correctional Facility Property and (d), the “Curran-Fromhold Correctional Facility”), and the Authority by the issuance of \$224,000,000 of its bonds (the “1991 Bonds”) in three series (the “1991A Bonds,” the “1991B Bonds” and the “1991C Bonds”) financed such project; and

WHEREAS, In order to induce the Authority to cause the acquisition, construction and equipping of the 1991 Project, the City leased the Criminal Justice Center Facility and the Curran-Fromhold Correctional Facility from the Authority pursuant to a lease (the “1991 Lease”) between the Authority and the City, subject to the 1988 Lease; and

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WHEREAS, The Authority by the issuance of \$179,895,000 of its bonds in two series (the “1993A Bonds” and the “1993B Bonds”) refunded the 1991B Bonds and the 1991C Bonds; and

WHEREAS, The Authority by the issuance of \$217,520,000 of its bonds (the “2003 Bonds”) in two series (the “2003A Bonds” and the “2003B Bonds”) refunded the 1991A Bonds, the 1993A Bonds, the 1993B Bonds, a portion of the 1993C Bonds and the 1993D Bonds; and

WHEREAS, In connection with the issuance of the 2003A Bonds and the 2003B Bonds, the City and the Authority entered into a new lease (the “2003 Lease”) of the Curran-Fromhold Correctional Facility, the Philadelphia Industrial Correctional Center Facility and the Criminal Justice Center Facility, subject to the 1988 Lease and the 1991 Lease (both of which leases have terminated), wherein the City agreed to pay a rental, solely out of its current revenues, in an amount sufficient to pay the principal of, premium, if any, and interest on the 2003 Bonds and administrative expenses of the Authority incurred in connection with such refunding, including any arbitrage rebate payments due to the United States Treasury with respect to the refunded bonds or the 2003 Bonds; and

WHEREAS, In order to provide for the health, safety and well-being of the citizens of the City, the City will undertake a project (the “Project”) consisting of: (a) the refunding of the 2003B Bonds; (b) paying costs of issuance for the Bonds (defined hereafter); and (c) amending the terms of the lease of the Curran-Fromhold Correctional Facility, the Philadelphia Industrial Correctional Center Facility and the Criminal Justice Center Facility from the Authority to the City; and

WHEREAS, The Authority by the issuance of not more than one hundred million dollars (\$100,000,000) of its bonds (the “Bonds”) will finance the Project; provided that, if any of the Bonds are to be sold at discounts, which are in lieu of periodic interest, the aggregate principal amount of Bonds which may be issued hereunder shall be increased to reflect such discounts, as long as the aggregate gross proceeds to the City from the sale of the Bonds shall not exceed one hundred million dollars (\$100,000,000), plus accrued interest, if any; and

WHEREAS, In order to induce the Authority to finance the Project, the City will enter into an amendment (the “Lease Amendment”) of the 2003 Lease (as so amended, the “Lease”) with the Authority, wherein the City will agree to pay a rental, solely out of its current revenues, in an amount sufficient to pay the principal of, premium, if any, and interest on the Bonds and administrative expenses of the Authority incurred in connection with the Project, including any arbitrage rebate payments due to the United States Treasury with respect to the 2003 Bonds or the Bonds; and

WHEREAS, The Council of the City of Philadelphia has, by this Ordinance, determined that it is in the best interests of the City to authorize and approve: (i) the Project; (ii) the execution and delivery the Lease Amendment by and between the City and the Authority; (iii) the issuance by the Authority of its bonds, in one or more series, to pay the costs of the Project; (iv) the assignment of the Lease Amendment by the Authority to Wachovia Bank, National Association, as trustee, or its successor (the “Trustee”); and (v) the obligation of the City to pay rent under the Lease; now, therefore

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

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SECTION 1. The Council of the City of Philadelphia (the “City” or “Council”) hereby authorizes and approves: (i) a project (the “Project”) consisting of (a) the refunding of all of a portion of the \$147,995,000 Lease Revenue Refunding Bonds, 2003 Series B (the “2003B Bonds”) of the Philadelphia Municipal Authority (the “Authority”), and (b) paying costs of issuance for the Bonds (defined hereafter) and (c) the leasing from the Authority to the City of (I) the detention and correctional facilities and parking improvements on certain real estate situated at 8301 State Road, Philadelphia, to house and provide services to the prison population of the City (the “Philadelphia Industrial Correctional Center Facility”), (II) the Criminal Justice Center, including any furniture and equipment thereon and improvements thereto, on certain real estate situated at 1301 Filbert Street, Philadelphia (the “Criminal Justice Center Facility”) and (III) the detention and correctional facilities and parking improvements on certain real estate situated at 7901 State Road, Philadelphia, to house and provide services to the prison population of the City (the “Curran-Fromhold Correctional Facility”); (ii) the issuance by the Authority of its Lease Revenue Refunding Bonds, 2013 Series A in an aggregate principal amount not to exceed one hundred million dollars (\$100,000,000) (the “Bonds”), pursuant to a Trust Indenture (the “Indenture”) dated as of December 1, 2003, as amended and supplemented, between the Authority and U.S. Bank National Association, as successor trustee, (the “Trustee”) to finance the Project; provided that, if any of the Bonds are to be sold at discounts, which are in lieu of periodic interest, the aggregate principal amount of Bonds which may be issued hereunder shall be increased to reflect such discounts, as long as the aggregate gross proceeds to the Authority from the sale of the Bonds shall not exceed one hundred million dollars (\$100,000,000), plus accrued interest, if any; (iii) the execution and delivery of an amendment (the “Lease Amendment”) to the Lease dated as of July 1, 2003 (as so amended, the “Lease”), with the Authority; (iv) the assignment of the Lease Amendment by the Authority to the Trustee; and (v) the obligation of the City to pay rent under the Lease in an amount sufficient to pay principal of, premium, if any, and interest on the Bonds when due and payable.

SECTION 2. The Director of Finance, the Commissioner of Public Property and all other proper officials of the City are hereby authorized to execute and deliver, on behalf of the City, the Lease Amendment in substantially the form as the City Solicitor shall advise and the Director of Finance shall approve, consistent with the terms of this Ordinance.

SECTION 3. The Lease Amendment authorized by this Ordinance shall be executed in conjunction with the issuance by the Authority of the Bonds for the purpose of financing the Project. The proceeds of the Bonds shall be applied to the financing of the Project approved hereby, to the funding of required reserves, if any, and to payment of costs of issuance and costs of credit and/or liquidity enhancement. The Lease Amendment shall not be executed or delivered until the Director of Finance has approved the bond documents pursuant to Section 7 hereof.

SECTION 4. The Director of Finance, the Commissioner of Public Property, the City Treasurer 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 one or more escrow agreements in connection with the refunding of the 2003B Bonds) and to take all actions as may be required by the Constitution and the laws of the Commonwealth, or as may be necessary or appropriate in order to accomplish the intent and purpose of this Ordinance and the Lease subject to the “Municipality Authorities Act of 2001,” P.L. 287, as amended. The Commissioner of Public Property, the Director of Finance, and all

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other proper officials of the City are further authorized to further amend the Lease in any manner consistent with the terms of this Ordinance.

SECTION 5. The City agrees to be bound by each and every provision, covenant and agreement set forth in the Lease.

SECTION 6. The City covenants to make appropriations, beginning in Fiscal Year 2014, in each and every fiscal year in such amounts as shall be required in order to make all rental payments due and payable under the Lease.

SECTION 7. All the terms of the Bonds and the Indenture shall have the approval of the Director of Finance, which approval shall be conclusively evidenced by the execution of the Lease Amendment by the Director of Finance.

SECTION 8. As long as Bonds issued by the Authority to finance costs of the Project are outstanding, the City covenants unconditionally to make all rental payments due as provided for under the Lease directly to any trustee, including the Trustee, to which the Lease may be assigned as security for payment of the Bonds and the obligations of the Authority under any credit facility and/or liquidity facility securing the Bonds, 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 setoff, recoupment or counterclaim that the City may have against the Authority or the Trustee or any Bondholder or any other party or parties and regardless of any contingency, act of God, event or cause whatsoever and notwithstanding any circumstance or occurrence that may arise after the date thereof.

SECTION 9. In the alternative to the execution and delivery of the Lease Amendment, at the option of the Director of Finance, the Council of the City hereby authorizes and approves: (i) the execution and delivery of a new lease agreement (the "New Lease") with the Authority to provide for the payment of rent with respect to the debt service on the Bonds; and (ii) the obligation of the City to pay in full when due such rent and other amounts payable under the New Lease. The Director of Finance, the Commissioner of Public Property and all other proper officials of the City are hereby authorized to execute and deliver, on behalf of the City, the New Lease, in substantially the form of the Lease, with such changes thereto as the City Solicitor shall advise and the Director of Finance shall approve, consistent with the terms of this Ordinance. With respect to the New Lease and all amounts due and payable under the New Lease, the City hereby makes the covenants described in Sections 5, 6 and 8 hereof. Amendment of the New Lease shall be as described in Section 4 hereof for the Lease. This Ordinance shall take effect immediately.

SECTION 10. 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 April 11, 2013. The Bill was Signed by the Mayor on April 24, 2013.



Michael A. Decker  
Chief Clerk of the City Council