

**SERVICE AGREEMENT**  
**BETWEEN**  
**PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT**  
**AND**  
**THE CITY OF PHILADELPHIA, PENNSYLVANIA**

**Dated as of April 1, 2021**

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## SERVICE AGREEMENT

This Service Agreement made and entered into as of the 1st day of April, 2021, between PHILADELPHIA AUTHORITY FOR INDUSTRIAL DEVELOPMENT, a public instrumentality 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 instrumentality 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 (the “General Assembly”) 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 operating costs of public facilities and finance and refinance certain projects and activities which promote a public purpose, including the financing of activities that promote the health, welfare and safety of the residents of the City by promoting economic activity, by alleviating or eliminating unemployment, blight and other unhealthy conditions and by otherwise providing public benefit and prosperity within the City, as further described in the Act, and to issue its obligations for any of its corporate purposes; and

WHEREAS, pursuant to a resolution of the Authority approved and duly adopted by the Board of the Authority on February 9, 2021 (the “Resolution”), the Authority authorized the financing of the Project (as defined herein) upon the terms set forth herein and consistent with the Resolution and the hereinafter defined Ordinance; and

WHEREAS, pursuant to Ordinance (Bill No. [\_\_\_\_]) of the Council (the “City Council”) of the City, adopted March [\_\_], 2021, and approved by the Mayor on March [\_\_], 2021 (the “Ordinance”), the City Council has: (i) authorized and approved the execution and delivery of this Service Agreement by the City; (ii) approved the issuance from time to time by the Authority of bonds, notes or other evidences of indebtedness in the aggregate principal amount further described therein to finance, among other things, the Project; 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 under this Service Agreement; and

WHEREAS, the City is authorized to enter into service agreements with the Authority, and to make such appropriations to the Authority as are deemed necessary to assist the Authority in carrying out its public purposes; and

WHEREAS, the Authority desires to provide financial services to the City through the financing of the Project and to provide certain administrative services for the Project; and

WHEREAS, the City has established a pension and retirement system (the “City Retirement System”) pursuant to the Pennsylvania Home Rule Charter Section 6-600 by Ordinance approved December 3, 1956, as amended, and the Municipal Retirement Benefit Plan 1987 Ordinance, which became effective January 8, 1987, as amended; and

WHEREAS; the Municipal Pension Plan Funding Standard and Recovery Act, Act No. 205 of the General Assembly, approved December 18, 1984 (P.L. 1005), as amended and supplemented, including as amended and supplemented by Act No. 1998-82 of the General Assembly approved June 18, 1998 and by Act No. 2009-44 of the General Assembly approved September 18, 2009 (collectively, the “Pension Plan Act”), authorized the City to use an Alternative Funding Mechanism, as defined in Section 1001 of the Pension Plan Act, to reduce the unfunded actuarial accrued liability of the City Retirement System; and

WHEREAS, pursuant to Ordinance (Bill No. 980789) of the City Council, approved by the Mayor on December 22, 1998, the City Council determined that in order to provide for the safety and soundness of the City Retirement System and to achieve savings in the schedule of payments then currently required to amortize the unfunded actuarial accrued liability of the City Retirement System, it was in the best interests of the City to provide for an Alternative Funding Mechanism consisting of: (i) the execution and delivery of a service agreement (the “1999 Service Agreement”) by and between the City and the Authority providing for the funding of up to \$1,250,000,000 of the unfunded actuarial accrued liability of the City Retirement System, such funding to be provided to the City by the issuance of bonds of the Authority as hereinafter described; (ii) the deposit of net proceeds of up to \$1,250,000,000 in the City Retirement System upon receipt thereof; and (iii) the obligation of the City to pay in full when due the payment requirements of the Alternative Funding Mechanism set forth on Schedule 1 to the 1999 Service Agreement, all as authorized by the Pension Plan Act; and

WHEREAS, the City and the Authority were authorized by the Pension Plan Act and the Act, to enter into the 1999 Service Agreement and to undertake the Alternative Funding Mechanism; and

WHEREAS, the Authority issued its Pension Funding Bonds (City of Philadelphia Retirement System) Series 1999A – 1999C (the “1999 Bonds”) to finance, among other things, a deposit of \$1,250,000,000 in the City Retirement System pursuant to such Alternative Funding Mechanism; and

WHEREAS, the City determined that the Authority was able to realize debt service savings by issuing bonds and applying the proceeds to purchase certain 1999 Bonds from the holders thereof; and

WHEREAS, the City desired to apply all or a portion of such debt service savings to fund a deposit to the City Retirement System with respect to a portion of the unfunded actuarial accrued liability of the City Retirement System; and

WHEREAS, in connection therewith, the Council of the City, by Ordinance (Bill No. 120824), adopted November 29, 2012, and approved by the Mayor on November 29, 2012, determined that it was in the best interests of the City to authorize and approve: (i) the execution and delivery of a service agreement (the “2012 Service Agreement”); (ii) the issuance by the Authority of bonds, notes or other evidences of indebtedness to, among other things, pay the costs of the purchase of some or all of the 1999 Bonds and finance a deposit to the City Retirement System; and (iii) the performance by the City of its obligation to pay in full when due the service fee and other amounts payable under the 2012 Service Agreement; and

WHEREAS, the Authority issued its City Service Agreement Refunding Revenue Bonds (City of Philadelphia, Pennsylvania), Series 2012 (Federally Taxable) (the “2012 Bonds,” and together with the 1999 Bonds, the “Prior Bonds”) to finance, among other things, the purchase of certain of the 1999 Bonds from the holders thereof and a deposit to the City Retirement System; and

WHEREAS, the City desires that the Authority finance the Project, which, among other things as described further below, will consist of the refunding of all or a portion of the Prior Bonds (including, in

some instances, the refunding of interest only) to achieve budgetary savings for the City in its current and/or future fiscal years and the resulting refinancing of its related service agreement payments; and

WHEREAS, the City desires to promote the health, welfare and safety of the residents of the City by promoting economic activity, by alleviating or eliminating unemployment, blight and other unhealthy conditions and by otherwise providing public benefit and prosperity within the City; and

WHEREAS, the City Council has, by the Ordinance, determined that the refunding of all or a portion of the Prior Bonds and associated budgetary savings for the City will enable the City to maintain City services and activities necessary to promote the foregoing purposes; and

WHEREAS, the Authority and the City have determined, in accordance with the Ordinance, that: (a) the Authority will, at the direction and with the cooperation of the City, issue its 2021 Bonds (as defined herein) to finance: (i) the refunding of [the \_\_\_\_\_ Bonds maturing \_\_\_\_\_][and][the interest on the \_\_\_\_\_ Bonds coming due on the \_\_\_\_\_ interest payment dates], (ii) capitalized interest on the 2021 Bonds through [20\_\_], and (iii) costs of issuance of the 2021 Bonds (collectively, the “Project”); and (b) the City will pay to the Authority the Service Fee; and

WHEREAS, at the request of the City, the Authority has determined to provide financing for the Project by issuing its \$[\_\_\_\_\_] City Service Agreement Refunding Revenue Bonds (City of Philadelphia, Pennsylvania), Series 2021 (Federally Taxable) (the “2021 Bonds”) for the purpose of funding the Project; and

WHEREAS, the Authority is entering into a trust indenture of even date herewith (as amended or supplemented from time to time in accordance with the terms thereof, the “Indenture”) between the Authority and U.S. Bank National Association, as trustee (together with any successors under the Indenture, the “Trustee”) for the purpose of issuing the Obligations (as defined in the Indenture), including the 2021 Bonds, and securing the payment thereof; and

WHEREAS, to secure the payment of the Obligations 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 the holders from time to time of the 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 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,” the “Capitalized Interest Account” and the “Revenue Fund” shall mean the Funds and Account so designated which are established with the Trustee pursuant to Article V of 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 closing fee with respect to the Obligations) 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 with respect to the foregoing, 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, and (ii) the payment of any Credit Facility Payment Obligations.

**“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, the Pension Plan Act and the Ordinance) 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) and 404(b) 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.

## 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 instrumentality 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 the transactions contemplated hereby and to carry out its obligations hereunder and has duly authorized the execution and delivery of this Service Agreement, the 2021 Bonds and the Indenture;

(b) the issuance and sale of the 2021 Bonds, 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 the Pension Plan Act, as applicable, and have been duly authorized by proceedings of the Authority adopted or passed at meetings thereof duly called and held with a quorum present and acting throughout;

(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, body politic and 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 2021 Bonds 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, enforceable in accordance with its terms, are authorized by the Philadelphia Home Rule Charter, the Pension Plan Act, and the Act, as applicable, and have been duly authorized by the Ordinance duly adopted by the City Council and approved by the Mayor;

(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; and

(d) the Ordinance remains in full force and effect on and as of the date of the execution of this Service Agreement.

### Article III THE PROJECT

Section 301. Funding of the Project. Upon the issuance of the 2021 Bonds, the Authority shall cause the proceeds thereof to be deposited in the funds and accounts established under the Indenture to finance the Project as set forth therein. Proceeds of any Additional Obligations shall be applied as set forth in the applicable Supplemental Indenture or in a certificate of an Authorized Representative of the Authority 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.

(b) Proceeds of the 2021 Bonds shall be applied to pay or reimburse Costs of the Project in accordance with the Indenture, the Act, the Pension Plan Act and the Ordinance.

Section 303. Compliance with the Indenture. Notwithstanding any other provision of this Service Agreement to the contrary, no proceeds of any Obligations of any series shall be spent except in accordance with the Indenture.

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. In connection with the issuance of Additional Obligations, the Authority and the City shall enter into an appropriate supplement to this Service Agreement, subject to the provisions of the Ordinance, and shall reaffirm on and as of the date of the issuance of any Additional Obligations, all of the representations, warranties and covenants of the City set forth in this Service Agreement.

Section 305. City Retirement System Assets Unavailable for Payment Requirements. The Authority and the City hereby acknowledge and agree that no assets of the City Retirement System shall be available at any time to make any payment due hereunder and that the Authority and the Trustee, as assignee of the Authority, shall have no right or claim whatsoever against any of the assets of the City Retirement System for any such payment nor shall any holder at any time of any 2021 Bond or other Obligation have any such right or claim.

#### Article IV PAYMENTS BY THE CITY

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 mandatory redemption price of the Obligations becoming due on such principal maturity or mandatory redemption date, subject to credit for other available funds in the manner provided in the Indenture.

(ii) 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 (A) interest on the Obligations becoming due on such Interest Payment Date, and (B) any other amounts due other than those set forth in clause (a)(i) above on the due date for such amounts, subject to credit for other funds available to the Trustee in the manner provided in the Indenture including amounts in the Capitalized Interest Account.

(iii) 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 or with respect to any Credit Facility Payment Obligation shall not cause an acceleration of the payment of the Service Fee hereunder.



(c) In lieu of all or a 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 Fiscal Year such balance due in addition to the amount of Service Fee due for such ensuing Fiscal 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.

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 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) the Authority's Administrative Expenses incurred at closing on the 2021 Bonds and from time to time; and

(b) 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 Fiscal 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 Fiscal Year such balance due in addition to the amount of Administrative Expenses due for such ensuing Fiscal 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 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 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, if any, 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, and Credit Issuers thereunder and that it will not take or effect any action which would cause a default thereunder or impair such rights; provided however, that such obligations shall only be payable from current revenues of the City as provided in this Service Agreement. 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; provided however, that such obligations shall only be payable from current revenues of the City as provided in this Service Agreement.

Section 504. Compliance with Pension Plan Act. For so long as any Obligations remain Outstanding, the City shall perform and observe all duties and obligations under the Pension Plan Act, including, without limitation, its duty to budget, appropriate and pay in full when due, all Service Fee payments required hereunder.

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 of the Authority. 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, but only from current revenues of 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 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 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 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. Reserved.

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 manufacture of supplies, performance of work, or any other activity required under this Service Agreement or any subcontract, the City, each subcontractor, or any person acting on behalf of the City or subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the Pennsylvania Human Relations Act (the "PHRA") and applicable federal laws, against any citizen of this Commonwealth who is qualified and available to perform the work to which the employment relates.

(b) Neither the City nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, against or intimidate any employee involved in the manufacture of supplies, the performance of work, or any other activity required under this Service Agreement.

(c) Neither the City nor any subcontractor nor any person on their behalf shall in any manner discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of the PHRA and applicable federal laws, in the provision of services under this Service Agreement.

(d) Neither the City nor any subcontractor nor any person on their behalf shall in any manner discriminate against employees by reason of participation in or decision to refrain from participating in labor activities protected under the Public Employee Relations Act, Pennsylvania Labor

Relations Act or National Labor Relations Act, as applicable and to the extent determined by entities charged with such Acts' enforcement, and shall comply with any provision of law establishing organizations as employees' exclusive representatives.

(e) The City and each subcontractor shall establish and maintain a written nondiscrimination and sexual harassment policy and shall inform their employees in writing of the policy. The policy must contain a provision that sexual harassment will not be tolerated and employees who practice it will be disciplined. Posting this Nondiscrimination/Sexual Harassment Clause conspicuously in easily-accessible and well-lighted places customarily frequented by employees and at or near where the contracted services are performed shall satisfy this requirement for employees with an established work site.

(f) The City and each subcontractor shall not discriminate by reason of race, gender, creed, color, sexual orientation, gender identity or expression, or in violation of PHRA and applicable federal laws, against any subcontractor or supplier who is qualified to perform the work to which the contract relates.

(g) The City and each subcontractor represents that it is presently in compliance with and will maintain compliance with all applicable federal, state, and local laws, regulations and policies relating to nondiscrimination and sexual harassment. The City and each subcontractor further represents that it has filed a Standard Form 100 Employer Information Report ("EEO-1") with the U.S. Equal Employment Opportunity Commission (the "EEOC") and shall file an annual EEO-1 report with the EEOC as required for employers' subject to Title VII of the Civil Rights Act of 1964, as amended, that have 100 or more employees and employers that have federal government contracts or first-tier subcontracts and have 50 or more employees. The City and each subcontractor shall, upon request and within the time periods requested by the Commonwealth, furnish all necessary employment documents and records, including EEO-1 reports, and permit access to their books, records, and accounts by the contracting agency and the Bureau of Diversity, Inclusion and Small Business Opportunities for purpose of ascertaining compliance with provisions of this Nondiscrimination/Sexual Harassment Clause.

(h) The City shall include the provisions of this Nondiscrimination/Sexual Harassment Clause in every subcontract so that those provisions applicable to subcontractors will be binding upon each subcontractor.

(i) The City's and each subcontractor's obligations pursuant to these provisions are ongoing from and after the effective date of the contract through the termination date thereof. Accordingly, the City and each subcontractor shall have an obligation to inform the Commonwealth if, at any time during the term of the contract, it becomes aware of any actions or occurrences that would result in violation of these provisions.

(j) 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. Audits Pursuant to Section 6-400 of the Philadelphia Home Rule Charter. The Authority shall permit the City Controller to audit its affairs as authorized in Section 6-400 of the Philadelphia Home Rule Charter during the term of this Service Agreement.

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 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: under the Act, the Pension Plan Act and the Philadelphia Home Rule Charter: (a) as prescribed under the Pension Plan Act, 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 the Pension Plan Act and 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 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.

Section 606. Remedies under Pension Plan Act. The City and the Authority hereby acknowledge and agree that the Trustee is authorized by the Authority to act on its behalf for purposes of the Pension Plan Act and, as such, the Trustee is authorized to exercise all rights and remedies provided the Authority in the Pension Plan Act, including, without limitation, the right to proceed by mandamus to compel the City to perform its duty under the Pension Plan Act and hereunder to pay when due the payments required hereunder; provided however, the Authority expressly reserves the right to exercise all remedies available to it to enforce the Reserved Rights.

## 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:

(i) if to the Authority:

Philadelphia Authority for Industrial Development  
1500 Market Street  
Suite 3500 West  
Philadelphia, PA 19102  
Attention: Chairperson

(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:

U.S. Bank National Association  
Two Liberty Place, Suite 2000  
50 S. 16<sup>th</sup> Street  
Philadelphia, PA 19102  
Attention: Global Corporate Trust

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 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 or redemption price 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 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 issued under the Indenture 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, 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 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. The 2021 Bonds are limited obligations of the Authority. The Authority has no taxing power.

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

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:

THE CITY OF PHILADELPHIA, PENNSYLVANIA

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