

City of Philadelphia



(Bill No. 030331)

AN ORDINANCE

Declaring that it is desirable for the health, safety and welfare of citizens of the City of Philadelphia that The Hospitals and Higher Education Facilities Authority of Philadelphia undertake a project involving the current refunding of the Authority's Revenue Refunding Bonds, Series of 1993 (Philadelphia MR Project) that remain outstanding, and to issue and sell Revenue Refunding Bonds for the purpose of financing such refunding project; authorizing the Authority to undertake the refunding project; authorizing the Commissioner of Public Property, on behalf of the City, to enter into a supplemental lease with the Authority providing for such refunding project; providing for the terms of such supplemental lease; covenanting to be bound by the terms of the supplemental lease, providing that the rental payments thereunder do not exceed revenues derived by the City from the operation of the MR Facilities; covenanting to make appropriations in each fiscal year of the City to provide for rental payments due under such supplemental lease, such appropriations to be made solely from revenues derived from the operation of the MR Facilities; covenanting as to the unconditional payment of the supplemental lease rentals; and authorizing the proper officials of the City to take certain actions required to carry out the intent of the ordinance.

WHEREAS, To provide for the health, safety and well-being of the citizens of the City of Philadelphia ("City"), the City has caused the development of health centers in the City (the "MR Facilities") which provide intermediate care and habilitation services to mentally retarded persons eligible for such care and services in the City pursuant to the Pennsylvania Mental Health and Mental Retardation Act of 1966, Act of the General Assembly approved October 20, 1966, P.L. 96, as amended (the "Mental Health Act"); and

WHEREAS, The Hospitals and Higher Education Facilities Authority of Philadelphia ("Authority") previously undertook a project (the "MR Project") consisting of the acquisition, construction, renovation and equipping of the MR Facilities and the MR Project was financed by the Authority through the issuance and sale of its \$20,430,000 Revenue Bonds, Series of 1986 (Philadelphia MR Project) (the "1986 Bonds"); and

WHEREAS, The City, as lessee, leased the MR Facilities from the Authority, as lessor, under the terms and conditions of a Lease and Security Agreement, dated as of August 1, 1986 (the "1986 Lease"), which required the City to make rental payments sufficient to pay: (i) the principal of, premium, if any, and interest on the 1986 Bonds issued to finance the costs of the MR Project; and (ii) all costs of the Authority incurred in connection with the issuance of such obligations and any other transactions required to effectuate the MR Project; and

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WHEREAS, The Office of Mental Health/Mental Retardation of the Department of Public Health of the City (“MH/MR Office”) provides for the operation of the MR Project and the receipt of revenues therefrom, including payments made to or on behalf of the City by the Pennsylvania Department of Public Welfare pursuant to the Mental Health Act, sufficient to make the lease rental payments due from the City to the Authority; and

WHEREAS, The MH/MR Office has previously requested the Authority to undertake a project involving: (i) the advance refunding of the 1986 Bonds (the “1993 Refunding Project”), through the issuance by the Authority of its Revenue Refunding Bonds, Series of 1993 (Philadelphia MR Project) in the original aggregate principal amount of \$21,120,000 (the “1993 Refunding Bonds”); and (ii) the payment of the costs and expenses of issuing the 1993 Refunding Bonds; and

WHEREAS, In connection with the 1993 Refunding Project, the City, as lessee, and the Authority, as lessor, amended and supplemented the 1986 Lease by entering into a First Supplemental Lease and Security Agreement, dated as of March 15, 1993 (the “1993 Supplemental Lease”; and together with the 1986 Lease, the “Original Lease”), under which the City agreed to make rental payments sufficient to pay the principal of, premium, if any, and interest on the 1993 Refunding Bonds and the costs and expenses of the Authority in connection with the 1993 Refunding Project; and

WHEREAS, The Authority has assigned certain of its rights under the Original Lease to Wachovia Bank, National Association, as successor trustee (the “Trustee”) under the Trust Indenture, dated as of August 1, 1986, as amended (the “Original Indenture”), between the Authority and the Trustee, securing the 1993 Refunding Bonds and the City has made its lease rental payments due under the Original Lease directly to such Trustee for the benefit of the owners of the 1993 Refunding Bonds; and

WHEREAS, The MH/MR Office has requested the Authority to undertake a project involving: (i) the current refunding of the 1993 Refunding Bonds (the “2003 Refunding Project”), through the issuance by the Authority of its Revenue Refunding Bonds, Series of 2003 (Philadelphia MR Project) in an aggregate principal amount not to exceed Fifteen Million Five Hundred Thousand Dollars (\$15,500,000) (the “2003 Refunding Bonds”); and (ii) the payment of the costs and expenses of issuing the 2003 Refunding Bonds; and

WHEREAS, In connection with the 2003 Refunding Project, the City, as lessee, and the Authority, as lessor, will amend and supplement the Original Lease by entering into a Second Supplemental Lease and Security Agreement (the “Supplemental Lease”; and together with the Original Lease, the “Lease”), under which the City will agree to make rental payments sufficient to pay the principal of, premium, if any, and interest on the 2003 Refunding Bonds and the costs and expenses of the Authority in connection with the 2003 Refunding Project; and

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WHEREAS, It has been determined that the 2003 Refunding Project will result in economic savings to the City and the Commonwealth of Pennsylvania (“Commonwealth”) and the Commonwealth has requested the Authority to undertake the 2003 Refunding Project for the purpose of achieving such economic savings; and

WHEREAS, It has been determined that the 2003 Refunding Project is desirable for the health, safety and welfare of the citizens of the City eligible for the care and services provided by the MR Facilities, and the Authority has agreed to undertake the 2003 Refunding Project and to issue the 1993 Refunding Bonds; now therefore

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. It is hereby declared: to be desirable for the health, safety and welfare of the people in the area served by health centers in the City which provide intermediate care and habilitation services to mentally retarded persons eligible for such care and services (the “MR Facilities”) pursuant to the Pennsylvania Mental Health and Mental Retardation Act of 1966, Act of the General Assembly approved October 20, 1966, P.L. 96, as amended (the “Mental Health Act”), to have the MR Facilities provided by or financed through the Authority; that the Authority undertake a project (the “2003 Refunding Project”) involving the current refunding of the principal of, premium and interest due on the Authority’s Revenue Refunding Bonds, Series of 1993 (Philadelphia MR Project) and the payment of the costs and expenses of issuing the Authority’s Revenue Refunding Bonds, Series of 2003 (Philadelphia MR Project) (the “2003 Refunding Bonds”); and that the City participate in the 2003 Refunding Project as herein provided.

SECTION 2. The Authority is hereby authorized to undertake the 2003 Refunding Project and to issue and sell the 2003 Refunding Bonds in an aggregate principal amount not to exceed Fifteen Million Five Hundred Thousand Dollars (\$15,500,000) at any one time outstanding, including any refunding bonds, in order to finance the costs of the 2003 Refunding Project, to make deposits required to be made to any fund or account established under the Original Indenture, as the same may be restated, amended or supplemented, pursuant to which the 2003 Refunding Bonds shall be issued and secured (collectively, the “Indenture”) and to pay the costs and expenses of issuing the 2003 Refunding Bonds.

SECTION 3. The Commissioner of Public Property, on behalf of the City, is hereby authorized to enter into the Supplemental Lease with the Authority, such Supplemental Lease to be substantially in the form set forth in Exhibit I attached hereto and made a part hereof, providing for the 2003 Refunding Project and for rental payments to be made by the City sufficient to pay all costs of the 2003 Refunding Project; provided that under no circumstances shall the City be required to pay as rentals under the Lease any sum in excess of the amounts derived by the MH/MR Office from the operation of the health centers comprising the MR Project, including payments made to or on behalf of the City

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by the Department of Public Welfare of the Commonwealth pursuant to the Mental Health Act.

SECTION 4. Pursuant to the Supplemental Lease, the lease rental payments made by the City, as lessee, shall be sufficient to pay: (i) the principal of and interest on the 2003 Refunding Bonds when due and payable; (ii) the annual administrative fee of the Authority and such other reasonable administrative expenses of the Authority incurred by the Authority in connection with the 2003 Refunding Project; and (iii) amounts necessary to make up any deficiency in any funds established under the Indenture, including the debt service reserve fund and the rebate fund, within the time periods set forth in the Indenture; provided that under no circumstances shall the City be required to pay as rentals under the Lease any sum in excess of the amounts derived by the MH/MR Office from the operation of the health centers comprising the MR Project, including payments made to or on behalf of the City by the Department of Public Welfare of the Commonwealth pursuant to the Mental Health Act.

SECTION 5. The City agrees to be bound by each and every provision, covenant and agreement set forth in the Lease as if it were specifically enacted as part of this Ordinance, with the full force and effect of law; provided that under no circumstances shall the City be required to pay as rental under the Lease any sum in excess of the amounts derived by the MH/MR Office from the operation of the health centers comprising the MR Project, including payments made to or on behalf of the City by the Department of Public Welfare of the Commonwealth pursuant to the Mental Health Act.

SECTION 6. The City covenants to appropriate for each fiscal year during the term of the Lease, out of revenues derived by the MH/MR Office from the operation of the MR Facilities, including revenues received from the Commonwealth pursuant to the Mental Health Act, such amounts as shall be required to make all rental payments when due and payable under the Lease during such fiscal year; provided, however, that such appropriations and all payments pursuant to such appropriations shall be limited to the amount of revenues derived by the MH/MR Office from the operation of the MR Facilities and there shall be no recourse under the Lease to any other moneys of the City except such moneys as may in any fiscal year be specifically appropriated by the Council for such purpose.

SECTION 7. Subject to Section 5 of this Ordinance the City covenants unconditionally to make all rental payments due under the Lease directly to the Trustee or any successor thereto appointed and acting under the Indenture to which the Lease has been assigned as security for payment of the Bonds issued under the Indenture and further covenants that such payments shall not be suspended, abated, reduced, abrogated, waived, or otherwise modified in any manner or to any extent whatsoever regardless of any rights of setoff, recoupment or counterclaim that the City may have against the Authority or the Trustee or any other party or parties and regardless of any contingency, act of God, event or cause

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whatsoever and notwithstanding any circumstances or occurrences that may arise after the date hereof.

SECTION 8. The Lease shall remain in full force and effect according to its terms. The Lease shall provide for a term not to exceed twenty-five (25) years.

SECTION 9. The proper officials of the City are hereby authorized to execute all documents and to take all actions, including the execution of the Supplemental Lease, as may be necessary to carry out the intent of this Ordinance and consistent with the terms of this Ordinance and the Pennsylvania Municipalities Authorities Act, 53 Pa.C.S.Ch.56 (“Act”).

SECTION 10. The City Solicitor is hereby authorized to include in the Supplemental Lease such other terms and provisions as he or she shall deem necessary or appropriate to protect the interests of the City and to make any other changes consistent with the terms of this Ordinance and the Act.

SECTION 11. The Chief Clerk of City Council shall keep on file and make available to the public all documents, including exhibits and schedules, referred to and incorporated in this Ordinance.

SECTION 12. 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 June 12, 2003. The Bill was Signed by the Mayor on July 7, 2003.



Patricia Rafferty
Chief Clerk of the City Council