

# City of Philadelphia



(Bill No. 170206)

## AN ORDINANCE

Authorizing and approving the execution and delivery of a Service Agreement between the City of Philadelphia and the Philadelphia Authority for Industrial Development relating to the financing of the City of Philadelphia's Rebuild program, approving 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 such program and authorizing and approving the obligation of the City of Philadelphia 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 such bonds, notes or other evidences of indebtedness; covenanting that the City of Philadelphia will make necessary appropriations in each of the City's fiscal years to provide for, and will make timely payments of, the Service Fee and other amounts due under the Service Agreement; and authorizing City officials to take necessary or appropriate actions, 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 pursuant to the Service Agreement (as defined herein) to provide financial services to the City through the financing or refinancing of improvements to, and construction, demolition, renovation and equipping of, the City's parks, libraries, playgrounds, recreation centers and other related facilities, and related costs such as workforce diversity and inclusion programs, community engagement and program administration (collectively, the "Project"), under the City's program generally referred to as "Rebuild;" and

WHEREAS, The Council of the City (the "Council") has, by this Ordinance, determined that it is in the best interests of the City to: (i) authorize and approve the execution and delivery of a Service Agreement (the "Service Agreement") by and between the City and PAID; (ii) approve 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) authorize and approve 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 to enable the financing and refinancing of the Project; now, therefore

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

SECTION 1. The Council hereby: (i) authorizes and approves the execution and delivery of the Service Agreement, which shall be substantially in the form of Exhibit A hereto, with PAID; (ii) approves 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 Three Hundred Million Dollars (\$300,000,000), net of original issue discount, plus amounts necessary for costs of issuance, amounts necessary to effect any refunding of Obligations, interest on the Obligations and costs of credit or liquidity enhancement, at any one time outstanding, in one or more series, either as taxable or tax-exempt obligations, to finance or refinance improvements to, and construction, demolition, renovation and equipping of, the City’s parks, libraries, playgrounds, recreation centers and other related facilities, and related costs such as workforce diversity and inclusion programs, community engagement and program administration (collectively, the “Project”), in connection with the City’s program generally referred to as “Rebuild,” interest on the Obligations, costs of credit or liquidity enhancement, amounts necessary to effect any refunding, and the costs of issuing the Obligations; and (iii) authorizes and approves 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; provided, that all expenditures of proceeds of the Obligations on the Project shall be subject to Section 2 of this Ordinance and the program guidelines attached hereto as Exhibit B. Section 2 of this Ordinance shall be controlling in the event of any conflict between the provisions of Section 2 and the program guidelines attached hereto as Exhibit B.

SECTION 2. The Service Agreement and Intergovernmental Cooperation Agreement authorized by this Ordinance shall provide that no proceeds of Obligations shall be used and no interest in City-owned real estate shall be conveyed except in accordance with the provisions of this Section 2; and shall further provide that City Council is an intended beneficiary of such provisions and may sue for their specific enforcement.

(a) The Mayor shall submit to Council for its approval by resolution the following items:

(i) A detailed Project Statement setting forth plans for expenditure of proceeds of Obligations, the conveyance of interests in City-owned real estate and any other source of funds or resources to be used for the Project and the component projects (“Rebuild Projects”) for the up-coming fiscal year. At least sixty days before the Mayor submits the Project Statement to Council for its approval by resolution, the Mayor shall send to each member of Council a preliminary Project Statement in the same detail that will be contained in the final Project Statement for which the Mayor will request approval of Council.

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(ii) An Economic Opportunity Plan (“EOP”) for the participation of minority and female workers, Minority-Owned Disadvantaged Business Enterprises, Female-Owned Disadvantaged Business Enterprises and Disabled-Owned Disadvantaged Business Enterprises (“M/W/DBE/DSBE”), in all work to be performed as part of the Project. Such Plan shall provide for the selection by the President of Council of a person or organization to monitor compliance with the EOP.

(b) Prior to each operating year of the Project, the Mayor shall submit to Council for its approval by resolution an annual line-item budget setting forth proposed Projects and expenditures, and proposed transfers of interests in City-owned real estate for the up-coming year, in such form and detail as is acceptable to Council. Such line-item budget shall be consistent with the Project Statement approved pursuant to subsection (2)(a)(i), and shall include provision for a City Council Project Manager. After it is approved, the annual line-item budget may be amended only with the approval of Council by resolution.

(c) Prior to each operating year of the Project, the Mayor shall submit to Council for approval an ordinance listing the sites to be leased to PAID for the purposes of sublease to qualified Project grantees and lessees (“Project Users”). Subleases shall have terms consistent with the time necessary to implement the Rebuild Project at the subleased site, and shall terminate upon the completion of the Rebuild Project.

(d) A Project Review Team is hereby created, consisting of one member to be appointed by the Mayor and one member to be appointed by the President of Council, each of whom shall serve at the pleasure of the appointing authority. Whenever this Ordinance requires the approval of the Project Review Team, such approval shall consist only of the written approval of both members of the Project Review Team. Before approving or disapproving any matter for which the approval of the Project Review Team is required, the member of the Project Review Team appointed by the President of Council shall first provide each District Councilperson whose district is directly affected by such matter the immediate opportunity to meet with the Project Review Team, at the discretion of the District Councilperson, in order for the District Councilperson to review, comment upon and make recommendations concerning such matter, and the Council President’s appointee shall not approve any matter for which the approval of the Project Review Team is required without first obtaining written authorization from each District Councilperson whose district is directly affected by such matter.

(e) No proceeds of any Obligations may be expended for the Project, or for the funding of required reserves, if any, or for payment of costs of issuance until all approvals required under Section 2(b) have been obtained except:

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(i) With the approval of the Project Review Team, expenditures may be made at variance with an approved annual line-item budget, provided such changes do not affect more than ten percent (10%) of any line-item.

(ii) Start-up expenditures of \$10 million may be made prior to approval of the first annual line-item budget, provided that the expenditures are accompanied by an itemized budget and provisions of subsections 2(f) and 2(g) shall apply to such expenditures as if they were being made under an approved annual line-item budget.

(f) No grant shall be awarded for any such work (including to any Project User) without the approval of the Project Review Team. No grant application for the funding of construction shall be approved unless applicant submits information regarding the size and estimated cost of bid packages.

(g) No interest in city-owned real estate shall be conveyed by the City and no interest in real estate shall be acquired by the City, or PAID on behalf of the City, unless Council shall have specifically approved such conveyance or acquisition by resolution or ordinance. The approval of the Project Review Team shall not be required for any conveyance or acquisition of an interest in real estate in accordance with this Sub-section 2(g).

(h) PAID shall submit a quarterly report to the Project Review Team summarizing all expenditures by budget category and real estate transactions made during the previous quarter.

(i) The provisions of this Section 2 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 Council that Council would not have enacted this Ordinance or any portion of this Ordinance unless all provisions of this Section 2 were a valid part of such enactment. No proceeds of any Obligations of any series shall be spent unless there is full compliance with the approval process set forth in Section 2 of this Ordinance, and all required approvals are obtained. Provided that to the extent that PAID has issued Obligations in reliance upon this Ordinance, the covenants and representations of this Ordinance, and the Service Agreement are fully enforceable upon the City. The Council of the City of Philadelphia is an intended beneficiary of the requirements of this Section 2. Council shall have standing to sue for specific enforcement of the requirements of this Section 2, and the City and PAID agree not to challenge the standing of Council in any action for such specific enforcement. No violation of Section 2 shall effect the legality, validity or enforceability of any other Section of this Ordinance.

(j) Any of the submissions required by Section 2 to be made prior to each operating or fiscal year of the Project, with respect to the first operating or fiscal year of

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the Project, may be made during or prior to the first operating or fiscal year of the Project, and may include expenditures to be made before the first operating or fiscal year of the Project.

SECTION 3. 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 permits the aggregate principal amount of Obligations (at any one time outstanding) described in Section 1 hereof to be exceeded shall be executed unless first approved by ordinance of the Council.

SECTION 4. The issuance of Obligations to refund outstanding Obligations (whether at maturity, through redemption or otherwise) is hereby authorized, and the Director of Finance is hereby authorized to execute and deliver, on behalf of the City, any required amendment or supplement to the Service Agreement in such form as the City Solicitor shall advise and the Director of Finance shall approve, consistent with the terms of this Ordinance; provided that no amendment or supplement to the Service Agreement shall permit the issuance of Obligations which cause the aggregate principal amount (at any one time outstanding) described in Section 1 hereof to be exceeded unless first approved by ordinance of the Council.

SECTION 5. The Service Agreement authorized by this Ordinance (and any required amendment or supplement thereto) shall be executed in conjunction with the issuance by PAID of its Obligations in an aggregate principal amount (at any one time outstanding) that does not exceed that set forth in Section 1 hereof to be applied for the purposes described in Section 1 hereof. The Obligations shall not be executed or delivered until the Director of Finance has approved the terms thereof.

SECTION 6. The City covenants to budget and make appropriations beginning in Fiscal Year 2018 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 7. As long as the Obligations issued by PAID 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/or other entity (the "Trustee") to which the Service Fee may be assigned as security for payment of the Obligations, any other payments due to a lender or holder with respect to any 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

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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.

SECTION 8. The City agrees to be bound by each and every provision, covenant and agreement set forth in the Service Agreement.

SECTION 9. 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 without limitation one or more continuing disclosure agreements, a letter of representations, and an intergovernmental cooperation agreement with PAID and/or other appropriate parties, as directed by the Director of Finance) as may be necessary in order to accomplish the intent and purpose of this Ordinance and the Rebuild program, and to take all actions as may be required by the Constitution and the laws of the Commonwealth of Pennsylvania in order to effectuate the financing approved hereby and the issuance of the Obligations.

SECTION 10. The Council reasonably expects that the proceeds of each series of tax-exempt Obligations will be expended for the Project within three years of the issuance of each such series and will not take any action or omit to take any action which would cause the expenditure of the proceeds of tax-exempt Obligations for the Project to proceed other than with due diligence.

SECTION 11. In accordance with Treasury Regulations §1.150-2, the City hereby states its intention that a portion of the proceeds of the Obligations will be used to reimburse itself or PAID for expenditures for costs of the Project paid prior to the date of issuance of one or more series of the Obligations. The maximum principal amount of Obligations expected to be issued for the Project is \$300,000,000.

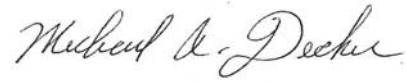
SECTION 12. This Ordinance shall take effect immediately.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 22, 2017. The Bill was Signed by the Mayor on June 28, 2017.



Michael A. Decker  
Chief Clerk of the City Council