

City of Philadelphia



(Bill No. 171053)

AN ORDINANCE

Authorizing the City of Philadelphia to enter into a guaranteed energy savings contract for the implementation and evaluation of energy conservation and efficiency measures designed to reduce energy, water, wastewater or other consumption or operating costs at specified City properties, and under certain terms and conditions.

WHEREAS, the City of Philadelphia (the "City") owns the three (3) properties located at (1) 2600 Benjamin Franklin Parkway, Philadelphia, Pennsylvania 19130; (2) 2525 Pennsylvania Ave, Philadelphia, Pennsylvania 19130; and (3) 2151 Benjamin Franklin Parkway, Philadelphia, Pennsylvania 19130 (respectively: Philadelphia Museum of Art Main Building, Perelman Building and Rodin Museum); and the buildings are in need of energy conservation measures that include programs, facility alterations or upgrades designed to reduce energy, water, wastewater or other measurable consumption or operating costs at said premises; and

WHEREAS, the Office of Sustainability (OOS) and Department of Public Property (DPP) have requested that the Philadelphia Energy Authority (the "Authority") undertake a project (the "Project") to provide energy conservation measures for the City; and

WHEREAS, the City is authorized under the Constitution, the Philadelphia Home Rule Charter and the laws of the Commonwealth of Pennsylvania, including without limitation the Guaranteed Energy Savings Act (62 Pa. C.S. § 3751 *et seq.*), to enter into this contract for the purpose of implementing selected energy conservation measures; and

WHEREAS, the Authority is authorized by the Municipality Authorities Act, 53 Pa. C.S., Ch. 56, to enter into long term contracts suitable for this project; and

WHEREAS, the Authority is given responsibility for actions concerning the development or facilitation of energy efficiency projects under Ordinance No. 100163-AA, passed by the Philadelphia City Council on June 3, 2010 and signed by the Mayor on July 29, 2010; and

WHEREAS, Johnson Controls Inc, has been selected through a competitive process, to provide energy conservation measures in accordance with a Request for Proposals; and

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WHEREAS, the Project will require the Authority to enter into a guaranteed energy savings agreement with Johnson Controls Inc. and the Philadelphia Museum of Art for the Project, and the City will undertake certain obligations of the Authority to Johnson Controls Inc.; now therefore,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Procurement Commissioner, on behalf of the City of Philadelphia, is hereby authorized to enter into a guaranteed energy savings contract with the Philadelphia Energy Authority, under which the Authority will cause Johnson Controls Inc. to implement and evaluate one or more energy conservation measures at the Philadelphia Museum of Art Main Building, Perelman Building and Rodin Museum pursuant to a guaranteed energy savings contract between the Authority, the Philadelphia Museum of Art, and Johnson Controls Inc., and the City will undertake certain obligations of the Authority to Johnson Controls Inc.

SECTION 2. The following condition shall apply to the authority granted pursuant to Section 1. The Project Costs for the guaranteed energy savings agreement between the Authority, the Philadelphia Museum of Art, and Johnson Controls Inc. must be a firm, fixed price. Such agreement may provide that price increases are permitted for the following reasons: (1) a change in law or permit requirements after the date hereof affecting the design or Project implementation; (2) pre-existing hazardous materials and archeological artifacts discovered in the course of Project implementation; (3) other unknown conditions discovered in the course of Project implementation; (4) force majeure events occurring in the course of design or Project implementation that are beyond the reasonable control of the affected party; (5) Authority-ordered changes to the scope of work or schedule; (6) Authority failure to provide services required during the Project implementation period; or (7) Authority-ordered suspension of the work other than for Johnson Controls Inc default. Any price increase must be supported by a demonstration of additional costs to Johnson Controls Inc resulting from one of the reasons enumerated above, and any reduction to the Project implementation costs resulting from one of the reasons enumerated above must be reflected in an equitable reduction in the Project price.

SECTION 3. The guaranteed energy savings contract between the City and the Authority will be substantially in the form set forth in Exhibit A of this ordinance. The guaranteed energy savings contract between the Authority, the Museum of Art, and Johnson Controls Inc. will be substantially in the form set forth in Exhibit B of this ordinance.

SECTION 4. The City Solicitor is hereby authorized to review and approve the agreements necessary to effectuate this Ordinance, and to impose such terms and conditions on them as the City Solicitor may deem necessary and proper to protect the interests of the City of Philadelphia and to carry out the purpose of this Ordinance.

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SECTION 5. The Chief Clerk of City Council shall keep the exhibits to this Ordinance on file and make them available to the public for inspection and copying during regular office hours.

SECTION 6. This Ordinance shall take effect immediately.

[Note: Exhibits to this Bill are on file in the Office of the Chief Clerk.]

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 14, 2017. The Bill was Signed by the Mayor on January 3, 2018.



Michael A. Decker
Chief Clerk of the City Council