

Legislation Text

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Authorizing the Director of Finance and the Commissioner of Public Property on behalf of the City, in cooperation with The Philadelphia Municipal Authority (the "Authority"), to undertake a project relating to the evaluation and implementation of energy conservation measures at City Hall, the Criminal Justice Center, the Municipal Services Building and the One Parkway Building; authorizing and approving: (i) the issuance by the Authority of revenue bonds in connection with the project, (ii) the entering into, execution and delivery of a Service Agreement between the City and the Authority providing for payment by the City to the Authority of amounts necessary to pay the costs of the Project, (iii) the provisions for establishment of credit enhancement, and (iv) the assignment of the Service Agreement by the Authority to a trustee, covenanting that the City will make necessary appropriations in each of the City's fiscal years to provide for payments due under the Service Agreement, and will make such payments, all under certain terms and conditions; and making certain related determinations and authorizations.

WHEREAS, In order to provide for the health, safety and well-being of the citizens of the City, the City, in cooperation with the Authority, will undertake the Project, the costs of which Project shall include but not be limited to the costs of preliminary studies, surveys, planning, testing and design work; fees and expenses of engineers, architects, financial advisors, attorneys and other experts engaged in connection with the Project; costs of materials, supplies and construction of the Project; financing costs including interest on money borrowed to finance the Project if capitalized and operating capital during construction, the repayment of temporary loans or the payment of bond anticipation notes made or issued in connection with the Project, and any of the foregoing incurred or paid prior to as well as after the issuance of the revenue bonds; and

WHEREAS, The Authority, by the arrangement of interim financing, if necessary, and subsequently, by the issuance of its Energy Conservation Project Revenue Bonds in an amount that will produce gross proceeds (inclusive of any premium or discount) not to exceed Thirteen Million Two Hundred Thousand Dollars (\$13,200,000), consisting of one or more series of federally taxable Qualified Energy Conservation Bonds in an aggregate principal amount sufficient to produce gross proceeds (inclusive of any premium or discount) not to exceed Six Million Four Hundred Thousand Dollars (\$6,400,000) and one or more series of traditional, federally tax-exempt bonds in an aggregate principal amount sufficient to produce gross proceeds (inclusive of any premium or discount) not to exceed Six Million Eight Hundred Thousand Dollars (\$6,800,000), plus costs of issuance, and later by refunding bonds, if any (collectively, the "Bonds") will finance the Project; and

WHEREAS, In order to induce the Authority to finance the Project, the City will enter into the Service Agreement with the Authority; and

WHEREAS, The Council of the City has, by this Ordinance, determined that it is in the best interests of the City to proceed with the foregoing Project and financing; now, therefore

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Council hereby authorizes the Director of Finance or his designee and other appropriate officers of the City, in cooperation with the Authority, to undertake the Project, which consists of the evaluation and implementation of energy conservation and efficiency measures designed to reduce energy, water,

wastewater or other consumption or operating costs including, without limitation, the evaluation, design, installation, financing, owning, operation, maintenance and leasing (in the capacity of either lessor or lessee) of related facilities, structures, fixtures, improvements, systems or technologies, and the provision of related services at four (4) City-owned properties located, respectively, at (1) Broad Street & Market Street, Philadelphia, PA 19107 ("City Hall"), (2) 1301 Filbert Street, Philadelphia, PA 19107 (the "Criminal Justice Center"), (3) 1401 JFK Boulevard, Philadelphia, PA 19102 (the "Municipal Services Building"), and (4) 1515 Arch Street, Philadelphia, PA 19102 ("One Parkway Building").

SECTION 2. Project costs shall include, but not be limited to, the costs of preliminary studies, surveys, planning, testing and design work, fees and expenses of engineers, architects, financial advisors, attorneys and other experts, cost of materials, supplies and construction of the Project, costs of issuance and financing costs including capitalized interest and repayment of interim loans or bond anticipation notes, if any, and any of the foregoing incurred or paid prior to as well as after the issuance of the Authority bonds authorized by this Ordinance, subject to the requirements of the Internal Revenue Code of 1986, as amended, and applicable regulations thereunder ("Federal Tax Code").

SECTION 3. The Authority, at the direction of the Director of Finance or his designee, by arrangement of interim financing, if necessary, and subsequently, by the issuance of the Bonds in an amount that will produce gross proceeds (inclusive of any premium or discount) not to exceed Thirteen Million Two Hundred Thousand Dollars (\$13,200,000), plus costs of issuance and later by permissible refunding bonds, if any (collectively, the "Bonds"), will finance the Project. An aggregate principal amount of the Bonds sufficient to produce gross proceeds (inclusive of any premium or discount) not to exceed Six Million Four Hundred Thousand Dollars (\$6,400,000) may be issued as federally taxable Qualified Energy Conservation Bonds ("QECBs") as defined in the Federal Tax Code and an aggregate principal amount of the Bonds sufficient to produce gross proceeds (inclusive of any premium or discount) not to exceed Six Million Eight Hundred Thousand Dollars (\$6,800,000) shall be issued as traditional tax-exempt bonds ("Tax-Exempt Bonds"). The Bonds shall be issued pursuant to a Trust Indenture (the "Indenture") between the Authority and a trustee (the "Trustee"). The Authority, at the direction of the Director of Finance or his designee, is authorized to enter into any credit enhancement agreement related to the Bonds and to enter into one or more interim financing agreements in an aggregate principal amount not to exceed the maximum principal amount of Bonds authorized hereby. The principal amounts of such interim financings shall not be counted against the maximum principal amount of Bonds authorized hereby if and to the extent such financings are paid off by the Bonds upon the issuance thereof. The sale of the Bonds by the Authority, at the direction of the Director of Finance or his designee, at public or private sale as permitted by the Municipality Authorities Act, 53 Pa. C.S.A. Chapter 56, as amended ("Authorities Act"), is hereby approved.

SECTION 4. The Director of Finance or his designee and any other appropriate officers of the City are authorized to execute and deliver a service agreement to the Authority (the "Service Agreement"), the terms of which shall be consistent with this Ordinance. The Service Agreement shall not be executed or delivered until the Director of Finance or his designee has approved the terms of any interim financing or, if there is no interim financing, has approved the Bond documents.

SECTION 5. The obligations of the City under the Service Agreement shall include the obligation to make payments solely out of its current revenues in an amount sufficient to pay the principal of, premium, if any, and interest on the Bonds and any payments due for temporary loans or other interim financing, credit enhancement and all obligations of the Authority incurred in connection with the issuance of the Bonds including, but not limited to, all administrative expenses of the Authority incurred in connection with the Project, any arbitrage rebate payments due to the United States Treasury with respect to the Bonds and, in the event no bonds are

issued, amounts necessary to satisfy Authority obligations in connection with any interim financing. The Authority is authorized to assign to the Trustee, some or all of the Authority's right to receive payments under the Service Agreement.

SECTION 6. To the extent required to enable the Authority to comply with the continuing disclosure requirements of Rule 15c2-12 of the Securities and Exchange Commission ("Rule"), appropriate officers of the City including, specifically but not by way of limitation, the Director of Finance and the City Treasurer, are hereby authorized and directed to execute and deliver a continuing disclosure agreement in the form and content that meets the requirements of the Rule and, to fulfill the obligations set forth in such Continuing Disclosure Agreement.

SECTION 7. The Director of Finance, the City Treasurer, the Commissioner of Public Property and all other proper officials of the City are hereby authorized, jointly and severally, on behalf of the City, to execute all documents and to take all actions as may be necessary or appropriate in order to accomplish the intent and purpose of this Ordinance and the Service Agreement subject to the Authorities Act. Said officials are further authorized to amend the Service Agreement in any manner consistent with the terms of this Ordinance; provided, however, if any such proposed amendment would increase the City's financial obligations under the Service Agreement, or otherwise materially adversely affect the rights and powers of the City or any official of the City under the Service Agreement, then such proposed amendment must be approved by further ordinance of Council. Notwithstanding the foregoing, in the case of changes which are specifically anticipated within the Service Agreement or any exhibits thereto, such changes may be made in accordance with the applicable terms of the Service Agreement.

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 City covenants to make appropriations, in each and every fiscal year in such amounts as shall be required in order to make all payments due and payable under the Service Agreement to make such payments.

SECTION 10. All the terms of any interim financing, the Bonds, the Indenture, the Service Agreement and any credit enhancements shall have the approval of the Director of Finance.

SECTION 11. As long as Bonds issued by the Authority to finance costs of the Project are outstanding or the Authority has any obligations remaining under any interim financing agreement or credit enhancement related to the Bonds, the City covenants unconditionally to make all payments due as provided for under the Service Agreement directly to any trustee, including the Trustee, to which the Service Agreement may be assigned as security for payment of the Bonds and the obligations of the Authority under any interim financing agreement or credit enhancements related to 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 12. To the extent required under the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder, the City hereby declares its "Official Intent" as prescribed in Treas. Reg. Section 1.150-2 and Section 54A(d)(2)(D) of the Federal Tax Code for the reimbursement of the City from the

proceeds of the Bonds, or any interim financing, for costs incurred in connection with the Project prior to the date of issuance of the Bonds, or any interim financing, including, but not limited to, the Project and related acquisition, design and development costs.

SECTION 13. The City hereby authorizes appropriate officers of the City and the Authority to take such action as may be necessary or appropriate to effect and maintain the desired status of the Bonds for federal tax purposes, *i.e.*, meeting the requirements of the Federal Tax Code applicable to the QECCBs and to the Tax-Exempt Bonds, respectively, including making any required election on IRS Form 8038TC and to execute and deliver any document or instrument including, without limitation, any IRS form.

SECTION 14. This Ordinance shall take effect immediately.