

Legislation Text

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Authorizing and approving the execution and delivery of a Service Agreement between The City of Philadelphia and The Philadelphia Energy Authority relating to the financing of the construction, equipping and installation of an energy efficient City street lighting system and related improvements; approving the issuance by such Authority of bonds, notes or other evidences of indebtedness in one or more series to finance or refinance such project and authorizing and approving the obligation of the City 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 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 other necessary or appropriate actions to effectuate the purposes of this Ordinance; all under certain terms and conditions.

WHEREAS, in order to benefit the people of The City of Philadelphia (the "City") by, among other things, increasing their commerce, health, safety and prosperity, the City and The Philadelphia Energy Authority (the "Authority") have determined that the Authority will, at the direction of and with the cooperation of the City, undertake pursuant to the Service Agreement (as defined herein) to provide project development and management services and related administrative services to the City in connection with a project consisting of the construction, equipping and installation of an energy efficient City street lighting system (the "Lighting System") and related improvements, including light emitting diode (LED) street lighting, controls and networking, designed to reduce energy consumption or operating costs associated with the Lighting System (the "Project"), including the financing or refinancing of certain costs thereof; and

WHEREAS, the Authority has the power, *inter alia*, to acquire, construct, finance, improve, maintain and operate projects for transportation, bridges, tunnels, highways, parkways, traffic distribution centers, parking spaces and all facilities necessary or incident thereto; 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 the Authority; (ii) approve the issuance by the Authority 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 certain costs of the Project; now, therefore

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 the Authority; (ii) approves the issuance from time to time by the Authority of bonds, notes or other evidences of indebtedness (the "Obligations") in an aggregate principal amount not to exceed Ninety-Two

Million Dollars (\$92,000,000), 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 certain costs of the Project, interest on the Obligations, costs of credit or liquidity enhancement, amounts necessary to effect any refunding of the Obligations, 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.

SECTION 2. The Director of Finance of the City (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 based on requirements of law or otherwise, 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 3. 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 4. The Service Agreement authorized by this Ordinance (and any required amendment or supplement thereto) shall be executed in conjunction with the issuance by the Authority 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 5. The City covenants to budget and make appropriations beginning in Fiscal Year 2023 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 6. As long as the Obligations issued by the Authority are outstanding, the City covenants unconditionally to make all Service Fee payments, and pay 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 payments may be assigned as security for payment of the Obligations and the obligations of the Authority under any credit facility and/or liquidity facility securing any 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 the Authority or the Trustee or any holder of Obligations, any credit and/or liquidity provider 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 7. The City agrees to be bound by each and every provision, covenant and agreement set forth in the Service Agreement.

SECTION 8. 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, continuing covenant agreements, credit and/or liquidity facility and an intergovernmental cooperation agreement with the Authority and/or other appropriate parties, as directed by the Director of Finance) and take all actions as may be necessary in order to accomplish the intent and purpose of this Ordinance and the Project and to effect and maintain the desired status of the Obligations for federal tax purposes (including making any required election to meet requirements of the Internal Revenue Code), 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 9. 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 10. 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 for expenditures paid for costs of the Project prior to the date of issuance thereof.

SECTION 11. This Ordinance shall take effect immediately.