



City of Philadelphia

City Council
Chief Clerk's Office
402 City Hall
Philadelphia, PA 19107

Legislation Text

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Authorizing the Procurement Commissioner, on behalf of the City of Philadelphia, to enter into an agreement with the Philadelphia Energy Authority for coordination of a guaranteed energy savings contract for implementation and evaluation of energy conservation measures designed to reduce energy, water, wastewater, or other consumption or operating costs at specified City properties, all under certain terms and conditions.

WHEREAS, The City of Philadelphia ("City") owns and operates, or leases and operates, the four (4) properties located in the City of Philadelphia at (1) 1400 JFK Boulevard; (2) 1301 Filbert Street; (3) 1401 JFK Boulevard; (4) 1515 Arch Street; (5) 555 S. 43rd Street; (6) 4400 Haverford Avenue; (7) 1900 N. 20th Street; (8) 301 W. Girard Avenue; (9) 131 Cheltenham Avenue; 2230 Cottman Avenue; (11) 2840 W. Dauphin Street; (12) 907 Hamilton Street; (13) 1300 E. Tulphocken Street; and (14) 1981 N. Woodstock Street (collectively, "Quadplex+") 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 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 these contracts for the purpose of implementing selected energy conservation measures; and

WHEREAS, the Mayor's Office of Sustainability ("OOS") has requested that the Philadelphia Energy Authority ("Authority") undertake a project ("the Project") to provide energy conservation measures for the City; and

WHEREAS, The Authority is authorized by the Municipal Authorities Act, 53 Pa. C.S., Ch. 56, to enter into long term contracts suitable for these projects; 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, Johnson Controls, Inc. ("JCI") has been selected through a competitive process to provide energy conservation measures in accordance with a Request for Proposals; and

WHEREAS, the projects will require the Authority to enter into a guaranteed energy savings contract with JCI for the Project, and the City will undertake certain obligations of the Authority to JCI; now therefore,

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Subject to the conditions set forth in Section 2, the Procurement Commissioner, on behalf of

the City of Philadelphia, is hereby authorized to enter into a guaranteed energy savings contract with the Authority, under which the Authority will cause JCI to implement and evaluate one or more energy conservation measures at City Hall, the Criminal Justice Center, the Municipal Services Building and One Parkway Building pursuant to a guaranteed energy savings contract between the Authority and JCI, and the City will undertake certain obligations of the Authority to JCI.

SECTION 2. The following conditions shall apply to the authority granted pursuant to Section 1.

- (a) The Project Costs for the Implementation Phase of the guaranteed energy savings agreement 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) preexisting 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 JCI's default. Any price increase must be supported by a demonstration of additional costs to JCI resulting from one of the reasons enumerated above, and must be offset by any reduction in the Project implementation costs resulting from such change.
- (b) The guaranteed energy savings agreement must provide that the Project implementation cost of Fifty Million Dollars (\$50,000,000) shall not be increased by more than ten percent without approval by an ordinance of Council.

SECTION 3. The guaranteed energy savings contract between the Authority and JCI will be substantially in the form set forth in Exhibit A 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.

SECTION 5. This Ordinance shall take effect immediately.

Exhibit A

INTERGOVERNMENTAL GUARANTEED ENERGY SAVINGS AGREEMENT

THIS INTERGOVERNMENTAL GUARANTEED ENERGY SAVINGS AGREEMENT (“Agreement”) is dated as of ____, 2025 (the “Contract Effective Date”) by and between THE CITY OF PHILADELPHIA (“City”) acting through its Procurement Department and THE PHILADELPHIA ENERGY AUTHORITY, a body corporate and politic organized and existing under the laws of the

Commonwealth of Pennsylvania (“Authority” or “PEA”).

RECITALS

WHEREAS, the Authority is a body corporate and politic organized under the provisions of the Municipalities Authorities Act of 2001 (the Act of June 19, 2001, P.L. 287, No. 22, as amended) pursuant to ordinances of the Council of the City; and

WHEREAS, the Authority is authorized by an Ordinance approved on July 29, 2010 (Bill No. 100163-AA), as amended by Ordinances approved on January 3, 2019 (Bill No. 181007) and February 22, 2022 (Bill No. 220294), to take actions concerning the development or facilitation of energy efficiency and conservation projects on behalf of the City; and

WHEREAS, the City has requested that the Authority enter into a Guaranteed Energy Savings Contract (the “Guaranteed Energy Savings Contract” or “GESC”) with Johnson Controls, Inc. (together with any successors or assigns, the “Vendor”), to evaluate and implement energy conservation and efficiency measures designed to reduce energy, water, wastewater or other consumption or operating costs, including without limitation the power to evaluate, design, install, finance, own, operate, maintain and lease (either in the capacity as lessor or lessee) related equipment, facilities, structures, fixtures (the “Project”); and

WHEREAS, the City and the Authority anticipate financing the installation of the energy efficiency and conservation measures through the issuance of tax-exempt and/or taxable bonds (the “Project Bonds”) by the Authority, and anticipate that the City will enter into a service agreement with the Authority pursuant to which the Authority will, at the direction of and with the cooperation of the City, undertake the Project and the City will make service fee payments to the Authority sufficient to timely meet, inter alia, all debt service (including any prepayments) on the Project Bonds; and

WHEREAS, the Council of the City of Philadelphia enacted an ordinance, Bill No.

, approved by the Mayor on____, 2025, duly empowering the City and the Authority to enter this Agreement and Exhibits thereto; and

WHEREAS, by resolution dated____, 2025, the Board of Directors of the Authority has authorized its Chairman, Vice-Chairman or its President & CEO to, among other things, execute this Agreement and the GESC; and

WHEREAS, the Vendor and the Authority propose to enter into the GESC, in the form attached hereto as Exhibit A, contemporaneously with this Agreement.

NOW, THEREFORE, in consideration of the mutual promises and agreements contained herein and for other valuable consideration, the City and the Authority (collectively, the “Parties”), intending to be legally bound, hereby agree as follows:

1. Definitions.

Capitalized terms used and not defined in this Agreement shall have the meanings ascribed to them in the GESC.

2. Term.

The term of this Agreement shall commence on the Contract Effective Date and shall terminate one day after the expiration or termination of the GESC; provided that to the extent that any obligations of the Authority under the GESC survive expiration or termination of the GESC, the City’s corresponding obligations under this Agreement shall remain in effect and be enforceable following such expiration or termination.

3. Obligations of the Authority.

(a) Authority shall provide all required administrative services necessary to fulfill its obligations to the Vendor and the City for the prompt and timely submission of any required representations and documents required under the GESC (the

“Administrative Obligations”).

(b) The Authority shall provide the City with copies of any notices received by the Authority from the Vendor, unless the Authority shall have determined by reasonable means that the City received a copy of such notice directly from such party.

(c) The Authority shall provide the City with copies of any notices received from any governmental authority with respect to the Project in relation to the performance or transactions contemplated by this Agreement, the GESC, or the other operative documents.

(d) The Authority shall not amend, modify, alter or otherwise change the GESC, once fully executed, without the prior written consent of the City.

(e) The Authority shall not assign the GESC once fully executed, without the prior written consent of the City.

(f) The Authority shall pay over to the City any payments due from the Vendor with respect to the GESC other than payments such as indemnities of PEA that are intended for the direct benefit of PEA.

(g) The Authority shall transfer all rights and ownership to the City of all energy conservation measures, equipment, warranties, licenses, or other materials obtained from the Vendor in accordance with the GESC; provided that PEA may retain copies of all documents related to the administration of the GESC.

(h) The Authority shall cause the Vendor to comply with Chapter 17 of the Philadelphia Code, including but not limited to Articles 36, 37, 38, 39 and 47 of the GESC and shall itself comply with Chapter 17 of the Philadelphia Code to the extent that it applies to the Authority.

4. Obligations of the City

(a) With the exception of Administrative Obligations, the City assumes and shall perform all other non-financial obligations of the Authority to the Vendor under the GESC and all obligations which PEA undertakes to cause the City to Perform. In addition, except in cases where payments to the Vendor are made from the proceeds of the Project Bonds, the City shall make timely payments to the Authority for all approved invoices submitted to the City by the Authority for services, products, or materials provided by the Vendor under the GESC or damages, termination payments, Break Fee, indemnification, charges, reimbursements, or any other payment of any kind, in each case payable by the Authority under the GESC. The City's payment obligations further include payments required to be made pursuant to a limited notice to proceed approved by the City that is issued prior to the satisfaction of conditions precedent pursuant to Section 4.3 of the GESC.

(b) The City shall timely and promptly review all required representations and documents, and shall confirm the accuracy of any representations and provide timely approvals of all documents required under the GESC.

(c) The City shall perform all of the Authority's obligations to the Vendor under the GESC which it has obligated itself to undertake herein in a prompt and timely manner.

(d) The City will promptly furnish information as needed by the Authority to comply with this agreement or the vendor to perform the GESC.

5. Indemnification.

Subject to the provisions and limitations of this Section and to the extent permitted at law, the City hereby indemnifies and holds harmless the Authority and each member, officer, and employee of the Authority against any and all claims, losses, damages or liabilities, joint and several, to which the Authority or any member, officer or employee of the Authority or any member, officer or employee of the Authority may become subject, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of this Agreement or the GESC, unless the losses, damages or liabilities arise from an adjudication of gross negligence, bad faith, fraud or deceit of the member, officer or employee of the Authority. In the event any claim is made or

action brought against the Authority, or any member, officer, or employee of the Authority, the Authority may request that the City assume the defense of the claim and any action brought thereon and pay all reasonable expenses incurred therein; or the Authority may assume the defense of any such claim or action, provided, however, that counsel selected by the Authority shall be approved by the City and the City shall reimburse the Authority's associated reasonable costs of such defense, and further provided that the City may engage its own counsel to participate in the defense of any such action. The defense of any such claim shall include the taking of all actions necessary or appropriate thereto. The City's obligations to the Authority under this indemnity survive any termination of this Agreement or assignment to a Successor Authority (as defined below).

6. Successor Authority.

In the event that the Authority ceases to exist or otherwise does not perform its obligations hereunder, or the City chooses to cause the Authority to assign the GESC to another authority, the City shall have the right to appoint and substitute a successor authority (the "Successor Authority") to succeed to the rights and assume the obligations of the Authority hereunder, in which event, the City shall cause such Successor Authority to assume all obligations and liabilities of the Authority under the GESC. The City's foregoing right to appoint a Successor Authority shall be a continuing right and shall not be exhausted by the exercise thereof. Notwithstanding the foregoing, upon any termination of an Authority, (a) the City shall enter into a new Intergovernmental Agreement, substantially in the form hereof, with any such Successor Authority that succeeds to the rights of or assumes the obligations and liabilities of the Authority under the GESC; and (b) all obligations of the City to a terminated Authority that accrued prior to termination shall survive termination and shall be owed to (i) the Authority to the extent of expenses incurred by the Authority, and (ii) to the Successor Authority that assumes the obligations and liabilities of the terminated Authority under the GESC to the extent they represent unpaid obligations to the Vendor.

7. Limitation of Liability: Special Obligations of the Authority.

Notwithstanding anything contained in this Agreement to the contrary, the payment obligations of the Authority arising under the GESC are special obligations of the Authority, payable solely from proceeds of the Project Bonds and payments received from the City. The Authority will do all things within its power to timely request funds from the City to fulfill its payment obligations.

In the event no City funds or insufficient City funds are appropriated and budgeted in any City Fiscal Year for payments due under this Agreement or the GESC, then the City will notify the Authority of such occurrence and this Agreement shall terminate on the last day of the City's Fiscal Year for which appropriations were received without penalty or expense to the City of any kind whatsoever.

The City's obligations under this Agreement shall not create any indebtedness of the City within the meaning of any constitutional or statutory provision relating to the incurrence of debt by the City.

8. Tort Claims Act.

Nothing in this Agreement or the GESC shall waive or be construed to waive or amend, or be deemed to waive or amend, any tort immunity which the City or the Authority, or their officials, members, officers, agents, employees or representatives, may have under Title 42, Chapter 85 of the Pennsylvania Consolidated Statutes Annotated, as applicable, or other Applicable Law.

9. Representations and Warranties of Authority. The Authority represents and warrants that:

(a) The Authority is a body corporate and politic, validly existing under the Constitution and laws of the Commonwealth of Pennsylvania with full legal right, power and authority to enter into and perform the obligations under this Agreement.

(b) The Authority has duly authorized the execution and delivery of this Agreement. This Agreement has been duly

executed and delivered by the Authority and constitutes a legal, valid and binding obligation of the Authority enforceable against the Authority in accordance with its terms.

(c) Neither the execution nor the delivery by the Authority of this Agreement nor the performance by the Authority of its obligations hereunder nor the consummation by the Authority of the transactions contemplated hereby (1) conflicts with, violates or results in a breach of any Applicable Law in effect on the date as of which this representation is being made or (2) conflicts with, violates or results in a breach of any term or condition of any judgment, decree, agreement or instrument to which the Authority is a party or by which the Authority or any of its properties or assets are bound, or constitutes a default thereunder.

(d) (1) The Authority will execute the GESC. The Authority is duly authorized to execute and deliver the GESC. The GESC will constitute legal, valid and binding obligations of the Authority, enforceable against the Authority in accordance with its terms except insofar as such enforcement may be affected by bankruptcy, insolvency, receivership, moratorium and other laws affecting creditors' rights generally; and (2) the City was allowed to review and approve the form of the GESC prior to its execution, in the form executed by the Authority and the Vendor.

(e) There is no action, suit or other proceeding as of the Contract Effective Date, at law or in equity, before or by any court or governmental authority, pending or, to the Authority's best knowledge, threatened against the Authority which is likely to result in an unfavorable decision, ruling or finding which would materially and adversely affect the execution or delivery of this Agreement or the validity or enforceability of the GESC or any other agreement or instrument entered into by the Authority in connection with the transactions contemplated hereby.

(f) The Authority has complied with the provisions of Chapter 17-1400 of the Philadelphia Code, including the provisions of Subsection 17-1404(3), in awarding the GESC as though such agreement was directly subject to the provisions of Chapter 17-1400.

10. Representations and Warranties of the City. The City hereby represents and warrants that:

(a) The City is a body corporate and politic validly existing under the Constitution and laws of the Commonwealth of Pennsylvania with full legal right, power and authority to enter into and perform its obligations under this Agreement.

(b) The City has duly authorized the execution and delivery of this Agreement and the taking of any and all actions as may be required on its part to carry out and to give effect and to consummate the transactions contemplated by this Agreement and this Agreement has been duly executed and delivered by it and constitutes a legal, valid and binding obligation of the City, enforceable against the City in accordance with its terms, except as such enforcement may be limited by laws relating to bankruptcy, insolvency, reorganization, receivership, arrangement, moratorium and other laws affecting creditors' rights, by equitable principles, whether considered at law or in equity, and by the exercise of judicial discretion in appropriate cases.

(c) Neither the execution nor the delivery by it of this Agreement, nor its performance of its obligations in connection with the transactions contemplated hereby nor its fulfillment of the terms or

conditions hereof (1) conflicts with, violates or results in a breach of any Applicable Laws in effect on the date as of which this representation is being made, or (2) conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default thereunder.

(d) There is no action, suit or other proceeding as of the Contract Effective Date, at law or in equity, before or by any court or governmental authority, pending or, to the City's best knowledge, threatened against the City having a material adverse effect on the right of the City to execute this Agreement or its ability to comply with its obligations under this Agreement.

(e) The City has no knowledge of any Applicable Law in effect on the date as of which this representation is being made which would prohibit the performance by the City of this Agreement and the transactions contemplated hereby.

11. Effect of City Approval

Review, approval or acceptance by either Party of any documents submitted by the other Party or the Vendor under or in connection with the Agreement or the GESC shall not constitute approval otherwise required under Applicable Law by any and all City departments, boards or commissioners, or by any other federal, state, or local governmental authority having jurisdiction.

12. No Merger.

The rights and obligations of the Parties under this Agreement shall remain in effect and shall not merge, even if the same Party holds rights of both Parties hereunder, unless such Party terminates this Agreement in writing.

13. Severability.

In the event that any of the provisions, or portions or applications thereof of this Agreement are held to be unenforceable or invalid by any court of competent jurisdiction, the Parties shall negotiate an equitable adjustment in the provisions of this Agreement with a view toward effecting the purpose of this Agreement, and the validity and enforceability of the remaining provisions, or portions or applications thereof, shall not be affected thereby.

14. Notice.

Any notice required to be given by City to the Authority hereunder shall be in writing and shall be addressed to:

The Philadelphia Energy Authority 30 S. 15th
Street
Suite 801
Philadelphia, PA 19102 Attention: President &
CEO

Any notice required to be given by the Authority to the City hereunder shall be in writing and shall be addressed to:

City of Philadelphia Office of Sustainability 1515 Arch Street,
13th Floor
Philadelphia, PA 19102 Attention:
Energy Manager

with a copy to:

City of Philadelphia Law Department One Parkway
Building
1515 Arch Street, 16th Floor Philadelphia, PA
19102
Attention: Divisional Deputy City Solicitor - Right of Way and Utilities

All notices under this Section shall be delivered in person, sent via certified mail with a return receipt requested or sent via facsimile or electronic mail and shall be effective when received at the address specified above. The Parties hereto, by like notice in writing, may designate, from time to time, another address or facsimile number to which notices may be given pursuant to this Agreement.

15. Entire Agreement.

This Agreement contains the entire agreement between the Parties hereto and supersedes any and all prior written and oral agreements, proposals, negotiations, understandings and representations pertaining to the subject matter hereof.

16. Amendments.

The parties acknowledge that from time to time the Agreement may require amendments to support the Parties interests and obligations under the GESC. Such requests for amendment from either Party shall not be unreasonably denied or delayed. However, no amendments or modifications of this Agreement shall be valid unless evidenced in writing and signed by a duly authorized representative of the Party against which enforcement is sought.

17. No Third-Party Rights.

This Agreement and all rights hereunder are intended for the sole benefit of the Parties and shall not imply or create any rights on the part of, or obligations to, any other person.

18. No Conflict.

To the extent of any conflict between the terms and conditions set forth in this Agreement, notwithstanding the City's assumption of the Authority's obligations in Section 4 of this Agreement, and the Guaranteed Energy Savings Contract, the terms and conditions of the Guaranteed Energy Savings

Contract shall govern.

19. Termination for Convenience.

The City may for any reason, including the City's own convenience, direct the Authority to terminate the GESC by exercising the Authority's rights under Article 22 (Termination for Convenience) of the GESC. The City shall provide the Authority written notice of its exercise of this termination option and upon receipt of such written notice the Authority shall terminate the GESC as set forth in Article of the GESC. This Agreement shall then terminate in accordance with Section 2 of this Agreement.

[Signature pages follow]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first above written.

APPROVED AS TO FORM:

Renee Garcia, City Solicitor

By:

Laura Antinucci Deputy City Solicitor

THE CITY OF PHILADELPHIA, acting

through its Procurement Department

By:

Monique Nesmith-Joyner Commissioner

THE PHILADELPHIA ENERGY AUTHORITY

By:

Emily Schapira President & CEO