

City of Philadelphia



(Bill No. 110787)

AN ORDINANCE

Authorizing the Procurement Commissioner, on behalf of the City of Philadelphia, to enter into a guaranteed energy savings contract with the Philadelphia Municipal Authority for the 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 (the “City”) owns and operates, or leases and operates, the four (4) properties located at (1) Broad Street & Market Street, Philadelphia, Pennsylvania 19107; (2) 1301 Filbert Street, Philadelphia, Pennsylvania 19107; (3) 1401 JFK Boulevard, Philadelphia, Pennsylvania 19102; and (4) 1515 Arch Street, Philadelphia Pennsylvania 19102 (respectively: City Hall, the Criminal Justice Center, the Municipal Services Building and One Parkway Building); 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 Mayor’s Office of Sustainability (MOS) and the Department of Public Property have requested that 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 Philadelphia Municipal Authority (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, Noresco, LLC, has been selected through a competitive process, to provide energy conservation measures in accordance with a Request for Proposals; and

WHEREAS, The Project will require the Authority to enter into a guaranteed energy savings agreement with Noresco, LLC for the Project, and the City will undertake certain obligations of the Authority to Noresco, LLC; now therefore,

City of Philadelphia

BILL NO. 110787 continued

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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 Philadelphia Municipal Authority, under which the Authority will cause Noresco, LLC 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 Noreseo, LLC., and the City will undertake certain obligations of the Authority to Noresco, LLC.

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) 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 Noresco LLC's default. Any price increase must be supported by a demonstration of additional costs to Noresco, LLC 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 \$12,284,534 shall not be increased by more than ten percent without approval by an ordinance of City Council.

SECTION 3. The guaranteed energy savings contract between the Authority and Noresco, LLC 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. 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.

City of Philadelphia

BILL NO. 110787 continued

Certified Copy

SECTION 6. This Ordinance shall take effect immediately.

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

City of Philadelphia

BILL NO. 110787 continued

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on December 8, 2011. The Bill was Signed by the Mayor on December 14, 2011.

A handwritten signature in cursive script, reading "Michael A. Decker".

Michael A. Decker
Chief Clerk of the City Council