

AMENDED AND RESTATED BYLAWS
OF
THE PHILADELPHIA ENERGY AUTHORITY

ARTICLE I

GENERAL

Section 101. NAME OF AUTHORITY.

The name of the Authority shall be as specified in its Articles of Incorporation:

THE PHILADELPHIA ENERGY AUTHORITY.

Section 102. SEAL OF AUTHORITY.

The Authority may have a corporate seal in the form of a circle containing the name of the Authority, the year of its incorporation and such other details as may be approved by the Board.

Section 103. OFFICE OF AUTHORITY.

The principal office of the Authority shall be at such location within Philadelphia, Pennsylvania as the Board of Directors may from time to time, by resolution, designate.

Section 104. PROJECTS.

Pursuant to the authorization granted by ordinance of the City of Philadelphia (Bill No, 100163-AA), and amended by Bill No. 181007, the Authority's responsibilities shall be limited to actions for and concerning (i) the development, facilitation and/or financing of energy storage and/or generation projects, (ii) the development, facilitation and/or financing of energy efficiency projects, (iii) the purchase or facilitation of energy supply and energy services on behalf of the City of Philadelphia, government agencies, institutions and businesses, as well as the education of consumers regarding choices available in the marketplace, and (iv) the promotion of a vital clean energy sector of the Philadelphia economy and increased employment in the sector by undertaking efforts to strengthen the markets for energy efficiency and energy storage and generation projects. Subject to these limitations, the Authority shall have and may exercise all of the powers set forth in the Municipal Authorities Act of 2001, June 19, P.L. 287, No 22 that are necessary or convenient for carrying out its purposes and responsibilities.

Section 105. AUTHORITY YEAR.

The fiscal year of the Authority shall begin on July 1st and end on June 30th of the following year. The fiscal year may be changed, from time to time, upon resolution of the Board of Directors.

Section 106. ANNUAL EXAMINATION OF RECORDS.

The financial records, books and accounts of the Authority for each fiscal year shall be examined during the first three months of the succeeding fiscal year by a certified public accountant who shall be designated by resolution of the Board. Such annual examination shall cover the immediately preceding fiscal year.

Section 107. RECORDS; DOCUMENTS.

There shall be kept at the principal office of the Authority for inspection by the public, an original or duplicate record of the proceedings of the Board and of each committee at any public meeting, the original or a copy of the Authority's Articles of Incorporation and By-laws, including all amendments and alterations thereto, and the financial records, books, audits, and accounts of the Authority.

Section 108. CONSTRUCTION.

In construing these bylaws, any reference made to Pennsylvania statutes shall be understood to incorporate amendments to such statutes passed subsequent to ratification of these Bylaws.

ARTICLE II

MEMBERS OF THE BOARD OF THE AUTHORITY

Section 201. APPOINTMENT OF BOARD.

Consistent with the Articles of Incorporation, the powers of the Authority shall be exercised by a governing Board called "the Board of the Philadelphia Energy Authority" and shall consist of the number of members set forth from time to time in the Authority's Articles of Incorporation and appointed by resolution by City Council who shall serve without compensation.

Section 202. TERMS OF BOARD MEMBERS

The members shall serve terms of five (5) years on a staggered basis as specified in the Articles of Incorporation, except during the first four years of the Authority's existence during which members shall serve terms of from one to five years. Vacancies shall be filled in the same manner as appointment. The terms of Board members expire on the first day of January; provided that members shall hold office until their successors have been appointed.

Section 203. ATTENDANCE AT BOARD MEETINGS.

Unless excused by the Board of the Authority, a member who fails to attend three consecutive regular meetings of the Board may be removed up to 60 days after the date of the third meeting of the Board which the member failed to attend. The Board shall nominate a new member for approval by City Council.

Section 204. QUALIFICATIONS.

Each Board member shall be a natural person of legal age and shall be a taxpayer in, maintain a business in, or be a citizen of the City of Philadelphia.

Section 205. RESIGNATION OF MEMBERS.

Any member of the Board may resign at any time by giving written notice to the Secretary. Such resignation shall be made in writing and shall take effect at the time specified in the notice. If no time is specified, the resignation shall take effect from the time of its receipt by the Secretary, who shall accept such resignation, noting the day of its reception. The acceptance of a resignation shall not be necessary to make it effective. The Secretary shall promptly notify the proper City of Philadelphia authorities of the resignation of any member of the Board of the Authority. Any member of the Board may resign at any time by giving oral notice to the Board of the Authority at a meeting at which a quorum (excluding the resigning member) is present.

ARTICLE III

OFFICERS

Section 301. OFFICERS

The Officers of the Authority shall be a Chairperson, a Vice-Chairperson, a President, a Secretary, and a Treasurer, and may at the discretion of the Board include one or more Vice-Presidents, Assistant Secretaries, or Assistant Treasurers. The Chairperson, Vice-Chairperson, Secretary and Treasurer shall be elected from the members of the Board of the Authority by vote thereof; and other officers shall be appointed by the Board of the Authority. Any Board member or other eligible person may be elected or appointed to more than one position simultaneously.

Section 302. CHAIRPERSON

The Chairperson shall preside at all meetings of the Board of the Authority. Except as otherwise authorized by resolution of the Board of the Authority, as required by law, the

Chairperson may sign all contracts, deeds and other instruments made by the Authority. At each meeting, the Chairperson, in consultation with the President, shall submit such recommendations and information as the Chairperson may consider proper concerning the business, affairs and policies of the Authority.

Section 303. VICE-CHAIRPERSON

The Vice-Chairperson shall perform all the duties of the Chairperson in the absence or incapacity of the Chairperson; and in case of the resignation or death of the Chairperson, the Vice-Chairperson shall perform such duties as are imposed on the Chairperson until such time as the Board of the Authority shall appoint a new Chairperson.

Section 304. PRESIDENT.

The President shall be the chief executive officer of the corporation and shall have general supervision over the activities and operations of the corporation, subject, however, to the control of the Board of the Authority. The President shall sign, execute, and acknowledge, in the name of the corporation, deeds, mortgages, bonds, contracts or other instruments, authorized by the Board of the Authority, except in cases where the signing and execution thereof shall be expressly delegated by the Board of the Authority, or by these bylaws, to some other officer or agent of the corporation.

The President shall serve *ex officio* as a non-voting member of the Board of the Authority; provided that the Board of the Authority may meet in executive session without the President to review the performance and compensation of the President.

The President shall be responsible for designating an Open Records Officer who will be responsible for responding to public records requests as required by the Pennsylvania Right-to-Know Law. 65 P.S. §§ 67.101-67.3104. Subject to the requirements of the Right-to-Know Law, decisions on approval or disapproval of requests are at the discretion of the Open Records Officer but may be reviewed and overturned by vote of a majority of the Board of the Authority.

Section 305. VICE PRESIDENTS.

The Board of the Authority may appoint one or more Vice-Presidents. The Vice-President, or if there is more than one, the most senior Vice-President in the order of seniority designated by the Board of the Authority, shall possess the powers and may perform the duties of the President, in case of the absence or disability of the President, or a more senior Vice President; and shall do and perform such duties as may be from time to time assigned to them by the Board of the Authority or the President.

Section 306. SECRETARY

The Secretary shall keep or cause to be kept the records of the Authority, shall act as Secretary of the meetings of the Board of the Authority and record all votes, and shall keep a record of the proceedings of the Board of the Authority in a journal of proceedings to be kept for such purpose, and shall perform all duties incident to the office of Secretary.

The Secretary shall keep or cause to be kept in safe custody the seal of the Authority, and shall have power, when required, to affix such seal to all proceedings and resolutions of the Board of the Authority and to all contracts and instruments authorized to be executed by the Authority.

Section 307. TREASURER.

The Treasurer shall have the care and custody of all funds of the Authority and shall de-posit or cause to be deposited the same in the name of the Authority in such bank or banks as the Board of the Authority may select.

The Treasurer, or such other person as authorized by resolution of the Board of the Authority, shall sign all orders and checks for the payment of the money of the Authority, and shall pay out and disburse such monies under the direction of the Board of the Authority.

Except as otherwise authorized by resolution of the Board of the Authority, all such orders and checks shall be countersigned by the Chairperson or Vice-Chairperson. The Treasurer or such other person as authorized by resolution of the Board of the Authority shall keep regular books, written or computerized, of accounts showing receipts and expenditures, and shall render to the Board of the Authority at each regular meeting (or more often when requested) an account of the Authority's transactions and also of the financial condition of the Authority.

The Treasurer, or other such person as authorized by resolution of the Board of the Authority, shall ensure annual financial reports of revenues, expenditures, and debt are prepared and submitted and annual financial audits are conducted in accordance with Pennsylvania Municipal Authorities Act and that the annual financial reports and audit results are presented to the Board of the Authority [for their approval].

Section 308. ASSISTANT SECRETARIES OR TREASURERS.

The Board of the Authority may appoint one or more Assistant Secretaries or Assistant Treasurers. An Assistant Secretary or Assistant Treasurer shall possess the powers and may perform the duties of the Secretary or of the Treasurer, respectively, in case of the

absence or disability of either; and shall do and perform such duties as may be from time to time assigned to them by the Board of the Authority or the President.

Section 309. ADDITIONAL DUTIES; STAFF SUPPORT.

The officers of the Authority shall perform such duties and functions as required by the Board of the Authority, these By-Laws, policies adopted by the Board of the Authority and as provided by law.

The Secretary, Treasurer and any Assistant Secretary or Treasurer may discharge their duties prescribed by these Bylaws through appropriate staff of the Authority subject to the oversight and supervision of such respective officers regarding their respective duties.

Section 310. ELECTION OR APPOINTMENT.

The Chairperson, Vice-Chairperson, Secretary and Treasurer shall be elected at the annual meeting of the Board of the Authority from among the members of the Board of the Authority, and shall hold office for one year or until their successors are appointed and qualified. The President, and any Vice-President, Assistant Secretary or Assistant Treasurer may be appointed at the same time or at any meeting of the Board of the Authority.

Section 311. VACANCIES.

Should the office of Chairperson, become vacant, the Vice Chairperson shall automatically serve as Temporary Chairperson until such time as the Board selects a new Chairperson. If any other office of the Board becomes vacant for any reason, the Board shall promptly choose a successor who shall hold office for the unexpired term in respect of which such vacancy occurred.

Section 312. ADDITIONAL PERSONNEL.

The Authority may from time to time employ such personnel as it deems necessary to exercise its powers, duties and functions, as prescribed by the Municipality Authorities Act, as from time to time amended, and all other laws of the Commonwealth of Pennsylvania applicable thereto. The selection and compensation of the President shall be determined by the Board of the Authority subject to the laws of the Commonwealth of Pennsylvania; the selection of other officers shall be made by the Board of the Authority as provided herein; the selection of other personnel and the compensation of such personnel and of officers who are employees of the Authority shall be determined by the President subject to the overall budgetary authority of the Board of the Authority.

Section 313. EXPENSES.

The members of the Authority shall be entitled to be reimbursed reasonable expenses in connection with the performance of their duties and said expenses shall be itemized on a form prepared by the Authority and duly attested to by the members submitting same.

ARTICLE IV

MEETINGS

Section 401. ANNUAL MEETINGS.

The Annual meeting of the Board of the Authority shall be held following the commencement of the Authority Fiscal Year at such date and time designated by the then-Chairperson. The Board may hold its meeting at such locations as may be approved by the Board from time to time. At the Annual Meeting, the Authority shall establish a schedule of its regularly scheduled meetings during that year.

Section 402. REGULAR MEETINGS.

Regular meetings will be held at such dates and times as are adopted and scheduled at the Annual Meeting. No notice to Board members shall be required for any such regular meeting of the Board.

Section 403. SPECIAL MEETINGS.

The Chairman of the Board of the Authority may, when she or he deems it expedient, and shall upon the written request of two members of the Board, call a Special Meeting of the Board for the purpose of transacting any business designated in the call. The call for a Special Meeting may be delivered to each member of the Board of the Authority or may be mailed to the business or home address of each member. Each member must be notified of a Special Meeting of the Board not less than 24 hours prior to the time of the Special Meeting. At such Special Meeting no business shall be considered other than as designated in the call, but if all of the members of the Board members be present other business may be discussed.

Section 404. EMERGENCY MEETINGS.

No public notice is necessary for emergency meetings called for the purpose of dealing with a real or potential emergency involving a clear and present danger to life or property.

Section 405. RECORDS.

The minutes of the Authority's public meetings shall be taken by the Secretary and promptly recorded, and once reviewed and approved by the Board shall be a public record, and shall be promptly made available for inspection by the public unless their disclosure is inconsistent with the terms of these Bylaws. All resolutions shall be in

writing, and shall be copied in the journal of the proceedings of the Board of the Authority. Records of the Authority are to be made available to the public to the extent required by the Pennsylvania Right-to-Know Law. 65 P.S. §§ 67.101-67.3104.

Section 406. PUBLIC NOTICE OF MEETINGS.

Except for the Emergency Meetings provided for in Section 404, all meetings which are open to all the members of the Philadelphia Energy Authority and which are held with the intent, on the part of the Board members in attendance, to lead to formal action on specific public business of the Authority, shall be duly advertised public meetings held in compliance with the Pennsylvania Sunshine Act. 65 Pa. C.S.A. §§ 701-716. The Authority shall give Public Notice of the specific dates, times, and places of its meetings which are open to the public. The Authority shall give public notice of any established schedule of meetings and of any change in it.

Public Notice means notice of at least 72 hours giving the time, date, and location of any regular meeting of the Authority, or 24 hours of any special meeting, which is open to the public. Public notice shall be given by:

- (a) Posting a copy of the notice prominently in a public place designated by the Authority in its principal offices for the posting of such announcements, and
- (b) Publishing the notice in a newspaper of general circulation in Philadelphia as defined by 45 Pa.C.S. § 101.
- (c) Providing a copy of the notice to interested citizens who request a copy and provide the agency with a stamped self-addresses envelope.

Section 407. MEETINGS OPEN TO THE PUBLIC.

Except in the specific instances listed in section 408, all meetings which are open to all the members of the Philadelphia Energy Authority and which are held with the intent, on the part of the Board members in attendance, to lead to formal action on specific public business of the Authority, are meetings which shall be open to the public. Public business includes the framing, preparation, making or enactment of laws, policy or regulations, the creation of liability by contract or otherwise, or the adjudication of rights, duties and responsibilities, but not including administrative action. Administrative action means the execution of policies relating to persons or things as previously authorized or required by official action of the agency adopted at an open meeting of the Authority.

Section 408: EXECUTIVE SESSIONS

The Board of the Authority may hold an executive session for one or more of the following reasons:

- (a) To discuss any matter involving the employment, appointment, termination of employment, terms and conditions of employment, evaluation of

performance, promotion or disciplining of any specific prospective public officer or employee or current public officer or employee employed or appointed by the agency, or former public officer or employee, provided, however, that the individual employees or appointees whose rights could be adversely affected may request, in writing, that the matter or matters be discussed at an open meeting. The agency's decision to discuss such matters in Executive Session shall not serve to adversely affect the due process rights granted by law, including those granted by Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

- (b) To hold information, strategy and negotiation sessions related to the negotiation or arbitration of a collective bargaining agreement or, in the absence of a collective bargaining unit, related to labor relations and arbitration.
- (c) To consider the purchase or lease of real property up to the time an option to purchase or lease the real property is obtained or up to the time an agreement to purchase or lease such property is obtained if the agreement is obtained directly without an option.
- (d) To consult with its attorney or other professional adviser regarding information or strategy in connection with litigation or with issues on which identifiable complaints are expected to be filed.
- (e) To review and discuss Authority business which if conducted in public would violate a lawful privilege or lead to the disclosure of information of confidentiality protected by law, including matters related to the initiation and conduct of investigations of possible or certain violations of the law and quasi-judicial deliberations.
- (f) To take administrative actions.
- (g) To take any other action permitted from time to time to be taken in executive session by the Pennsylvania Sunshine Act, 65 Pa. C. S. § 701 *et. seq.*

Section 409. MANNER OF VOTING

The voting on all questions coming before the Board of the Authority shall be by roll call, and the ayes and nays shall be entered upon the minutes of such meeting, unless the vote is unanimous of all members present, and in that case the minutes shall so indicate. The Board of the Authority may also take administrative action by the unanimous written consent of the members of the Board.

Section 410. QUORUM.

At all meetings and special meetings of the Board of the Authority a majority of the members of the Board shall constitute a quorum for the purpose of transacting business. If at any meeting of the Board there shall be less than a quorum present, a majority of

those present may adjourn the meeting from time to time until a quorum shall be present. Except as otherwise provided in this Section, all actions of the Board may be taken by a vote of the majority of the members present at any meeting where a quorum exists. In the case of any equality of votes, the Chairperson, shall have a second and deciding vote.

Section 411. ORDER OF BUSINESS.

At the regular meeting and emergency meetings of the Board of the Authority the following shall be the order of business:

1. Roll Call
2. Approval of minutes
3. Treasurer's Report
4. Unfinished Business
5. New Business
6. Adjournment

The order of business may be changed at any meeting by the Chair with the approval of the Board.

Section 412. REMOTE PARTICIPATION.

One or more members may participate in any meeting of the Board of the Authority by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear and speak to one another at the same time. Participation in a meeting by such means shall constitute presence in person at the meeting and therefore shall be counted for the purpose of determining a quorum thereof, and shall entitle such member to exercise all rights and privileges to which such Board member might be entitled were they personally in attendance, including the right to vote and any other rights attendant to presence in person at such meeting.

Section 413. PARLIAMENTARY AUTHORITY.

The rules of the current edition of Robert's Rules of Order Newly Revised will govern Board meetings whenever questions of procedure not covered in these Bylaws arise.

ARTICLE V

COMMITTEES

Section 501. COMMITTEES.

The Board may appoint and dissolve standing and ad hoc Committees as the Board shall determine from time to time. Unless otherwise determined by the Board, the membership of such committees shall consist of such persons, who may be Board members and non-Board members,

as the Chairperson of the Authority shall determine from time to time. The Chairperson shall also appoint and from time to time replace the Chair of each Committee. The Chairperson shall be an ex officio member of all Committees. No Committee shall consist of more Board members than constitute a quorum of the Board.

ARTICLE VI

CODE OF ETHICS

Section 601. CODE OF ETHICS

Board Members and Employees of the Philadelphia Energy Authority are bound by the provisions of the Pennsylvania Public Officials and Employee Ethics Act, 65 Pa. C.S. §§ 1101-1113.

Section 602. ABSTENTION.

Any Board member or employee of the Authority who, in the discharge of their official duties, would be required to take an action or make a decision that would be inconsistent with any of the provisions of the Ethics Act, shall instead take the following actions:

- (a) Prepare a written statement describing the matter requiring action or decision and the nature of their interests affected with respect to such action or decision.
- (b) Cause copies of such statements to be delivered to the Chair and Secretary of the Authority, if they are a Board member, or to their superior and the Secretary/Treasurer if they are an employee.
- (c) If a Board member, they shall deliver a copy of such statements to the Chairperson, and to the Secretary/Treasurer of the Authority and shall abstain from participating in discussion of or vote on the matter. The presiding officer shall cause such statements to be noted in the minutes and shall exclude the member from any votes, deliberations, and other action on the matter.
- (d) If not a Board Member, they shall withdraw from participation in the matter and their superior shall assign it to another employee.

Section 603. ENFORCEMENT.

Any Board member or employee of the Authority who violates the provisions of the Public Officials and Employee Ethics Act shall be subject to immediate dismissal or other disciplinary action by the appointing authority.

ARTICLE VII

LEGAL REPRESENTATION AND INDEMNIFICATION OF BOARD MEMBERS AND EMPLOYEES

Section 701. LEGAL REPRESENTATION.

- (a) The Authority upon written request shall provide legal representation to any person who was or is a Board member, employee, agent or servant of the Authority when an action is threatened or brought against such person and it is alleged that the acts or omissions which gave rise to the claim were within the scope of the office or duties of such person, unless or until there is a judicial determination that such acts or omissions were not within the scope of the office or duties of such person.
- (b) The Authority upon written request may, but is not obligated to, provide legal representation to any person who was or is a Board member, employee, agent or servant of the Authority when an action is threatened or bought against such person and it is not alleged that the acts or omissions which gave rise to the claim were within the scope of the office or duties of such person.
- (c) If pursuant to Section 601(b) above, the Authority does not provide legal representation, the Authority shall reimburse any present or former Board member, employee, agent or servant of the Authority for reasonable expenses of such person's legal defense if there is a judicial determination that the acts or omissions were within the scope of such person's office or duties; provided, however, that the Authority need not reimburse such person when there is a judicial determination that such acts or omissions constituted a crime, actual fraud, actual malice or willful misconduct.
- (d) In any instance where the Authority provides legal representation to a present or former Board member, employee, agent, or servant of the Authority, the Authority shall assume exclusive control of the defense. If legal counsel provided by the Authority determines that the interests of the Authority and the present or former Board member, employee, agent or servant are conflicting, the Authority shall obtain the written consent of such person for such representation or supply independent representation.

Section 702. INDEMNITY.

- (a) The Authority shall indemnify any person who was or is a Board member, employee, agent, or servant of the Authority for the payment of any judgment on a suit where it is judicially determined that such person's acts or omissions caused the injury and were, or such person in good faith reasonably believed such acts or omissions were, within the scope of his or her office or duties; provided, however, if it is judicially determined that such acts of omissions constituted a crime, actual fraud, actual malice or willful misconduct, the Authority may withhold indemnification pursuant to Section 702 (b) below.

(b) The Authority shall indemnify any person who was or is a Board member, employee, agent or servant of the Authority against all reasonable costs and expenses (including without limitation judgments, penalties, fines, amounts paid in settlement, etc) incurred in any actual or threatened investigation or proceeding (whether civil, criminal, administrative or otherwise) if such person, in acting as a Board member, employee, consultant, agent or servant of the Authority, (i) acted in good faith, and (ii) in a manner such person believed to be in the best interest of the Authority, and (iii) with respect to criminal matters, without knowledge that such actions were unlawful. As to (i) and (ii) above, it shall be presumed that a person acted in good faith and in a manner such person believed to be in the best interest of the Authority unless and until it shall be finally adjudged that such person acted in a manner which such person knew not to be in good faith or knew not to be in the best interests of the Authority; or the Authority shall determine that such person acted in a manner which such person knew not to be in good faith or knew not to be in the best interests of the Authority, and shall have received the opinion of its independent counsel that indemnification may be improper under the circumstances. As to (iii) above, a conviction or judgment (whether after trial or based on a plea of guilty or *nolo contendere* or otherwise) shall not be deemed an adjudication adverse to the person to be indemnified unless it shall also be adjudged in such conviction or judgment that such person knew such actions to be unlawful.

(c) It is the intent and obligation of the Authority to indemnify each former and present Board member, employee, agent, or servant in accordance with this indemnity provision and to the maximum extent permitted by law. If any portion of this Article VII is declared to be illegal or unenforceable, then the remaining portions of this Article VII shall be interpreted so as to provide the maximum indemnity permitted by law.

(d) Any person entitled to indemnity pursuant to this Section 702 shall, as a precondition to such indemnity, inform and consult with the Authority prior to incurring any cost or expense from which indemnity is requested. Payment of expenses to be indemnified shall be made as and when incurred by the person to be indemnified, except as otherwise directed by the Authority.

Section 703. ADDITIONAL RIGHTS.

The obligations of the Authority as set forth in this Article VII shall:

- (a) be in addition to and supplemental to any rights of the indemnity pursuant to any insurance contracts;
- (b) be in addition to and supplemental to any right of indemnity pursuant to the “Political Subdivisions Tort Claims Act” or any other right to indemnity; and
- (c) not constitute a waiver of any immunity which might be available to the person entitled to indemnity.

Section 704. OBLIGATION TO COOPERATE.

The obligations of the Authority under this Article VII are conditioned upon the cooperation with the Authority of the person benefited by the provisions of this Article VII; and in the event such person shall fail or refuse to cooperate with Authority as reasonably requested by the Authority, then the Authority may recover all costs and expenses expended on behalf of such person.

ARTICLE VIII

AMENDMENTS

Section 801. AMENDMENTS TO BY-LAWS.

These By-Laws may be altered or amended by a quorum of the Board of the Authority at any regular or special meeting of the Board. Notice of such proposed alteration, amendment or repeal shall have been given in writing to each Board member at least ten days prior to the meeting at which action thereon is to be taken.

WHEREFORE, the Authority has caused these Amended and Restated By-Laws to be adopted by Resolution at its meeting held this 2nd day of December, 2020.