



(Bill No. 1563-A)

AN ORDINANCE

Explanation:

[**Bold Brackets**] indicate matter deleted on Final Passage.

Bold Italics indicate new matter added on Final Passage.

Setting forth and approving an intergovernmental cooperation agreement between the City of Philadelphia and the Pennsylvania Intergovernmental Cooperation Authority ("PICA"), and requiring that prior to the submission of certain documents to PICA the Mayor shall submit them for approval by resolution of City Council.

WHEREAS, The General Assembly of the Commonwealth of Pennsylvania has enacted the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class (Act of June 5, 1991, P.L. ____ No. 6) (the "Act"); and

WHEREAS, The Act declares it to be the public policy of the Commonwealth of Pennsylvania (the "Commonwealth") to exercise its retained sovereign powers with regard to taxation, debt issuance and matters of state-wide concern in a manner calculated to foster the fiscal integrity of cities of the first class to assure that these cities provide for the health, safety and welfare of their citizens; avoid interruption of essential city services; pay principal and interest owed on their debt obligations

when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper financial planning procedures and budgeting practices; and

WHEREAS, In accordance with the Act the Pennsylvania Intergovernmental Cooperation Authority (the "Authority") has been created, a governing board of the Authority has been duly appointed, and the Authority has initiated actions to provide the City with access to capital markets for deficit elimination and to foster sound financial planning and budgetary practices that will address the underlying problems which result in such deficits; and

WHEREAS, The City of Philadelphia is a city of the first class requiring the financial assistance of the Authority; and

WHEREAS, In order to foster cooperative action between the Authority and the City to reach common ends, it is necessary to further define and detail the undertakings of the Authority and the City in an Intergovernmental Cooperation Agreement (the "Agreement") as anticipated in the Act; and

WHEREAS, The City Council is the governing body of the City, and as such is responsible for approving all operating and capital budgets and amendments thereto and should, accordingly, participate fully in the interchanges of information and the development of City financial plans required by the Agreement and the Act; now therefore

The Council of the City of Philadelphia hereby ordains:

SECTION 1. The Intergovernmental Cooperation Agreement attached hereto as Exhibit "A," and incorporated herein, is hereby approved, and all

appropriate officers of the City are hereby authorized to execute such Agreement, and, consistent with the terms of this ordinance, implement its provisions.

SECTION 2. Prior to the submission to the Authority of the initial financial plan pursuant to Section 4.01(a) of the Agreement, and prior to the submission of a proposed revision to the plan pursuant to Section 4.07 or 4.08(b) of the Agreement or of proposed remedial action pursuant to Section 4.10(b)(ii) of the Agreement, if such proposed revision or remedial action will require the adoption of an ordinance of City Council for its implementation, the Mayor shall submit such financial plan, revisions thereto and proposals for remedial action (individually and collectively to be referred to hereinafter as a "filing") to City Council for preliminary approval by resolution. Without said approval no filing shall be deemed an official filing by the City: Provided, however, that in the event that City Council has no regularly scheduled meeting within ten (10) days of the time the administration has completed the preparation of a filing and is ready to submit said filing to the Authority, the administration may request the President of City Council to waive the requirement for Council approval by resolution, and if the President of City Council determines that time is of the essence and elects not to call a special meeting of City Council, the President of City Council may waive the requirement that City Council approve the filing by resolution, such waiver to be in writing and addressed to the Mayor, the Finance Director and each Councilmember. Further provided, that if City Council fails to approve or disapprove a request for approval of any of the filings within ten (10) days of the submission of the request, or if the President of City Council fails to approve or disapprove a waiver within ten

(10) days of the submission of the request, City Council's approval, and where appropriate, the President of City Council's waiver, shall be deemed to have been given.

SECTION 3. All written financial, contract-related, and other reports and written communications submitted to the Authority by the City pursuant to the Agreement or the Act shall simultaneously be submitted to the President of the Council for immediate distribution to all members of City Council, and all decisions, recommendations, and other written communications received from the Board shall be submitted to the President of the Council for immediate distribution to all members of City Council immediately upon receipt thereof by any City official.

SECTION 4. All proposed amendments to the Agreement shall be submitted to the President of City Council for immediate distribution to all members of City Council. If the President of City Council determines that the proposed amendments are substantial in nature, they shall be submitted to City Council for approval by ordinance. An amendment is substantial in nature if it changes the terms of the Agreement to materially alter the relationship of the parties to the Agreement, directly or indirectly increases the City's financial obligations under the Agreement, materially diminishes the obligations of the Authority to the City under the Agreement or otherwise adversely affects the rights of the City or any official of the City under said Agreement. If the President of City Council determines that proposed amendments are not substantial in nature, the appropriate officers of the City are authorized to execute such amendments, and, consistent with the terms of this ordinance, implement their provisions.

APP. NO. 678-5

INTERGOVERNMENTAL COOPERATION
AGREEMENT
by and between
PENNSYLVANIA INTERGOVERNMENTAL
COOPERATION AUTHORITY
and
THE CITY OF PHILADELPHIA

Dated as of _____, 1992

TABLE OF CONTENTS

	<i>Page</i>
ARTICLE I — DEFINITIONS	
Section 1.01	Definitions..... 11
Section 1.02	Rules of Construction 16
ARTICLE II — ISSUANCE OF BONDS BY THE AUTHORITY	
Section 2.01	Initial Issuance of Bonds to Finance a Deficit..... 16
Section 2.02	Application of Net Proceeds of Initial Bonds..... 19
Section 2.03	Additional Bonds of the Authority ... 19
ARTICLE III — THE CITY ACCOUNT	
Section 3.01	Establishment of the City Account... 21
Section 3.02	Deposits into the City Account 21
Section 3.03	Investment of the City Account..... 24
Section 3.04	Disbursement of Funds from the City Account..... 24
ARTICLE IV — PREPARATION, APPROVAL AND EFFECT OF THE CITY'S FINANCIAL PLAN	
Section 4.01	Submission of the Financial Plan..... 25
Section 4.02	Standards for the Financial Plan..... 27
Section 4.03	Form of the Financial Plan..... 28
Section 4.04	Supporting Information, Opinions, and Statements for the Financial Plan..... 29
Section 4.05	Authority Consultation with the City in Preparation of the Financial Plan..... 31
Section 4.06	Authority Review and Approval of the Financial Plan 31

	<i>Page</i>
Section 4.07	Authority Disapproval of the Financial Plan 32
Section 4.08	Revisions to the Financial Plan..... 33
Section 4.09	Supplemental Reports 34
Section 4.10	Determination of Adherence to or Variance from the Financial Plan 36
Section 4.11	Authority Recommendations 37
Section 4.12	Withholding of Funds..... 37
Section 4.13	Exemptions to Withholding by the Commonwealth 39
Section 4.14	Commonwealth's Failure to Disburse Funds 40
 ARTICLE V — ADDITIONAL AGREEMENTS OF THE CITY AND THE AUTHORITY	
Section 5.01	Authority Budgets 41
Section 5.02	Authority Taxes 41
Section 5.03	Additional Reporting Requirements of the City 42
Section 5.04	Inspection Rights 44
Section 5.05	Independent Audits..... 45
Section 5.06	Contracts of the City 46
Section 5.07	Collective Bargaining Agreements of the City 49
Section 5.08	Arbitration Awards 50
Section 5.09	City Expenditure of Available Funds 52
Section 5.10	Additional Remedies of Authority for Failure to File Financial Plans and Reports 53
 Article VI — MISCELLANEOUS	
Section 6.01	Term 53
Section 6.02	General Rights and Prohibitions..... 54

	<i>Page</i>
Section 6.03	Compliance with the Act;
	Severability 54
Section 6.04	Notices 54
Section 6.05	Governing Law..... 56
Section 6.06	No Third Party Rights..... 56
Section 6.07	Amendments and Waivers 56
EXHIBIT "A"	Principal Terms of Proposed Extraordinary Contracts
EXHIBIT "B"	Principal Terms of Proposed Bond Purchase Agreements (Estimated)
EXHIBIT "C"	<i>Corporate Entities</i>

INTERGOVERNMENTAL COOPERATION
AGREEMENT

THIS INTERGOVERNMENTAL COOPERATION AGREEMENT made and entered into as of the ____ day of _____, 1992, by and between the PENNSYLVANIA INTERGOVERNMENTAL COOPERATION AUTHORITY, a body corporate and politic constituting a public authority and instrumentality of the Commonwealth of Pennsylvania (the "Authority"), and the CITY OF PHILADELPHIA, a city of the first class of the Commonwealth of Pennsylvania (the "City");

W I T N E S S E T H :

WHEREAS, The General Assembly of the Commonwealth of Pennsylvania has enacted the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class (Act of June 5, 1991, P.L. _____, No. 6) (the "Act"); and

WHEREAS, The Act declares it to be the public policy of the Commonwealth of Pennsylvania (the "Commonwealth") to exercise its retained sovereign powers with regard to taxation, debt issuance and matters of state-wide concern in a manner calculated to foster the fiscal integrity of cities of the first class to assure that these cities provide for health, safety and welfare of their citizens; pay principal and interest owed on their debt obligations when due; meet financial obligations to their employees, vendors and suppliers; and provide for proper financial planning procedures and budgeting practices; and

WHEREAS, The Act further declares that the inability of a city of the first class to provide essential services to its citizens as a result of a fiscal emergency has been determined to affect adversely the health, safety and welfare not only of the citizens of that municipality but also of other citizens of the Commonwealth; and

WHEREAS, In accordance with the Act, a governing board of the Authority has been duly appointed and has initiated actions intended to provide the City with access to capital markets for deficit elimination and to foster sound financial planning and budgetary practices that will address the underlying problems which result in such deficits; and

WHEREAS, In order to implement such cooperative intergovernmental actions, it is necessary to further define and detail the undertakings of the Authority and the City in this Agreement as anticipated in the Act; and

WHEREAS, The Act declares that the Commonwealth may attach conditions to grants of authority to incur indebtedness or assistance to the City in order to ensure that deficits are eliminated and access to capital markets is achieved and maintained, and that such conditions shall be incorporated into one or more intergovernmental cooperation agreements between the Authority and the City; and

WHEREAS, The Authority and the City intend that this Agreement constitute such an intergovernmental cooperation agreement incorporating certain of such conditions in accordance with the Act; and

WHEREAS, By resolution approved by a qualified majority of its governing board, the Authority has authorized the execution and delivery of this Agreement by the Authority; and

WHEREAS, By ordinance of its City Council, approved by the Mayor, the City has authorized the execution and delivery of this Agreement by the City and has determined that this Agreement constitutes a service agreement as provided for in Section 8-200(3) of the City's Home Rule Charter; and

WHEREAS, In furtherance of the legislative intent of the Act and the actions to be undertaken by the Authority pursuant to the Act and this Agreement, the City, by Ordinance (Bill No. 1437) of its City Council, approved by the Mayor on June 12, 1991, has enacted exclusively for purposes of the Authority a one and one-half percent (1½%) tax on wages, salaries, commissions and other compensation earned by residents of the City and on the net profits earned in businesses, professions or other activities conducted by residents of the City (the "Authority Tax");

NOW, THEREFORE, for good and valuable consideration, and intending to be legally bound hereby, the Authority and the City agree as follows:

ARTICLE I DEFINITIONS

SECTION 1.01. Definitions.

In addition to any words and terms elsewhere defined in this Agreement, the following words and terms, when used in this Agreement, shall have the following respective meanings, unless the context clearly requires

otherwise. Any other words and terms used in this Agreement which are defined in the Act are used in this Agreement as so defined in the Act.

"Act" shall mean the Pennsylvania Intergovernmental Cooperation Authority Act for Cities of the First Class (Act of June 5, 1991, P.L. _____, No. 6), as it may be amended, supplemented or otherwise modified and in effect from time to time.

"Additional City Documents" shall mean any and all additional documents, instruments, certificates and agreements delivered by or on behalf of the City pursuant to Section 2.01(d) or 2.03 hereof.

"Agreement" shall mean this Intergovernmental Cooperation Agreement, as it may be amended, supplemented or otherwise modified and in effect from time to time.

"Authority Tax" shall have the meaning given to that term in the recitals to this Agreement.

"City Account" shall mean the account so designated and established pursuant to Section 3.01 of this Agreement.

"City Account Depository" shall have the meaning given to that term in Section 3.01 hereof.

"City Controller" shall mean the City Controller of the City.

"City Council" shall mean the City Council of the City.

"Code" shall mean the Internal Revenue Code of 1986, as amended, and all regulations promulgated from time to time thereunder.

"Commonwealth" shall mean the Commonwealth of Pennsylvania.

"Corporate Entity" shall mean an authority or other corporate entity, *now existing or hereafter created*, of which one or more of the members of its governing board are appointed by the Mayor and which performs governmental functions for the City[.], *and currently including, without limitation, those authorities and corporate entities listed in Exhibit "C" attached hereto.*

"Covered Fund" or "Covered Funds" shall mean the principal operating fund or funds of the City, now existing or hereafter created, and shall include the General Fund, the General Capital Fund, and the Grants Revenue Fund and any other principal operating fund of the City which becomes a member of the City's Consolidated Cash Account.

"Days" shall mean, with respect to any period of time under consideration, the number of calendar days during such period excluding the first and including the last day of such period. Whenever the last day of any such period shall fall on a Saturday or Sunday, or on any day made a legal holiday by the laws of the City, the Commonwealth, or of the United States, such day shall be omitted from the computation.

"Deficit" shall mean as of any relevant date of determination or estimation thereof with respect to any Covered Fund or Funds, the amount of such negative fund balance as is reasonably estimated, projected or determined by the City to exist in any such Covered Fund or Funds as of the close of the relevant fiscal year, as

calculated pursuant to the modified accrual basis of accounting according to generally accepted standards and set forth in the relevant approved Financial Plan.

“Director of Finance” shall mean the Director of Finance of the City.

“Extraordinary Contract” shall mean any contract or agreement to which the City is a party or under or on account of which the City may be or become obligated, directly or indirectly, pursuant to which the City will (or upon the occurrence of certain events or circumstances or the satisfaction of certain conditions may) incur a financial obligation or confer a financial benefit upon another, in either case in excess of one million (\$1,000,000) dollars during any fiscal year of the City during the term of such contract or agreement or in excess of five million (\$5,000,000) dollars in the aggregate during the term of such contract or agreement. The City shall not divide individual contracts into separate contracts for purposes of avoiding such limits. Notwithstanding the foregoing, the term “Extraordinary Contract,” (a) shall in all cases include, without limitation, any contract or agreement to which the City is a party and which relates to the borrowing of money by the City (regardless of the amount thereof and regardless of whether such borrowing would legally constitute indebtedness of the City), or the direct or indirect guaranty or incurrence of a liability by the City (through an agreement of guaranty or suretyship, a service agreement or lease with an authority, or otherwise) of or on account of all or any portion of any indebtedness for money borrowed by another person or entity, (b) shall not include any contracts or agreements entered into by the City in the ordinary and usual course

of business for the purchase of materials, equipment or supplies or for construction, alteration, repairs, maintenance or other services which are, in any such case, subject to the competitive bidding requirements of the Home Rule Charter or other relevant Pennsylvania law, and (c) shall not include any collective bargaining agreements entered into by the City with any labor union representing any employees of the City.

"Financial Plan" shall mean each financial plan of the City, including all amendments, supplements or revisions thereto from time to time, required to be prepared in accordance with the requirements of Article IV hereof.

"Governor" shall mean the Governor of the Commonwealth.

"Home Rule Charter" shall mean the Philadelphia Home Rule Charter as adopted by the electors of the City of Philadelphia on April 17, 1951, as it may be amended, supplemented or otherwise modified and in effect from time to time.

"Initial Bonds" shall have the meaning given to that term in Section 2.01 hereof.

"Initial Bond Request" shall have the meaning given to that term in Section 2.01 hereof.

"Mayor" shall mean the Mayor of the City.

"Net Proceeds" shall have the meaning given to that term in the Act.

"Outstanding" shall mean, with respect to any bonds of the Authority issued from time to time, all such bonds except, (a) bonds purchased by the Authority or the City for cancellation by the Authority or otherwise required to

be canceled by the Authority, and (b) bonds for the payment of the principal of and interest on which moneys or investments sufficient to make such payments timely have been irrevocably deposited with a fiduciary for obligees of the Authority owning such bonds, in each case subject to such limitations and such additional requirements with regard to the payment or provision for payment or cancellation of such bonds as may be set forth in any agreement between the Authority and any obligee of the Authority.

"School District" shall mean The School District of Philadelphia, Pennsylvania.

"Secretary of the Budget" shall mean the Secretary of the Budget of the Commonwealth.

"Special Fund" shall mean any fund (other than the General Fund), whether governmental, proprietary or fiduciary in nature, now existing or hereafter created on the books of account of the City to account for the receipt and use by the City of financial resources dedicated, earmarked or otherwise in any manner restricted for a particular purpose.

"Supplemental Funds" shall mean the Water Fund and the Aviation Fund of the City.

"Variance" shall have the meaning given to that term in Section 4.10 hereof.

SECTION 1.02. Rules of Construction.

Unless the context of this Agreement clearly requires otherwise, references to the plural include the singular, the singular the plural, and the part the whole. The words "hereof," "herein," "hereunder" and similar terms in this

Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement. The section and other headings contained in this Agreement and the table of contents preceding this Agreement are for reference purposes only and shall not control or affect the construction of this Agreement or the interpretation thereof in any respect. Section, subsection and exhibit references are to this Agreement unless otherwise specified. References in this Agreement to any section or subsection of the Act are to such sections or subsections of the Act as originally in effect and to any successor sections or subsections.

ARTICLE II

ISSUANCE OF BONDS BY THE AUTHORITY

SECTION 2.01. Initial Issuance of Bonds to Finance a Deficit.

(a) As soon as practicable after the receipt by the Authority of a request by the City therefor in accordance with Section 301(g) of the Act (the "Initial Bond Request") and the approval (or deemed approval) by the Authority of the Initial Financial Plan of the City pursuant to Sections 4.06 or 4.07 hereof, as the case may be, the Authority shall use its best efforts, subject to the provisions of the Act, to issue and sell bonds (the "Initial Bonds") for the purposes of:

(i) financing, as contemplated by Section 317 of the Act, the entire Deficit with respect to the General Fund of the City for its fiscal year ended June 30, 1991, in such amount as shall have been set forth as such in the initial Financial Plan of the City referred to above;

(ii) funding twelve (12) months' capitalized interest on the Initial Bonds;

(iii) funding a debt service reserve fund for the Initial Bonds, in an amount not to exceed ten percent (10%) of the aggregate principal amount of the Initial Bonds;

(iv) paying the costs of issuance and of credit enhancement, if any, for the Initial Bonds;

(v) funding the initial operating expenses of the Authority; and

(vi) any and all other purposes permitted by the Act, as determined by the Authority in its discretion.

(b) If so requested by the City in the Initial Bond Request, the Authority may, in its sole discretion, issue the Initial Bonds for the additional purpose of financing all or a portion of the Deficit with respect to the General Fund of the City for its fiscal year ending June 30, 1992.

(c) The initial Bonds shall be sold at such prices, rates of interest and in accordance with such other terms and conditions as may be determined by the Authority in its discretion, consistent with the requirements of the Act. As soon as practicable after the issuance of the Initial Bonds, the Authority shall furnish to the City a complete copy of the transcript of closing documents relating to the Initial Bonds.

(d) The City agrees to cooperate fully with the Authority with respect to the issuance and sale of the Initial Bonds, such cooperation to include, without limitation, (i) promptly furnishing to the Authority and to such other entities as the Authority may reasonably request all such information (accompanied by such

certifications of the City concerning the accuracy and completeness of such information as the Authority may reasonably request) concerning the City and its finances and operations as the Authority may reasonably request at any time and from time to time (before or after the issuance of the Initial Bonds) in order to enable the Authority timely to prepare or update and distribute to investors or potential investors in the Initial Bonds disclosure documents (and amendments or supplements thereto) concerning the Initial Bonds and the security therefor and in order to enable the Authority otherwise to comply with all relevant federal and state securities laws and regulations in respect of the offering and sale of the Initial Bonds, and (ii) the execution and delivery by or on behalf of the City of such additional documents, instruments, certificates, agreements and legal opinions as may be reasonably determined by the Authority, by bond counsel to the Authority or by the initial purchasers of the Initial Bonds to be necessary or desirable in connection with the issuance and sale of the Initial Bonds or to establish or maintain the exclusion from gross income for Federal income tax purposes of the interest on the Initial Bonds.

(e) The Authority shall use its best efforts to request the information, certifications, documents, instruments, certificates, agreements and legal opinions within a reasonable period of time prior to the dates needed for delivery of the foregoing in order to provide the City with a reasonable period for preparation of such information and documentation.

SECTION 2.02. Application of Net Proceeds of Initial Bonds.

Subject to the provisions of the Act (including, without limitation, Section 202(i) thereof), and subject to the provisions of any of the Additional City Documents or other financing documents executed and delivered by the Authority in connection with the issuance of the Initial Bonds which may require that all or any portion of such Net Proceeds be deposited into an escrow account or similar segregated account subject to special provisions as to the disbursement or application thereof in order to assure compliance with the requirements of the Code applicable to the Initial Bonds, the Authority shall, on the date of its custody and control thereof, or on the business day next succeeding the date of its custody and control thereof, disburse or cause to be disbursed the Net Proceeds of the issuance and sale of the Initial Bonds to the City by wire transfer of immediately available funds to such account of the City as is designated in writing to the Authority by the Director of Finance. Such disbursement of the Net Proceeds of the Initial Bonds shall constitute a grant of such funds by the Authority to the City without obligation on the part of the City to repay such funds to the Authority.

SECTION 2.03 Additional Bonds of the Authority.

(a) As and to the extent permitted by the Act, the Authority may from time to time in its discretion issue and sell one or more series of bonds in addition to the Initial Bonds, but only after receiving a proper request by the City therefor to the extent required by the Act. The City acknowledges that the Authority may, in the exercise of such discretion, refuse to issue any such additional bonds.

The City agrees to cooperate fully with the Authority in connection with the issuance and sale of any such additional bonds, such cooperation to include, without limitation, (i) promptly furnishing to the Authority, and to such other entities as the Authority may reasonably request, all such information (accompanied by such certifications of the City concerning the accuracy and completeness of such information as the Authority may reasonably request) concerning the City and its finances and operations as the Authority may reasonably request at any time and from time to time (before or after the issuance of such additional bonds) in order to enable the Authority timely to prepare or update and distribute to investors or potential investors in such additional bonds disclosure documents (and amendments or supplements thereto) concerning such additional bonds and the security therefor and in order to enable the Authority otherwise to comply with all relevant federal and state securities laws and regulations in respect to the offering and sale of such additional bonds, and (ii) the execution and delivery by or on behalf of the City of such additional documents, instruments, certificates, agreements and legal opinions as may be reasonably determined by the Authority, by bond counsel to the Authority or by the initial purchasers of any such additional bonds to be necessary or desirable in connection with the issuance and sale thereof or to establish or maintain the exclusion from gross income for Federal income tax purposes of the interest thereon.

(b) The Authority shall use its best efforts to request the information, certifications, documents, instruments, certificates, agreements and legal opinions within a reasonable period of time prior to the dates needed for

delivery of the foregoing in order to provide the City with a reasonable period for preparation of such information and documentation.

ARTICLE III THE CITY ACCOUNT

SECTION 3.01. Establishment of the City Account.

As contemplated by the Act, the Authority has heretofore established with CoreStates Bank, N.A., in trust for the exclusive benefit of the City, an account designated as the "City Account." The Authority shall maintain the City Account at all times with CoreStates Bank, N.A. or, upon prior written notice to the City, with any other bank with trust powers or a trust company with a place of business in the Commonwealth selected by the Authority in its discretion. CoreStates Bank, N.A. and any other such depository of the City Account are herein referred to as the "City Account Depository." The City Account and all funds and investments on deposit to the credit thereof shall at all times constitute trust funds for the exclusive benefit of the City and shall not, unless the City otherwise expressly agrees in writing, be subject to lien or attachment by or in favor of any creditor or obligee of the Authority.

SECTION 3.02 Deposits into the City Account.

(a) There shall be deposited to the credit of the City Account, weekly prior to the issuance of the Initial Bonds and thereafter no less often than monthly, the proceeds of the taxes or other revenues pledged by the Authority or the City, as the case may be, to secure any bonds of the Authority or to secure any payments due from the City to the Authority, but only if and to the extent such tax

