

City of Philadelphia



(Bill No. 110447)

AN ORDINANCE

Constituting the Eleventh Supplemental Ordinance to the General Gas Works Revenue Bond Ordinance of 1998 (the “1998 General Ordinance”); authorizing the City of Philadelphia (the “City”) to sell, either at public or private sale, Gas Works Revenue Bonds, Tenth Series (the “Tenth Series Bonds”) to pay the cost of refunding or redeeming certain outstanding Gas Works Revenue Bonds, any termination payment which may become due under a Qualified Swap Agreement in connection with the redemption or conversion of all or any portion of certain Gas Works Revenue Bonds and other Project Costs; authorizing the City to obtain credit enhancement for the Tenth Series Bonds; making certain determinations and covenants relating to Gas Works Revenues and the payment of interest and principal; and authorizing covenants and actions in order that the Tenth Series Bonds shall not be arbitrage bonds; all under certain terms and conditions.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. The Mayor, the City Controller and the City Solicitor (the “Bond Committee”), or a majority of them, are hereby authorized, on behalf of the City, to borrow, by the issuance and sale of Gas Works Revenue Bonds, Tenth Series (1998 General Ordinance), of the City (the “Tenth Series Bonds”), which may be issued in one or more subseries, designated “Tenth Series Bonds” and consecutively thereafter by letter designation, and with such relative priorities as the Bond Committee may deem desirable, pursuant to The First Class City Revenue Bond Act of October 18, 1972, Act No. 234 (the “Act”), and the General Gas Works Revenue Bond Ordinance of 1998, Bill No. 980232, adopted by the City on April 30, 1998 (the “1998 General Ordinance”), a sum or sums which in the aggregate shall not exceed the principal amount of Tenth Series Bonds authorized to be issued hereunder, to be expended as provided in Section 2 of this Ordinance. The Tenth Series Bonds shall be sold at public or private sale and shall contain such terms and provisions as are determined by a majority of the Bond Committee to be in the best interests of the City and are not inconsistent with the provisions hereof, of the Act, of the 1998 General Ordinance, or of any applicable law. If a majority of the Bond Committee determines it to be in the best interests of the City, the Tenth Series Bonds may be issued in book-entry form; and in such event a majority of the Bond Committee shall also select a securities depository (the “Depository”) for the Tenth Series Bonds. The Tenth Series Bonds shall mature or be subject to mandatory redemption in such principal amounts and on such date or dates and bear interest at such rate or rates (including, without limitation, variable, adjustable or convertible rates), as shall be determined by a majority of the Bond Committee. A majority of the Bond

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Committee is authorized to take any and all other actions as may be necessary or appropriate in connection with the consummation of the transactions contemplated herein.

The Tenth Series Bonds are authorized to be issued hereunder in an aggregate principal amount of up to One Hundred Forty-Five Million Dollars (\$145,000,000) to pay the costs related to any or all of the purposes set forth in Section 2 hereof; provided that if any of the Tenth Series Bonds are to be sold at discounts which are in lieu of periodic interest, the aggregate principal amount of the Tenth Series Bonds which may be issued hereunder shall be increased to reflect such discounts, as long as the aggregate gross proceeds to the City from the sale of the Tenth Series Bonds shall not exceed One Hundred Forty-Five Million Dollars (\$145,000,000), plus accrued interest if any; provided further, that the Tenth Series Bonds, or any portion thereof, may be sold at a premium so long as the aggregate principal amount of the Tenth Series Bonds does not exceed One Hundred Forty-Five Million Dollars (\$145,000,000).

The Tenth Series Bonds shall not pledge the City's credit or taxing power, create any debt or charge against the tax or general revenues of the City or create any lien against any property of the City other than the revenues pledged by the 1998 General Ordinance. The opinion of the City Solicitor required by Section 8 of the Act with respect to the matters stated in the preceding sentence has been filed with City Council and shall be kept on file at the office of the Clerk of City Council.

SECTION 2. The Tenth Series Bonds shall be issued for the purpose of providing funds for any or all of the following purposes: (i) the refunding or redeeming of all or any portion of the outstanding City of Philadelphia, Pennsylvania, Gas Works Revenue Bonds, First Series A, First Series C, Second Series A, Third Series, Fourth Series, Fifth Series A-1, Seventh Series, Eighth Series B, Eighth Series C, Eighth Series D and Eighth Series E, upon such terms and in such amounts as shall be determined by the Director of Finance (the "Refunded Bonds"); (ii) paying any termination payment that may become due and payable under a Qualified Swap Agreement in connection with the redemption or conversion of all or any portion of the City of Philadelphia, Pennsylvania, Gas Works Revenue Bonds, Eighth Series B, Eighth Series C, Eighth Series D and Eighth Series E; (iii) paying the costs of issuing the Tenth Series Bonds and any required deposits to the Sinking Fund Reserve; and (iv) paying any other Project Costs (as defined in the Act).

The City covenants that the proceeds of the Tenth Series Bonds which remain available for the payment of the costs of refunding the Refunded Bonds, and after payment of the financing costs, and the required payment into the Sinking Fund Reserve, shall be deposited, held in and disbursed from a special account of the Sinking Fund or from the escrow fund to be established pursuant to the Escrow Agreement (defined below).

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The City hereby authorizes the redemption of the Refunded Bonds, in whole or in part, in accordance with the terms of the 1998 General Ordinance and the Refunded Bonds and further authorizes the Bond Committee or the Director of Finance, if it is determined to be necessary, to enter into an Escrow Deposit Agreement (the “Escrow Agreement”) providing, among other things, for the deposit and investment of a portion of the Tenth Series Bond proceeds and any other available funds of the City in amounts sufficient, together with interest thereon, if any, to defease such Refunded Bonds so that such Refunded Bonds shall be deemed not to be outstanding under the 1998 General Ordinance, and providing for payment of the Refunded Bonds at maturity or redemption, as applicable, including all interest payable on such Refunded Bonds to such maturity or redemption dates, as applicable. All interest and income earned on the investment of such proceeds (except for amounts to be rebated to the United States), which is not required for the refunding or redemption of the Refunded Bonds, pending expenditure for the aforesaid purposes, may be transferred to and deposited in the operating funds of the Gas Works and applied as Gas Works Revenues in accordance with Section 4.02 of the 1998 General Ordinance.

SECTION 3. Based on the report of the Director of Finance of the City required by Section 8 of the Act (the “Financial Report”), it is hereby determined that the pledged Gas Works Revenues (as defined in the 1998 General Ordinance) will be sufficient to comply with the rate covenant contained in Section 4.03(b) of the 1998 General Ordinance and also to pay all costs, expenses and payments required to be paid therefrom in the order and priority stated in Section 4.02 of the 1998 General Ordinance. An executed copy of the Financial Report has been filed with City Council and shall be kept on file at the office of the Clerk of City Council.

SECTION 4. The City covenants that, as long as any of the Tenth Series Bonds shall remain outstanding, all pledged Gas Works Revenues shall be deposited and held in and disbursed from one or more unsegregated accounts of the Gas Works which shall be separate from and not commingled with the consolidated cash account of the City or any other account of the City not held exclusively for Gas Works purposes. Such pledged Gas Works Revenues shall be held for the security and payment of the Tenth Series Bonds and all Bonds issued under the 1998 General Ordinance to the extent, and to be applied in the order of priority, set forth in Section 4.02 of the 1998 General Ordinance. This covenant shall not be construed to require the establishment of any Gas Works account segregated from any other Gas Works accounts except as provided in Section 2 hereof or as otherwise required by the 1998 General Ordinance.

SECTION 5. The City covenants that as long as any Tenth Series Bonds shall remain unpaid, it shall make payments or cause payments to be made out of its 1998 Gas Works Revenue Bond Sinking Fund created under the 1998 General Ordinance at such times and in such amounts as shall be sufficient for the payment of the interest thereon and the principal thereof when due; provided, however, that whenever the City shall be required to deposit moneys with the Fiscal Agent for the mandatory redemption of any of

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the Tenth Series Bonds, such obligation may be satisfied, in whole or in part, by the delivery by the City to the Fiscal Agent of a principal amount of Tenth Series Bonds of the maturity required to be redeemed for cancellation prior to the date specified for such redemption.

SECTION 6. The Director of Finance is authorized to make such elections under the Internal Revenue Code of 1986, as amended (the "Code"), and the Treasury Regulations promulgated thereunder with respect to the Tenth Series Bonds and to take such actions on behalf of the City with respect to the investment of the proceeds of the Tenth Series Bonds as is deemed advisable, and the Director of Finance or any member of the Bond Committee is authorized to make such covenants as may be necessary or advisable in order that the Tenth Series Bonds shall not be "arbitrage bonds" as defined in the Code.

SECTION 7. In the event Tenth Series Bonds are issued in book-entry form, the ownership of one fully registered Tenth Series Bond for each maturity, each in the aggregate principal amount of such maturity, will be registered in the name(s) designated by the Depository. So long as, but only so long as, the book-entry only system is applicable to the Tenth Series Bonds, the following provisions of this Section 7 shall govern as to matters set forth in Article III of the 1998 General Ordinance.

Pursuant to the book-entry-only system, ownership interests in the Tenth Series Bonds may be purchased in the manner directed by the Depository, which may be through financial institutions for whom the Depository effects book-entry transfer (the "Participants"). A person who owns such an interest in a Tenth Series Bond (a "Beneficial Owner") will not receive certificated Tenth Series Bonds and will not be the registered owner thereof. Receipt by the Beneficial Owners of timely payment of principal, purchase price, redemption price and interest on the Tenth Series Bonds, is subject to the Depository's making such timely payment, either to the Beneficial Owner or to the Participants to be forwarded to the Beneficial Owners. Neither the City nor the Fiscal Agent will have any responsibility or obligation to such Participants or to the Beneficial Owners for any failure of the Depository to act or make any payment with respect to the Tenth Series Bonds or the providing of notices relating to redemption or mandatory tender to Participants or the Beneficial Owners of the Tenth Series Bonds.

The Depository will receive payments from the Fiscal Agent to be remitted by the Depository to the Beneficial Owners or to the Participants for whom the Depository holds the Tenth Series Bonds for subsequent disbursement to the Beneficial Owners. The ownership interest of each Beneficial Owner in the Tenth Series Bonds shall be recorded on the records of the Depository or the records of the Participants, whose ownership interests will be recorded on the records of the Depository.

When notices are given, they shall be sent by the Fiscal Agent to the Depository with a request that the Depository forward (or cause to be forwarded) the notice to the

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Participants so that such Participants may forward (or cause to be forwarded) the notices to the Beneficial Owners.

Transfers of ownership interests in the Tenth Series Bonds will be accomplished by book-entries made by the Depository and/or the Participants who act on behalf of the Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interests in the Tenth Series Bonds, except as specifically provided herein. So long as the Depository is the Bondholder, interest, principal and redemption price of the Tenth Series Bonds will be paid when due by the Fiscal Agent to the Depository, then paid by the Depository to the Beneficial Owners, or by the Depository to the Participants and thereafter paid by the Participants to the Beneficial Owners. The payments to the Depository shall satisfy the City's obligations under the Tenth Series Bonds.

For every transfer and exchange of the Tenth Series Bonds, the Fiscal Agent, the Depository and the Participants may charge the Beneficial Owner of the Tenth Series Bonds a sum sufficient to cover any tax, fee or other governmental charge that may be imposed in relation thereto. No transfer or exchange of any Tenth Series Bonds shall be required to be made fewer than five (5) days prior to any interest payment date or five (5) days prior to any mailing of a notice of redemption of the Tenth Series Bonds. No transfers shall be made of Tenth Series Bonds previously called for redemption, except pursuant to the optional or mandatory tender provisions thereof.

The Depository may determine to discontinue providing its services with respect to the Tenth Series Bonds at any time by giving notice to the City and the Fiscal Agent and discharging its responsibilities with respect thereto under applicable law. Under such circumstances (if there is no successor securities depository), the City is obligated to deliver bond certificates in such names as the City and the Fiscal Agent are directed by the Depository.

The Bondholders have no right to a depository for the Tenth Series Bonds. If the book-entry only system is no longer utilized, bond certificates will be issued in such names as the City and the Fiscal Agent are directed by the Depository.

Notwithstanding any other provision of the 1998 General Ordinance, so long as the Depository is the registered Bondholder of all Tenth Series Bonds, the Depository may present notices, approvals, waivers or other communications required or permitted to be made by Bondholders under the 1998 General Ordinance on a fractionalized basis on behalf of some or all of the Beneficial Owners.

The appropriate officials of the City are authorized to execute any documentation required by the Depository in connection with book-entry registration of the Tenth Series Bonds.

SECTION 8. (a) Subject to the determination by a majority of the Bond Committee referred to in Section 1 hereof, in accordance with and as permitted by

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Section 4.02 of the 1998 General Ordinance, the pledge and grant of a lien on and security interest in, all Gas Works Revenues, all accounts, contract rights and general intangibles representing the Gas Works Revenues and all funds and accounts established under the 1998 General Ordinance (except for the Sinking Fund and the Sinking Fund Reserve), and in each case, the proceeds of the foregoing, shall be for the benefit of the providers of any Credit Facilities with respect to the Tenth Series Bonds, all to the extent and in the manner as provided therein; provided, however, that any payments to a Credit Facility Provider on account of principal of and interest on the Tenth Series Bonds owned or deemed to be owned by a Credit Facility Provider shall be payable from and secured by Gas Works Revenues and the Sinking Fund and Sinking Fund Reserve equally and ratably with all other Tenth Series Bonds.

(b) All of the provisions of Section 4.02 of the 1998 General Ordinance relating to Credit Facilities, except to the extent limited by Section 8(a) hereof with respect to the Sinking Fund and the Sinking Fund Reserve, shall apply to Credit Facilities with respect to the Tenth Series Bonds and to payments due from the City to the providers of such Credit Facilities. The providers of Credit Facilities shall have no right or claim at any time to amounts on deposit in the Sinking Fund or the Sinking Fund Reserve, except as provided in Section 9(a) hereof.

(c) All of the provisions in Section 4.03(b) of the 1998 General Ordinance relating to Credit Facilities shall apply to the Credit Facilities with respect to the Tenth Series Bonds.

SECTION 9. This Ordinance is supplementary to the 1998 General Ordinance and all sections of the 1998 General Ordinance not inconsistent with this Ordinance are applicable to the Tenth Series Bonds. All definitions of terms contained in the Act or the 1998 General Ordinance not inconsistent herewith shall apply to such terms in this Ordinance.

SECTION 10. The City reasonably expects to reimburse any expenditures toward the cost of the matters authorized by Section 2 of this Ordinance paid prior to the issuance of the Tenth Series Bonds. No funds from sources other than the Tenth Series Bonds authorized by this Ordinance have been or are reasonably expected to be reserved, allocated on a long-term basis, or otherwise set aside by the City, or any member of the same "control group" as the City within the meaning of Treasury Regulation 1.150-1(e) of the Code, pursuant to their budget or financial policies with respect to any expenditures to be reimbursed. This section constitutes a declaration of the City's official intent to reimburse expenditures paid in accordance with Treasury Regulation 1.150-2 (d) of the Code.

SECTION 11. This Ordinance shall take effect immediately.

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CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on June 16, 2011. The Bill was Signed by the Mayor on July 5, 2011.



Michael A. Decker
Chief Clerk of the City Council