

# City of Philadelphia



(Bill No. 010259)

## AN ORDINANCE

Constituting the Third Supplemental Ordinance to the Amended and Restated General Airport Revenue Bond Ordinance; authorizing the Mayor, the City Controller and the City Solicitor, or a majority of them, to issue one or more series of Airport Revenue Bonds, of the City of Philadelphia, and to take certain actions with respect to Qualified Swap Agreements, Exchange Agreements and similar instruments, setting forth the use of such Airport Revenue Bonds; providing for the pledge of certain passenger facility charges for this and certain subsequent series of Airport Revenue Bonds; determining the sufficiency of pledged Amounts Available for Debt Service; covenanting the payment of interest and principal; authorizing the Bond Committee to take certain action with regard to the terms and conditions of the Airport Revenue Bonds and related agreements; authorizing the Director of Finance of the City to take certain actions with regard to the sale of such Airport Revenue Bonds and the City's continuing disclosure obligation; and specifying applicability of sections of The First Class City Revenue Bond Act and the Amended and Restated General Airport Revenue Bond Ordinance.

### *THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:*

SECTION 1. Authorization, Scope and Purpose. The Mayor, the City Controller and the City Solicitor, or a majority of them (the "Bond Committee"), are hereby authorized on behalf of the City of Philadelphia (the "City") to issue one or more series of Airport Revenue Bonds of the City (the "Bond" or "Bonds") which in the aggregate shall not exceed the principal amount set forth below, to be expended as provided in Section 2 of this Ordinance. The Bond is to be issued under and pursuant to The First Class City Revenue Bond Act of October 18, 1972, Act No. 234 (the "Act"), and is to be secured by the Amended and Restated General Airport Revenue Bond Ordinance (Bill No. 950282), approved on June 16, 1995, as supplemented and amended (the "Amended and Restated Ordinance").

The aggregate principal amount of the Bond shall not exceed One Hundred and Seventy Five Million Dollars (\$175,000,000) exclusive of costs of issuance (including underwriters' discount), original issue discount, capitalized interest, funding of deposits to the Sinking Fund Reserve Account and similar items. The Bond Committee is hereby authorized to increase the aggregate principal amount of the Bond so issued by the amount of such items. The Bond shall bear interest from the dated date thereof to maturity or prior redemption, if any, at prescribed fixed or variable rates, or any combination thereof, (not exceeding any limitation prescribed by law). The Bond shall be in the form of a single instrument or multiple instruments and shall contain such series designation, terms and provisions (including without limitation, interest payment dates,

# City of Philadelphia

BILL NO. 010259 continued

Certified Copy

record date, redemption provisions, denominations and provisions for payments by wire transfer) as the Bond Committee, or a majority of them, shall determine to be in the best interest of the City and which are not inconsistent with the provisions hereof, of the Act and the Amended and Restated Ordinance. The interest on the Bond which, at any time, is to be payable at a variable rate or rates shall be computed and payable at such times, using such methods and indices and under such terms as shall be determined by the Bond Committee. In connection with the issuance of the Bond, the Bond Committee is hereby authorized to enter into such Qualified Swaps, Exchange Agreements or similar instruments as it may determine and as are permitted by the Amended and Restated Ordinance.

The Council hereby determines that a private negotiated sale of the Bond authorized by this Ordinance is in the best interest of the City.

The Bond shall not pledge the credit or taxing power of the City, or create any debt, charge or lien against the tax, general revenues or property of the City other than the revenues pledged by the Amended and Restated Ordinance.

The Bond Committee, or a majority of them, is authorized on behalf of the City to enter into agreements (the "Agreements") with any bank, insurance company or other appropriate entity providing credit enhancement or payment or liquidity sources for the account of the City for the Bond, including, without limitation, letters of credit, lines of credit and insurance. Such Agreements may provide for payment or acquisition of the Bond if the City does not pay the Bond when due and may provide for repayment with interest to the bank or other institution from the date of such payment or acquisition.

The Fiscal Agent (as defined in the Amended and Restated Ordinance) is hereby designated to act as Bond Registrar pursuant to Section 3.05 of the Amended and Restated Ordinance.

The Bond Committee, or a majority of them, is authorized to make all such covenants and to take any and all such other actions on behalf of the City as may be necessary or appropriate in connection with the consummation of the transactions contemplated herein.

SECTION 2. Purposes for the Bond. The Bond shall be issued to the Philadelphia Authority for Industrial Development (the "Authority") in order to provide for additional costs of the acquisition of a capital leasehold interest (the "Project") in certain land and improvements at the Philadelphia International Airport (the "Airport"). The capital leasehold interest is described in the Second Supplemental Ordinance approved by the Mayor of the City of Philadelphia on June 24, 1998 as consisting of a new terminal located to the west of Terminal A and the extension of the building between the new terminal building and Terminal A ("Terminal One"), a new commuter terminal building located to the east of Terminal E for the consolidation of commuter aircraft operations

# City of Philadelphia

BILL NO. 010259 continued

Certified Copy

and the extension between said building and Terminal E (“Commuter Terminal”), a new ramp control tower to replace the existing ramp control tower (“Control Tower”), associated improvements and modifications to the existing facilities at the Airport including, without limitation, renovations to Terminal A, expansion of the Terminal A-B link, and related utility work not located in Terminal One, the Commuter Terminal or the Control Tower, a new hydrant fueling system adjacent to Terminal One and the Commuter Terminal and other Airport property and certain additional capital improvements at the Airport or the Northeast Philadelphia Airport. Pursuant to the Terminal Lease dated as of July 1, 1998 between the City and the Authority (as amended and supplemented from time to time, the “Terminal Lease”), the capital leasehold interest of the City in the Leased Premises (as defined in the Terminal Lease) will extend to the improvements, structures, alterations and additions to the Leased Premises, which include the widening of the connector between Terminals A and B to accommodate moving sidewalks, relocating and acquiring concessions facilities in Terminal A, adding infrastructure for concessions in Terminal One and Terminal F, adding a baggage conveyor between Terminal One and Terminal A, adding baggage conveyor screening devices, adding a ramp control tower as part of the Terminal F Project, and relocation of existing utilities but will not extend to the hydrant fueling system.

The Authority will finance the costs of improving the Leased Premises and related costs, including payment of costs of issuance (including underwriters’ discount), original issue discount, capitalized interest, deposits to the Sinking Fund Reserve Account and similar items, with an issue of revenue bonds (the “Authority Bonds”) which will be payable from the payments of principal, interest, and redemption price of the Bond. To the extent appropriate, payments of principal, interest, and redemption price of the Authority Bonds shall, if paid from the proceeds of the Authority Bonds, be credited against amounts due under the Bond. Any reduction in the principal amount of the Authority Bonds shall result in a reduction in the corresponding principal amount of the Bond. Unless available from another source, debt service on the Bond shall always be sufficient to pay debt service on the Authority Bonds. In the event that the Authority Bonds are paid in whole or in part such that they no longer remain outstanding under the indenture pursuant to which they were issued, the Bond will be deemed to have been prepaid to the same extent.

The costs of the Project are “Project Costs” as such term is defined in the Act, including, but without limitation, the deposits to the Sinking Fund Reserve Account required by, and other funds permitted by, the Amended and Restated Ordinance, and the payment of the costs of the issuance (including underwriters’ discount) of the Bond.

SECTION 3. Pledge of Passenger Facility Charges. Subject to the approval of the Federal Aviation Administration (the “FAA”) and commencing on the later of the date of beneficial occupancy or the date of the approval of the FAA, the City hereby pledges for the security and payment of the Bond and hereby grants to holders of the Bond a lien on and security interest in Passenger Facility Charges (“PFCs”), to the extent available, in

# City of Philadelphia

BILL NO. 010259 continued

Certified Copy

the amount described below on an annual basis, such lien and security interest to be held on an equal and ratable basis, without preference or priority, with any lien and security interest hereafter created with respect to (i) any bonds issued pursuant to a supplemental ordinance to the Amended and Restated Ordinance pursuant to which PFC's are pledged (collectively, "Additional Bonds"), and (ii) any other obligations of the City with respect to which PFC's are pledged. Such pledge shall be equal to one hundred percent of the annual amount of the PFC eligible portion of debt service on the Bond; provided, however, that (i) the lien and security interest created with respect to the PFC's securing the \$443,700,000 City of Philadelphia, Pennsylvania Airport Revenue Bond, Series 1998B (Philadelphia Airport System Project) (the "1998B GARB") shall have first priority with respect to all PFC's up to an amount in any year equal to the PFC's pledged to the 1998B GARB in such year; and (ii) at no time shall the amount of all PFCs pledged to the Bond in any year exceed the lesser of (a) seventy percent of the amount of all PFCs actually paid to the City in that year, or (b) seventy-five percent of total debt service on the Bond. Such PFCs, after receipt by the City, shall be deposited into the PFC sub-accounts of the Sinking Fund associated with the Bond and the 1998B GARB, respectively, at least semi-annually.

The City covenants that, until the Bond is no longer outstanding, it will take no action which it reasonably believes would impair the ability of the City to impose, use, or pledge PFCs in connection with the Bond, the 1998B GARB or any Additional Bonds pursuant to Subpart E of Part 158, 14 CFR.

SECTION 4. Finding Required by Act. Based on the report of the Director of Finance of the City filed with the Council pursuant to Section 8 of the Act, a copy of which is attached hereto as Exhibit A including the reports of Leigh Fisher Associates Airport Consultants, and Urban Engineers, Inc., registered consulting engineers, attached thereto, it is hereby determined that the pledged Amounts Available for Debt Service, as defined in the Amended and Restated Ordinance, will be sufficient to comply with the rate covenant contained in Section 5.01(a) of the Amended and Restated Ordinance and also to pay all costs, expenses and payments required to be paid therefrom, in the order and priority stated in Section 4.06 of the Amended and Restated Ordinance.

SECTION 5. Payments From Sinking Fund. The City covenants that, so long as any Bond shall remain unpaid, it will make payments or cause payments to be made out of the Sinking Fund established pursuant to the Amended and Restated Ordinance or any of the other Aviation Funds available therefor, at such times and in such amounts as shall be sufficient for the payment of the interest thereon and the principal thereof when due.

The City has caused to be delivered to the Chief Clerk of City Council an opinion of the City Solicitor to the effect, *inter alia*, that the holder of the Bond will have no claim upon the taxing power or general revenues of the City nor any lien upon any of the property of the City other than the Pledged Amounts pledged for the Bond.

# City of Philadelphia

BILL NO. 010259 continued

Certified Copy

SECTION 6. Additional Tax Covenants. The Bond may be issued as a taxable or tax-exempt bond as determined by the Bond Committee. To the extent that the Bond Committee determines that the Bond shall be issued as a tax-exempt bond, the City covenants that it will make no investment or other use of the proceeds of the Bond which would cause the Bond to be an “arbitrage bond” under Section 148 of the Internal Revenue Code of 1986, as amended, and Treasury Regulations promulgated thereunder (the “Code”), and that the City will comply with the requirements of Section 148 of the Code throughout the term of the Bond as more fully described in the determination of the Bond Committee. The Director of Finance is authorized to execute on behalf of the City a report of the issuance of the Bond as required by Section 149(e) of the Code to the extent that the Bond is issued as a tax-exempt bond.

The City covenants that it will make or cause to be made no investment or other use of the proceeds of the Authority Bonds which would cause the Authority Bonds to be “arbitrage bonds” under Section 148 of the Code. The City will comply with the requirements of Section 148 of the Code throughout the term of the Authority Bonds.

SECTION 7. Bond Not to Become An Arbitrage Bond. To the extent that the Bond is issued as a tax-exempt bond, the Director of Finance is authorized to make such elections under the Code, and file any reports required to be filed pursuant to the Code, with respect to the Bond as may be necessary or advisable and to take such action and make such covenants on behalf of the City as may be necessary or advisable with respect to the sale of the Bond and the investment of the proceeds of the Bond in order that the Bond shall not be an “arbitrage bond” as defined in the Code, in order to otherwise effect or maintain the exclusion of interest on the Bond from gross income for federal income tax purposes, and further to establish such sub-accounts within the Sinking Fund Reserve Account and terms or restrictions relating thereto as may be necessary or advisable to permit issuance of the Bond. For purposes of Section 4.14 of the Amended and Restated Ordinance, the Rebate Bond Year with respect to the Bond shall mean the period as determined by the Bond Committee.

The Director of Finance is further authorized to take such action and make such covenants on behalf of the City as may be necessary or advisable with respect to the investment of the proceeds of the Authority Bonds in order that the Authority Bonds shall not be an “arbitrage bond” as defined in the Code, in order to otherwise effect or maintain the exclusion of interest on the Authority Bonds from gross income for federal income tax purposes.

SECTION 8. Form and Terms of Bond. The Bond shall be in such form as the Bond Committee may determine pursuant to Section 3.01 of the Amended and Restated Ordinance, consistent with its terms of issuance including principal amount and interest rate or rates, except that it shall be issued in fully registered form only, exchangeable only for a fully registered bond unless and until issuance in coupon form, in the opinion of bond counsel, will have no adverse effect on the exclusion of interest on the Bond

# City of Philadelphia

BILL NO. 010259 continued

Certified Copy

from gross income for federal income tax purposes (to the extent that such Bond's interest is intended to be tax-exempt), in which case the Bond may be exchanged for a coupon bond as provided in the Amended and Restated Ordinance.

The Bond is an unconditional obligation of the City and shall be satisfied in accordance with its terms under any and all circumstances and irrespective of any rights of set-off, counterclaim, recoupment or defense of payment which the City may have against the Authority or any other party. The Bond may be assigned but only to the trustee for the Authority Bonds under the Authority's indenture.

The Bond together with all parity bonds of the City issued under the Amended and Restated Ordinance and all subsequent supplemental ordinances, shall be equally and ratably secured, except as provided in Section 3 above, under the Amended and Restated Ordinance, to the extent set forth in the Amended and Restated Ordinance, by a pledge of Pledged Amounts which shall include Project Revenues defined to include revenues, rents, rates, tolls or other charges imposed and moneys received by or on behalf of the City from or in connection with the ownership and operation of the Airport System (exclusive of certain revenues as described in the Amended and Restated Ordinance), as more fully defined in the Amended and Restated Ordinance, together with certain other amounts as set forth in the Amended and Restated Ordinance.

The City covenants, so long as the Bond shall remain outstanding, it will pay or cause to be paid from the pledged Amounts Available for Debt Service deposited in the Sinking Fund, and other amounts available therefor, the principal of, redemption premium, if any, and interest on the Bond as the same shall become due and payable.

SECTION 9. Continuing Disclosure. The Director of Finance is authorized on behalf of the City to execute and deliver a Continuing Disclosure Agreement (the "Continuing Disclosure Agreement") relating to the Bond and/or the Authority Bonds, meeting the requirements of Securities and Exchange Commission Rule 15c2-12(b)(5). The City covenants and agrees that it will comply with and carry out all of the provisions of the Continuing Disclosure Agreement.

SECTION 10. Effect of Ordinance. This Ordinance is supplementary to the Amended and Restated Ordinance and all sections of the Amended and Restated Ordinance and the Act not inconsistent herewith are applicable to the Bond authorized hereunder. All definitions of terms contained in the Act or the Amended and Restated Ordinance shall apply to such terms in this Ordinance.

SECTION 11. Effective Date. This Ordinance shall take effect immediately.

# City of Philadelphia

BILL NO. 010259 continued

Certified Copy

## EXHIBIT A

[LETTERHEAD OF THE CITY OF PHILADELPHIA]

\_\_\_\_\_, 2001

TO THE PRESIDENT AND MEMBERS OF THE  
COUNCIL OF THE CITY OF PHILADELPHIA

There has been transmitted to the Council the proposed Third Supplemental Ordinance to the Amended and Restated General Airport Revenue Bond Ordinance, as supplemented and amended (the "General Ordinance"), specifically authorizing the issuance and sale of up to a maximum aggregate principal amount not to exceed One Hundred Seventy Five Million Dollars (\$175,000,000) exclusive of costs of issuance (including Underwriter's discount), original issue discount, capitalized interest, funding of deposits to the Sinking Fund Reserve Account and similar items, of Airport Revenue Bonds, Series 2001A (Philadelphia Airport System Project), of The City of Philadelphia (the "Bond"), and in the event the Bond is issued with original issue discount, capitalized interest, funding of deposits to the Sinking Fund Reserve Account and similar items, the proposed Third Supplemental Ordinance authorizes the City to increase the aggregate principal amount of the Bond so issued, by the amount of such additional items.

In connection with the proposed issuance of the Bond, the City has engaged the firm of Leigh Fisher Associates of San Francisco, California (the "Consultant") who has compiled data from the City and the Division of Aviation in order to enable the Consultant to make projections with respect to the current capital improvement program of the Airport System consisting of the City's payment of the additional cost of acquisition of a capital leasehold interest, reviewed the Use and Lease Agreements by and between the City and the Scheduled Airlines (as defined therein), and compiled relevant data and made projections to ascertain the adequacy of the revenues of the Airport System to support the financial report required by Act No. 234 of October 18, 1972, as amended, known as The First Class City Revenue Bond Act (the "Act").

The Consultant is an independent firm of airport consultants having broad experience in the analysis of airport systems and has a favorable reputation for competence in this field of work. The Consultant has reviewed the financial operations of the Airport System of the City and has collaborated with the officers and employees of the Division of Aviation, the City Treasurer's Office and the Office of the Director of Finance in the preparation of its report.

# City of Philadelphia

BILL NO. 010259 continued

Certified Copy

The City has also engaged the firm of Urban Engineers, Inc., of Philadelphia, Pennsylvania, consulting engineers (the “Consulting Engineers”), to report on the physical condition of the facilities of the Airport System. The Consulting Engineers are an independent firm of consulting engineers having broad experience in the design and analysis of the physical operation of airport systems of the magnitude and scope of the Airport System and have a favorable reputation for competence in this field of work.

The reports of the Consultant and Consulting Engineers (the “Feasibility Reports”) are attached to this report and form the basis for the statements and opinions contained herein. The Feasibility Reports have been reviewed and approved by both the Finance Department and by the Division of Aviation. They are transmitted herewith in compliance with Section 8 of the Act and Section 5.04(c) of the General Ordinance.

On the basis of the Feasibility Reports and the schedules and summaries therein contained and in compliance with Section 8 of the Act, the undersigned Chief Fiscal Officer of the City of Philadelphia hereby submits this financial report:

(i) The project for which the Bond is to be issued is the additional cost of acquisition of a capital leasehold interest in, among other things, the terminal facilities, as more fully described in the Feasibility Reports. The Bond will be issued to pay additional costs of acquiring such leasehold interest from the Philadelphia Authority for Industrial Development;

(ii) The revenues pledged for the payment of the Bond will be derived from the revenues, rents, rates, tolls and other charges imposed upon all lessees, occupants and users of the Airport System (including certain passenger facility charges as described in the proposed Third Supplemental Ordinance) and all other revenues derived from the Airport System constituting pledged “Amounts Available for Debt Service” as defined in the General Ordinance.

(iii) On the basis of the revenues currently in effect and on the basis of the estimated future annual financial operations of the Airport System, all as detailed in the Feasibility Reports, the Airport System will, in my opinion, yield pledged Amounts Available for Debt Service over the amortization period of the Bond sufficient to comply with the Rate Covenant contained in the General Ordinance and to meet the payment or deposit requirements of (1) all expenses of operation, maintenance, repair and replacement of the Airport System, (2) all reserve or special funds required to be established out of such revenues, (3) the principal of and interest on all bonds to be outstanding under the General Ordinance (including the Bond), as the same shall become due and payable, for which such pledged Amounts Available for Debt Service are pledged, and (4) state taxes assumed by the city to be paid on such bonds, and such surplus requirements as may be fixed by the General Ordinance.



# City of Philadelphia

BILL NO. 010259 continued

Certified Copy

(iv) The pledged Amounts Available for Debt Service forming the basis for the statement set forth in clause (iii) above comply with the requirements of the definition of “Project Revenues” contained in Section 2 of the Act.

For the purpose of the opinion expressed in clause (iii) above, you are advised that the City has not covenanted to pay or assume any taxes on the Bond.

Respectfully submitted,

\_\_\_\_\_  
Director of Finance

# City of Philadelphia

BILL NO. 010259 continued

Certified Copy

CERTIFICATION: This is a true and correct copy of the original Bill, Passed by the City Council on May 31, 2001. The Bill was Signed by the Mayor on May 31, 2001.



Patricia Rafferty  
Chief Clerk of the City Council