

City of Philadelphia



(Bill No. 010210)

AN ORDINANCE

Constituting the Fourth Supplemental Ordinance to the General Gas Works Revenue Bond Ordinance of 1998 (the "1998 General Ordinance"); authorizing the Mayor, the City Controller and the City Solicitor, or a majority of them, to sell, either at public or private sale, Gas Works Revenue Bonds, Third Series (1998 Ordinance), of the City of Philadelphia, in one or more subseries (the "Third Series Bonds") to be issued to pay (i) the cost of certain capital projects as hereinafter more particularly described, and (ii) the cost of refunding or redeeming all or a portion of certain outstanding Gas Works revenue bonds; and authorizing the application of proceeds of the Third Series Bonds for such purposes; authorizing the City to obtain credit enhancement for the Third Series Bonds; determining the sufficiency of Gas Works Revenues; covenanting the separation of Gas Works revenue accounts and proceeds of the Third Series Bonds from general accounts of the City; covenanting the payment of interest and principal on and specifying the purposes of the Third Series Bonds; authorizing covenants and action in order that the Third Series Bonds shall not be arbitrage bonds; authorizing the Third Series Bonds to be issued in book-entry form and providing book-entry provisions to apply in such case; and providing that this Ordinance is supplemental to the 1998 General Ordinance and that the provisions of the 1998 General Ordinance, to the extent not modified, amended or superseded by this Ordinance, are applicable.

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, Third Series, of the City (the "Third Series Bonds"), in one or more subseries and with such relative priorities as they 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 Third Series Bonds authorized to be issued hereunder, to be expended as provided in Section 2 of this Ordinance. The Third 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 or of the 1998 General Ordinance. If a majority of the Bond Committee determines it to be in the best interests of the City, the Third 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 Third Series Bonds. If a majority of the Bond Committee determines it to be in the best interests of the City, the

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City may obtain credit enhancement for all or a portion of the Third Series Bonds. A majority of the Bond 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 Third Series Bonds are authorized to be issued hereunder in an aggregate principal amount up to One Hundred Eighty Million (\$180,000,000) Dollars; provided that, if any of the Third Series Bonds are to be sold at discounts which are in lieu of periodic interest, the aggregate principal amount of Third 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 Third Series Bonds shall not exceed One Hundred Eighty Million (\$180,000,000) Dollars, plus accrued interest, if any. Not more than an aggregate principal amount of Sixty Million Dollars (\$60,000,000) shall be used for refunding or redeeming Gas Works Revenue Bonds referred to in Section 2 (ii) of this Ordinance, together with costs of issuance related thereto and any required deposits to the Sinking Fund Reserve related thereto as referred to in Section 2 (iii) of this Ordinance, and not more than an aggregate principal amount of One Hundred Twenty Million Dollars (\$120,000,000) shall be used for Capital Projects costs of issuance related thereto, required deposits to the Sinking Fund Reserve related thereto, paying other Project Costs and funding or refunding outstanding bond anticipation notes or other obligations of the city issued in respect of Project Costs, all as referred to in Sections 2 (i), (iii), (iv) and (v) of this Ordinance.

The Third 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 is attached hereto as Exhibit A.

SECTION 2. The Third Series Bonds shall be issued for the purpose of providing funds for any or all of the following purposes: (i) the capital projects included in the capital program of the Gas Works, which may include, without limitation, (a) the acquisition of land or rights therein; (b) the acquisition, construction or improvement of buildings, structures and facilities together with their related furnishings, equipment, machinery and apparatus; (c) the acquisition, construction or replacement of pipes and pipe lines; and (d) the acquisition or replacement of property of a capital nature for use in the operation, maintenance and administration of the Gas Works system of the City; (ii) the refunding or redeeming of certain outstanding (a) Gas Works Revenue Bonds, which were issued under the General Gas Works Revenue Bond Ordinance of 1975, from such series and in such amounts as shall be determined by the Director of Finance, and (b) Gas Works Revenue Bonds, which were issued under the General Gas Works Revenue Bond Ordinance of 1998, from such series and in such amounts as shall be determined by the Director of Finance; (iii) paying the costs of issuing the Third Series Bonds and any required deposits to the Sinking Fund Reserve; (iv) paying any other Project Costs (as

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defined in the Act), which may include, without limitation, the repayment to any fund of the City or to accounts of the Gas Works of amounts advanced for Project Costs, and (v) the funding or refunding of outstanding bond anticipation notes or other obligations of the City issued in respect of Project Costs.

The City covenants that the proceeds of the Third Series Bonds which remain available for the payment of the costs of the capital improvements, after payment of the financing costs, the required payment into the Sinking Fund Reserve and the repayment to the City and the Gas Works of amounts previously advanced for Project Costs or for the funding or refunding of bond anticipation notes or other obligations issued in respect of Project Costs as described above, shall be deposited, held in, and disbursed from, one or more unsegregated accounts of the Gas Works which shall be separate and apart 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. This covenant shall not be construed to require the establishment of any Gas Works account segregated from any other Gas Works accounts. All interest and income earned on the investment of such proceeds (except for amounts to be rebated to the United States) 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 is attached hereto as Exhibit B.

SECTION 4. The City covenants that, as long as any of the Third 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. 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 Third 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 Third 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 Third 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, and Treasury Regulations promulgated thereunder with respect to the Third Series Bonds and to take such actions on behalf of the City with respect to the investment of the proceeds of the Third 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 Third Series Bonds shall not be “arbitrage bonds” as defined in the Internal Revenue Code of 1986, as amended (the “Code”).

SECTION 7. In the event Third Series Bonds are issued in book-entry form, the ownership of one fully registered Third 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 Third Series Bonds, the following provisions of this Section 7 shall govern as to matters set forth in Section 3 of the 1998 General Ordinance.

Pursuant to the book-entry only system, ownership interests in the Third 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 transfers (the “Participants”). A person who owns such an interest in a Third Series Bond (a “Beneficial Owner”) will not receive certificated Third 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 Third 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 Third Series Bonds or the providing of notices relating to redemption or mandatory tender to Participants or the Beneficial Owners of the Third 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 Third Series Bonds for subsequent disbursement to the Beneficial Owners. The ownership interest of each Beneficial Owner in the Third 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 Third Series Bonds will be accomplished by book-entries made by the Depositories and/or the Participants who act on behalf of the Beneficial Owners. Beneficial Owners will not receive certificates representing their ownership interest in the Third Series Bonds, except as specifically provided herein. So long as the Depository is the Bondholder, interest, principal and redemption price of the Third 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 Third Series Bonds.

For every transfer and exchange of the Third Series Bonds, the Fiscal Agent, the Depository and the Participants may charge the Beneficial Owner of the Third 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 Third Series Bonds shall be required to be made fewer than fifteen (15) days prior to any interest payment date or fifteen (15) days prior to any mailing of notice of redemption of the Third Series Bonds. No transfers shall be made of Third Series Bonds previously called for redemption, except pursuant to the optional or mandatory tender provisions hereof.

The Depository may determine to discontinue providing its services with respect to the Third 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 Third 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 Third 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 Third Series Bonds.

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SECTION 8. This Ordinance is supplementary to the 1998 General Ordinance and all sections of the 1998 General Ordinance not modified, amended or superseded by this Ordinance are applicable to the Third 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 9. The City reasonably expects to reimburse any expenditures towards the cost of the matters authorized by Section 2 of this Ordinance paid prior to the issuance of the Third Series Bonds, with a portion of the proceeds of the Third Series Bonds. No funds from sources other than the Third 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 10. This Ordinance shall take effect immediately.

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EXHIBIT A

CITY SOLICITOR

May ____, 2001

Honorable Anna C. Verna, President
City Council of Philadelphia

RE: Philadelphia Gas Works
Revenue Bonds, Third Series

Dear Council President Verna:

The office of the City Solicitor has reviewed The First Class City Revenue Bond Act, the General Gas Works Revenue Bond Ordinance of 1998 (the "1998 General Ordinance") and the proposed Fourth Supplemental Ordinance thereto (the "Fourth Supplemental Ordinance") authorizing the issuance of Gas Works Revenue Bonds (1998 General Ordinance), Third Series (the "Third Series Bonds") of the City of Philadelphia in the maximum principal amount of One Hundred Eighty Million (\$180,000,000) Dollars or, if the Bonds are sold at a discount, such greater principal amount as will reflect such discount so long as the aggregate gross proceeds to the City do not exceed One Hundred Eighty Million (\$180,000,000) Dollars.

Based on that review, it is my opinion that, under the 1998 General Ordinance and the Fourth Supplemental Ordinance, the registered owners of the Third Series Bonds will have no claim upon the taxing power or general revenues of the City of Philadelphia, nor will they have any lien upon any property of the City of Philadelphia other than the Gas Works Revenues (as defined in the 1998 General Ordinance) and the funds properly pledged to such registered owners pursuant to the terms and conditions of the 1998 General Ordinance and the Fourth Supplemental Ordinance.

Sincerely,

City Solicitor

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EXHIBIT B

OFFICE OF THE DIRECTOR OF FINANCE

May ____, 2001

To the President and Members of the
Council of the City of Philadelphia

FINANCIAL REPORT OF THE DIRECTOR OF FINANCE

RE: Philadelphia Gas Works Revenue Bonds, Third Series

The Mayor has transmitted to the Council the Fourth Supplemental Ordinance (the "Fourth Supplemental Ordinance") to the General Gas Works Revenue Bond Ordinance of 1998 (the "1998 General Ordinance"), authorizing the issuance and sale of a maximum principal amount of One Hundred Eighty Million (\$180,000,000) Dollars or, if the Third Series Bonds (hereinafter defined) are sold at a discount, such greater principal amount as will reflect such discount, so long as the aggregate gross proceeds to the City do not exceed One Hundred Eighty Million (\$180,000,000) Dollars of Gas Works Revenue Bonds (1998 General Ordinance), Third Series (the "Third Series Bonds") of the City of Philadelphia (the "City").

In preparation for the issuance of the Bonds, the Philadelphia Gas Works, a City-owned utility (the "Gas Works") has engaged the firm of Black & Veatch Corporation, a Delaware general business corporation, of Kansas City, Missouri ("Black & Veatch") to: (i) investigate the physical properties included in the Gas Works and the accounts and records of the Gas Works; (ii) review the capital program of the Gas Works; and (iii) compile relevant data upon which to make projections to determine whether the revenues of the Gas Works are and will be sufficient to satisfy the tests of adequacy required by Act No. 234 of October 18, 1972, known as The First Class City Revenue Bond Act (the "Act"), and the 1998 General Ordinance.

The firm of Black & Veatch is an independent consulting firm having broad experience in utility systems of a similar magnitude and scope as the Gas Works and has a favorable reputation for competence in this field of work. They have conducted an in-depth examination of the Gas Works and have collaborated with the officers and

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employees of the Gas Works in the preparation of a report (the "Engineering Report"), a copy of which is attached hereto.

The Engineering Report forms the basis for the statements and opinions contained in this financial report. The Engineering Report has been reviewed by the Gas Works.

The following statements and opinions are made in compliance with Section 8 of the Act and Section 4.03(a) of the 1998 General Ordinance:

(i) The Third Series Bonds are to be issued in respect of capital costs of the Gas Works incurred or to be incurred for the purpose of: (a) acquiring and constructing the capital improvements included in the capital program of the Gas Works, which may include, without limitation (1) the acquisition of land or rights therein; (2) the acquisition, construction or improvement of buildings, structures and facilities together with their related furnishings, equipment, machinery and apparatus; (3) the acquisition, construction or replacement of pipes and pipe lines; and (4) the acquisition or replacement of property of a capital nature for use in the operation, maintenance and administration of the Gas Works; (b) the refunding or redeeming of certain outstanding (1) Gas Works Revenue Bonds, which were issued under the General Gas Works Revenue Bond Ordinance of 1975, from such series and in such amounts as shall be determined by the City's Director of Finance, and (2) Gas Works Revenue Bonds, which were issued under the General Gas Works Revenue Bond Ordinance of 1998, from such series and in such amounts as shall be determined by the City's Director of Finance; (c) paying the costs of issuing the Third Series Bonds and making any required deposits to the Sinking Fund Reserve; (d) paying any other Project Costs (as defined in the Act), which may include, without limitation, the repayment to any fund of the City or to accounts of the Gas Works of amounts advanced for Project Costs; and (e) the funding or refunding of outstanding bond anticipation notes or other obligations of the City issued in respect of Project Costs.

(ii) The revenues pledged for the payment of the Third Series Bonds will be all operating and nonoperating revenues of the Gas Works derived from its activities and assets involved in the supply, manufacture, storage and distribution of gas, including all rents, rates and charges imposed or charged by the Gas Works upon the owners or occupants of properties connected to, and upon all users of, gas distributed by the Gas Works and all other revenues derived therefrom and all other income derived by the City from the Gas Works (the "Gas Works Revenues").

(iii) Assuming not more than One Hundred Eighty Million (\$180,000,000) Dollars of Third Series Bonds are to be issued, amortizing over a period ending _____, at an average interest rate not exceeding _____ percent], I find that with the rates currently in effect and on the basis of estimated future financial operations of the Gas Works, as detailed in the Engineering Report, the Gas Works will, in my opinion, yield pledged Gas Works Revenues over the amortization period of the Third Series Bonds sufficient to meet the payment and/or deposit requirements of all expenses

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of operation, maintenance, repair and replacement of the Gas Works; (b) all reserve or special funds required to be established and maintained out of Gas Works Revenues; (c) the principal of and interest on all revenue bonds issued under the 1998 General Ordinance and under the 1975 General Ordinance, as the same shall become due and payable; and (d) any State taxes assumed by the City to be paid on such bonds and also to provide such coverage on such bonds as prescribed by the 1998 General Ordinance.

(iv) The Gas Works Revenues forming the basis for the statements set forth in clause (iii) above comply with the requirements of the definition of "Project Revenues" contained in Section 2 of the Act.

(v) Based on their investigations, Black & Veatch have found that the Gas Works is in good operating condition and that adequate steps are being taken to maintain it in good operating condition.

For the purpose of the opinion expressed in clause (iii) above, you are advised that no State taxes on any of such bonds have been or are being assumed by the City.

Respectfully submitted,

Janice Davis
Director of Finance

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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