

City of Philadelphia



(Bill No. 090322)

AN ORDINANCE

Constituting the Ninth Supplemental Ordinance to the General Gas Works Revenue Bond Ordinance of 1998 (the "1998 General Ordinance"); authorizing the City to sell, either at public or private sale, Gas Works Revenue Bonds, Eighth Series, to pay the cost of refunding or redeeming certain outstanding Gas Works Revenue Bonds and other Project Costs; authorizing the City to obtain credit enhancement and liquidity for all or a portion of the Eighth Series Bonds; authorizing the City to enter into or amend one or more Qualified Swap Agreements or to relate all or a portion of an existing Qualified Swap Agreement to all or a portion of a different series of outstanding Gas Works Revenue Bonds; making certain determinations and covenants relating to Gas Works Revenues and payment of interest and principal; and authorizing covenants and actions in order that the Eighth 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, Eighth Series (1998 General Ordinance), of the City (the "Eighth Series Bonds"), which may be issued in one or more subseries, designated "Eighth 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 Eighth Series Bonds authorized to be issued hereunder, to be expended as provided in Section 2 of this Ordinance. The Eighth 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 Eighth 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 Eighth Series Bonds. If a majority of the Bond Committee determines it to be in the best interests of the City, the City may obtain Credit Facilities in the forms of credit enhancement and liquidity for all or a portion of the Eighth Series Bonds. If a majority of the Bond Committee determines, the Eighth Series Bonds may be issued as Build America Bonds (Tax Credit) or Build America Bonds (Direct Payment). If a majority of

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the Bond Committee determines that the entry by the City into one or more Qualified Swap Agreements, or the modification of an existing Qualified Swap Agreement, will assist the City in more effectively managing its interest costs or interest rate exposure, the City may enter into one or more Qualified Swap Agreements with respect to all or a portion of the Eighth Series Bonds, or one or more amendments to an existing Qualified Swap Agreement with respect to the Eighth Series Bonds and/or the Bonds to which such Qualified Swap Agreement to be amended relates, or may enter into one or more amendments to an existing Qualified Swap Agreement to relate all or a portion thereof to all or a portion of a different series of outstanding Gas Works Revenue Bonds, and designate in writing to the Fiscal Agent that such Qualified Swap Agreements constitute Qualified Swaps, in accordance with the requirements of the 1998 General Ordinance and Section 8 of this Ordinance. The Eighth 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 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 Eighth Series Bonds are authorized to be issued hereunder in an aggregate principal amount of up to Four Hundred Fifty Million Dollars (\$450,000,000) to pay the costs related to any or all of the purposes set forth in Section 2 hereof; provided that if any of the Eighth Series Bonds are to be sold at discounts which are in lieu of periodic interest, the aggregate principal amount of the Eighth 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 Eighth Series Bonds shall not exceed Four Hundred Fifty Million Dollars (\$450,000,000), plus accrued interest if any; provided further, that the Eighth Series Bonds, or any portion thereof, may be sold at a premium so long as the aggregate principal amount of the Eighth Series Bonds does not exceed Four Hundred Fifty Million Dollars (\$450,000,000).

The Eighth 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 Eighth 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, Sixth Series (1998 Ordinance), upon such terms and in such amounts as shall be determined by the Director of Finance (the "Sixth Series Bonds"); (ii) providing funds in order to make a payment (the "Termination Payment") to terminate, in whole or

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in part, the Qualified Swap (the “Sixth Series Swap”) entered into with respect to the Sixth Series Bonds pursuant to a Qualified Swap Agreement (the “Sixth Series Swap Agreement”); (iii) paying the costs of issuing the Eighth Series Bonds and any required deposits to the Sinking Fund Reserve; and (iv) paying any other Project Costs (as defined in the Act). Upon the refunding or redeeming of all the outstanding Sixth Series Bonds, no further bonds may be issued pursuant to the authorization granted by this Ninth Supplemental Ordinance.

The City covenants that the proceeds of the Eighth Series Bonds which remain available for the payment of the costs of refunding the Sixth Series Bonds, and after payment of the Termination Payment, 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).

The City hereby authorizes the redemption of the Sixth Series Bonds, in whole or in part, in accordance with the terms of the 1998 General Ordinance and the Sixth Series 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 Eighth Series Bond proceeds and any other available funds of the City in amounts sufficient, together with interest thereon, if any, to defease such Sixth Series Bonds so that such Sixth Series Bonds shall be deemed not to be outstanding under the 1998 General Ordinance, and providing for payment of the Sixth Series Bonds at maturity or redemption, as applicable, including all interest payable on such Sixth Series 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 Sixth Series 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 Eighth 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

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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 Eighth 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 Eighth 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 the Eighth 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 Eighth Series Bonds of the maturity required to be redeemed for cancellation prior to the date specified for such redemption.

SECTION 6. (a) 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 Eighth Series Bonds and to take such actions on behalf of the City with respect to the investment of the proceeds of the Eighth 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 Eighth Series Bonds shall not be "arbitrage bonds" as defined in the Code.

(b) The Director of Finance is authorized to make such elections under Section 54 AA of the Code, any subsection thereof or any other applicable section of the Code, and to take such actions on behalf of the City with respect to the Eighth Series Bonds, in order that the Eighth Series Bonds as so issued, constitute Build America Bonds (Tax Credit) or Build America Bonds (Direct Payment), as applicable, if it is determined to issue the Eighth Series Bonds, in whole or in part as Build America Bonds (Tax Credit) or Build America Bonds (Direct Payment).

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

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Pursuant to the book-entry only system, ownership interests in the Eighth 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 an Eighth Series Bond (a "Beneficial Owner") will not receive certificated Eighth 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 Eighth 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 Eighth Series Bonds or the providing of notices relating to redemption or mandatory tender to Participants or the Beneficial Owners of the Eighth 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 Eighth Series Bonds for subsequent disbursement to the Beneficial Owners. The ownership interest of each Beneficial Owner in the Eighth 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 of the Participants so that such Participants may forward (or cause to be forwarded) the notices to the Beneficial Owners.

Transfers of ownership interests in the Eighth 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 Eighth Series Bonds, except as specifically provided herein. So long as the Depository is the Bondholder, interest, principal and redemption price of the Eighth 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 Eighth Series Bonds.

For every transfer and exchange of the Eighth Series Bonds, the Fiscal Agent, the Depository and the Participants may charge the Beneficial Owner of the Eighth 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 Eighth 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 Eighth Series Bonds. No transfers shall be made of Eighth Series Bonds previously called for redemption, except pursuant to the optional or mandatory tender provisions thereof.

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

SECTION 8. (a) Subject to the determination by a majority of the Bond Committee referred to in Section 1 hereof, and as required by Section 3.03 of the 1998 General Ordinance, the Director of Finance is hereby authorized to enter into an amendment to the Sixth Series Swap Agreement; provided that the Sixth Series Swap Agreement, as so amended, shall continue to constitute a Qualified Swap Agreement with respect to the Sixth Series Bonds and/or the Eighth Series Bonds and/or relate to all or a portion of the outstanding Gas Works Revenue Bonds Fifth Series A-2, as authorized and permitted pursuant to Section 3.09 of the 1998 General Ordinance and as determined by a majority of the Bond Committee; and provided further, that the Sixth Series Swap Agreement, as amended, shall be in a notional amount not to exceed the then outstanding aggregate principal amount of the Sixth Series Bonds and/or the Eighth Series Bonds and/or the outstanding Gas Works Revenue Bonds Fifth Series A-2 to which such Sixth Series Swap Agreement relates, amortizing in accordance with the schedules set forth therein.

(b) Subject to the determination by a majority of the Bond Committee referred to in Section 1 hereof and as required by Section 3.03 of the 1998 General Ordinance, the Director of Finance is hereby authorized to enter into one or more interest rate swap transactions consisting of a Master Agreement, Schedule and one or more Confirmations (collectively, the "Eighth Series Swap"), collectively constituting a Qualified Swap Agreement, as such term is defined in the 1998 General Ordinance, with respect to the Eighth Series Bonds, and/or the Sixth Series Bonds and/or relate to all or a portion of the outstanding Gas Works Revenue Bonds Fifth Series A-2, as authorized and permitted pursuant to Section 3.09 of the 1998 General Ordinance and as determined by a

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majority of the Bond Committee. The Eighth Series Swap shall be in a notional amount not to exceed the then outstanding aggregate principal amount of the Eighth Series Bonds, the Sixth Series Bonds and the Gas Works Revenue Bonds Fifth Series A-2 to which it relates, amortizing in accordance with the schedule set forth therein; provided, however, that at no time shall the principal amount of such schedule be greater than the then outstanding aggregate principal amount of the Eighth Series Bonds, the Sixth Series Bonds and the Gas Works Revenue Bonds Fifth Series A-2 to which it relates; provided further, that the Director of Finance shall have no authority under this subsection to enter into a Qualified Swap Agreement with respect to the Eighth Series Bonds, the Sixth Series Bonds and/or the Gas Works Revenue Bonds Fifth Series A-2 to the extent that, pursuant to subsection (a) hereof, the Sixth Series Swap Agreement has been amended and, as amended, is an aggregate notional amount equal to the then outstanding aggregate amount of the Sixth Series Bonds and/or the Eighth Series Bonds and/or the Gas Works Revenue Bonds, Fifth Series A-2 to which such Sixth Series Swap Agreement, as amended, relates. The Eighth Series Swap shall be entered into with a Qualified Swap Provider, as such term is defined in the 1998 General Ordinance.

(c) In accordance with and as permitted by 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 provider of the Sixth Series Swap, the provider of the Eighth Series Swap and the provider of a Credit Facility securing any payments of the City to be made pursuant to the Sixth Series Swap and/or the Eighth Series Swap (collectively, "Swap Credit Facilities"), all to the extent and in the manner as provided therein.

(d) All of the provisions of Section 4.02 of the 1998 General Ordinance relating to Qualified Swaps, except to the extent limited by Section 8(c) hereof with respect to the Sinking Fund and the Sinking Fund Reserve, shall apply to the Sixth Series Swap, as amended, the Eighth Series Swap and to payments due from the City to the providers of the Sixth Series Swap, as amended, the Eighth Series Swap and the Swap Credit Facilities, respectively; provided that periodic payments scheduled to be paid by the City under the Sixth Series Swap and the Eighth Series Swap shall be payable equally and ratably with payments of debt service on the Sixth Series Bonds and/or the Eighth Series Bonds and/or the Gas Works Revenue Bonds Fifth Series A-2 to which the Sixth Series Swap relates, and shall be secured by Gas Works Revenues equally and ratably with payments of debt service on the Sixth Series Bonds and/or the Eighth Series Bonds and/or the Gas Works Revenue Bonds Fifth Series A-2 to which the Sixth Series Swap relates. Payments by the City to a provider of any Swap Credit Facility shall have the same priority and security as the corresponding payments under the Sixth Series Swap or the Eighth Series Swap secured by such respective Swap Credit Facility. The provider of the Sixth Series Swap, the Eighth Series Swap and the provider of any Swap Credit

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Facility shall have no right or claim at any time to amounts on deposit in the Sinking Fund or the Sinking Fund Reserve.

(e) All of the provisions of Section 4.03(b) of the 1998 General Ordinance relating to Qualified Swaps shall apply to the Sixth Series Swap, the Eighth Series Swap and to the Swap Credit Facilities.

SECTION 9. (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 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 Sixth Series Bonds and/or the Eighth 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 Sixth Series Bonds and/or the Eighth 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 Eighth 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 9(a) hereof with respect to the Sinking Fund and the Sinking Fund Reserve, shall apply to Credit Facilities with respect to the Sixth Series Bonds and/or the Eighth 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 Sixth Series Bonds and/or the Eighth Series Bonds.

SECTION 10. 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 Eighth 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 11. 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 Eighth Series Bonds. No funds from sources other than the Eighth 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

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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 12. 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 May 21, 2009. The Bill was Signed by the Mayor on June 3, 2009.



Patricia Rafferty
Chief Clerk of the City Council