

Legislation Text

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Constituting the Twenty-Fifth Supplemental Ordinance to the Restated General Water and Wastewater Revenue Bond Ordinance of 1989, as supplemented; authorizing the Bond Committee to issue and sell one or more series or subseries of tax-exempt or taxable water and wastewater revenue bonds and revenue refunding bonds, some or all of which may be used for the implementation of a revolving commercial paper program for the System; authorizing agreements to provide credit enhancement or payment or liquidity sources (or any combination of the foregoing) for such Obligations; providing that such Obligations shall bear interest at fixed or variable rates; authorizing the Bond Committee to take certain action with regard to the terms and conditions of the water and wastewater revenue bonds or notes and related agreements and the elections under the Restated General Water and Wastewater Revenue Bond Ordinance of 1989; determining the sufficiency of pledged Project Revenues; authorizing the Director of Finance to take certain actions with regard to the sale of such Obligations, the investment of proceeds thereof and the City's continuing disclosure obligations with respect to such Obligations; setting forth the use of proceeds of such Obligations; covenanting the payment of interest and principal; supplementing and amending the Restated General Water and Wastewater Revenue Bond Ordinance of 1989; and specifying applicability of sections of The First Class City Revenue Bond Act and the Restated General Water and Wastewater Revenue Bond Ordinance.

THE COUNCIL OF THE CITY OF PHILADELPHIA HEREBY ORDAINS:

SECTION 1. Authorization, Scope and Purpose. This Supplemental Ordinance is enacted pursuant to the provisions of The First Class City Revenue Bond Act, approved October 18, 1972 (Act No. 234, 53 P.S. §§15901 to 15924), as amended (the "Act"), and constitutes a Supplemental Ordinance enacted for the purpose of authorizing the issuance of one or more series or subseries of Bonds within the meaning of the City's Restated General Water and Wastewater Revenue Bond Ordinance of 1989 (Bill No. 544) approved June 24, 1993, as amended and supplemented (the "General Ordinance").

The Bond Committee is hereby authorized on behalf of the City, to borrow, by the issuance and sale of one or more series or subseries of Bonds (the "Obligations"), a sum or sums which in the aggregate shall not exceed the principal amount of the Obligations authorized to be issued hereunder, to be expended as provided in Section 4 of this Supplemental Ordinance. Some or all of the Obligations may be issued for the purpose of implementing a revolving commercial paper program (the "Water and Wastewater CP Program") for the System. In accordance with the General Ordinance, the Bond Committee shall approve the final terms of the Obligations in one or more Determinations of the Bond Committee (each, a "Determination") prior to, and as a condition of, the issuance of the Obligations. Any such Determination shall be deemed a supplement to this Supplemental Ordinance.

The aggregate principal amount of the Obligations shall not at any time exceed Four Hundred Million Dollars (\$400,000,000), (exclusive of costs of issuance (including underwriters' discount), original issue discount, capitalized interest, funding of deposits to the Debt Reserve Account, if necessary, and similar items). The Bond Committee is hereby authorized to increase the aggregate principal amount of the Obligations so issued, by the amount of such items. The aggregate principal amount of the Obligations, as may be so increased, and subject to any amortization thereof, is referred to herein as the "Authorized Program Amount." In the case of Obligations issued for the Water and Wastewater CP Program, the Authorized Program Amount may be reduced and reinstated from time to time so long as the aggregate principal amount of Obligations outstanding at any one time does not exceed the Authorized Program Amount.

The Bond Committee is authorized, on behalf of the City to enter into agreements specified in the Determination (the "Enhancement Agreements") with any bank, insurance company or other appropriate entity providing credit enhancement or payment or liquidity sources (collectively, a "Provider") for the account of the City for the Obligations, including, without limitation, letters of credit, liquidity and credit facilities and bond insurance. Such Enhancement Agreements may provide for payment of the principal or purchase price of, or interest on, the Obligations if the City does not pay the Obligations when due and may provide for repayment

with interest to the Provider from the date of such payment or acquisition.

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

The Bond Committee or the Director of Finance, as appropriate, 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. Definitions. All defined terms contained in the Act shall apply to this Supplemental Ordinance. Unless expressly given different meanings hereunder or the context clearly otherwise requires, all terms used herein shall have the same meanings assigned to them in the General Ordinance.

SECTION 3. Form and Terms of the Obligations. The Obligations shall be sold either at public competitive sale to the highest bidder or bidders or at a private negotiated sale, as the Bond Committee shall determine to be in the best interest of the City. The Obligations shall be issued substantially in the form or forms set forth in the Determination providing for the issuance thereof.

The Obligations may be issued and sold in one or more Series or, as authorized by the General Ordinance and as specified by the Determination, in one or more subseries, each of which shall be deemed a Series for purposes of the General Ordinance and shall be designated by letter as a Series of Obligations of the year in which such Series is issued, at the same or different times, as taxable or tax-exempt bonds, all as specified in the Determination.

The Obligations shall bear interest from the dated date thereof, or the date of delivery, to maturity or prior redemption, if any, or pursuant to tender provisions contained within the Obligations, at prescribed fixed rates or variable rates (not exceeding any limitation prescribed by law), as specified in the Determination. The interest on the Obligations may accrue, and may be payable, at fixed rates or variable rates, on such basis as the Bond Committee shall determine to be in the best interest of the City and which are not inconsistent with the provisions hereof, the Act or the General Ordinance, all as set forth in the Determination.

The Obligations shall contain series or subseries, designations, terms and provisions (including without limitation, interest payment dates, record dates, commercial paper roll-over provisions, redemption and tender for purchase provisions, denominations, provisions for payments by wire transfer and provisions for issuance of the Obligations in book-entry form) as the Bond Committee shall determine to be in the best interest of the City and which are not inconsistent with the provisions hereof, the Act or the General Ordinance, all as set forth in the Determination. Obligations issued for the Water and Wastewater CP Program (the “CP Obligations”) may be sold with a maturity of up to 270 days or such other number of days as shall be set forth in the Bond Committee Determination; and at each maturity date the maturing CP Obligations may be rolled over, so long as the total aggregate principal amount of CP Obligations outstanding does not exceed the Authorized Program Amount specified in the Bond Committee Determination. The Water and Wastewater CP Program shall have a final maturity date of 30 years and any Obligation issued pursuant to this Twenty-Fifth Supplemental Ordinance shall have a final maturity date not exceeding 30 years from the date of issuance of the first CP Obligation issued pursuant to this Twenty-Fifth Supplemental Ordinance.

The Obligations 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 General Ordinance.

SECTION 4. Purposes for the Obligations. The Water and Wastewater CP Program is intended to provide the City with a source of short-term financing to fund, in accordance with the Act, capital expenditures for the System. The Water and Wastewater CP Program provides the City flexibility with respect to the timing and the amounts periodically issued as part of the Water and Wastewater CP Program. Obligations may have an issuance and delivery date that occurs in a fiscal year that is different than the fiscal year in which the sale date of such Obligations occurred. For the avoidance of doubt, Obligations issued under the Water and Wastewater CP Program shall not constitute Interim Debt under the General Ordinance.

Proceeds of the Obligations may be used, from time to time, for any of: (i) paying costs of (a) constructing, acquiring, reconstructing and renovating wastewater treatment plants and related facilities and equipment for the sewer system; (b) constructing, acquiring, reconstructing and renovating water treatment plants and related facilities and equipment for the water system; (c) constructing, acquiring, reconstructing and replacing water, wastewater and stormwater pipes, pumping stations and related facilities; (d) purchasing equipment and apparatus of a capital nature for the water and wastewater systems; (e) constructing, acquiring, reconstructing and renovating storm water management and mitigation improvements and facilities and other improvements and facilities in furtherance of the City’s Combined Sewer Overflow (CSO) Long Term Control Plan Update (referred to as the Green

City, Clean Waters Program) dated September 1, 2009, as permitted under the Act and the General Ordinance; (f) acquiring, demolishing and replacing of such other property, plant and equipment, including real property, for use in the operation, maintenance and administration of the System as the Water Commissioner, from time to time, may deem necessary or desirable for the prudent management of the System with, to the extent required by the Home Rule Charter, the approval of this Council therefor; and (g) purchasing vehicles that serve the water or wastewater system, all as included in the capital budgets of the City; (ii) paying the costs of any Enhancement Agreements; (iii) paying any other Project Costs as such term is defined in the Act; (iv) making the deposits referred to in Section 6 hereof including, without limitation, the establishment of a debt reserve account or series subaccount within the Sinking Fund and any other fund permitted by, the General Ordinance; and (v) paying the issuance costs of the Obligations (the "Capital Project").

Proceeds of the Obligations also may be used to pay or defease prior Obligations issued pursuant to this Twenty-Fifth Supplemental Ordinance.

SECTION 5. Official Intent. In accordance with Treasury Regulation §1.150-2, the City hereby states its intentions that it may use all or a portion of the proceeds of the Obligations to reimburse the City for expenditures originally paid prior to a date of issuance of the Obligations.

All original expenditures which may be reimbursed will be capital expenditures (as defined in Treasury Regulation §1.150-1(b)) and other permissible amounts under Treasury Regulation §1.150-2(d)(3). The property for which the original expenditure may be fully or partially reimbursed from bond proceeds consists of the Capital Project described in Section 4 of this Supplemental Ordinance.

Once the Obligations are issued, the City shall allocate, or cause to be allocated, bond proceeds to reimburse prior capital expenditures, if any, provided that, except as permitted under Treasury Regulation §1.150-2(f), such costs to be reimbursed were paid not more than sixty (60) days prior to the date of enactment of this Supplemental Ordinance. Such allocation shall specifically identify the actual original expenditures to be reimbursed. Such allocation shall occur not later than eighteen (18) months after the later of (i) the date on which the original expenditure was paid, or (ii) the date the Capital Project was placed in service or abandoned, but in no event more than three (3) years after the original expenditure was paid.

Any bond proceeds used to reimburse the City for original expenditures will not be used within one (1) year after the allocation in a manner that results in the creation of replacement proceeds (as defined in Treasury Regulation §1.148-1) for the Obligations or for other bonds or notes.

SECTION 6. Deposit of Proceeds of Obligations. As provided in Section 5.04(f) of the General Ordinance, accrued interest, if any, on the Obligations shall be deposited in the Sinking Fund.

Of the remaining Bond proceeds, a portion thereof shall be deposited first in the Debt Reserve Account as may be needed to satisfy the Debt Reserve Requirement pursuant to Section 4.09 of the General Ordinance, subject to the establishment pursuant to Section 9 hereof of a separate Debt Reserve Requirement for any specified Series of Bonds issued hereunder or a separate Debt Reserve Subaccount within the Debt Reserve Account for any specified Series of Bonds issued hereunder (a "Series Debt Reserve Subaccount").

Remaining proceeds and other monies currently on deposit under the General Ordinance, including current reserves and construction funds, shall be deposited or transferred as provided in a certificate of the Director of Finance.

SECTION 7. Requirements of the Act. Based on a report of the Director of Finance of the City filed with the City Council pursuant to Section 8 of the Act, it is hereby determined that the pledged Project Revenues, as defined in the General Ordinance, will be sufficient to: (a) comply with the Rate Covenant contained in Section 5.01 of the General Ordinance, and (b) pay all costs, expenses and payments required to be paid from pledged Project Revenues in the order and priority stated in Section 4.06 of the General Ordinance.

An opinion of the City Solicitor shall be filed with the City Council prior to enactment of this Supplemental Ordinance pursuant to Section 8 of the Act.

SECTION 8. Payments from Sinking Fund. The City covenants that, so long as any Obligation shall remain outstanding, it will make payments or cause payments to be made out of the Sinking Fund established pursuant to the General Ordinance or any of the Water and Wastewater Funds available therefor, at such times and in such amounts as shall be sufficient for the payment of the

interest on the Obligations and the principal thereof when due.

SECTION 9. Establishment of Series Debt Reserve Requirements and Series Debt Reserve Subaccounts. To the extent as shall be permitted by the General Ordinance, the City may establish a separate Debt Reserve Requirement for any specified Series of Obligations issued hereunder (a “Series Debt Reserve Requirement”) pursuant to a Determination of the Bond Committee.

To the extent as shall be permitted by the General Ordinance, there may be established by the Fiscal Agent one or more Series Debt Reserve Subaccounts in accordance with written direction given by the City. Each Series Debt Reserve Subaccount shall be funded at the Series Debt Reserve Requirement in the amount set forth in the Determination for the related Series of Obligations; and all amounts on deposit in such subaccount shall be available to pay, pursuant to the General Ordinance, and shall secure the payment of, the Debt Service Requirements of such Obligations, and only such Obligations. Each Series Debt Reserve Subaccount shall be held, and the amounts therein expended, by the Fiscal Agent solely for the benefit of the Holders of the Series of Obligations for which it is established. If as a result of a withdrawal or for any other reason there shall be a deficiency in any Series Debt Reserve Subaccount established hereby, the City hereby covenants to restore such deficiency promptly from Net Revenues as provided in the General Ordinance and the Determination.

SECTION 10. Tax Covenants; Tax-Exempt Obligations Not to Become Arbitrage Bonds. The Director of Finance and any other applicable City officer are authorized to make such additional covenants and to take such other action on behalf of the City with respect to the use and investment of the proceeds of the Obligations intended to be issued as tax-exempt (“Tax-Exempt Obligations”) as may be necessary or advisable in order that the Tax-Exempt Obligations shall not be “arbitrage bonds” as defined in Section 148 of the Internal Revenue Code of 1986, as amended (the “Code”), that the City will comply with the requirements of Section 148 of the Code throughout the term of the Tax-Exempt Obligations as more fully described in the Determination and in order to otherwise effect or maintain the exclusion of interest on the Tax-Exempt Obligations from gross income of the holders thereof for federal income tax purposes, and further to establish such sub-accounts within the Sinking Fund and terms or restrictions relating thereto as may be necessary or advisable to permit issuance of the Tax-Exempt Obligations. For purposes of Section 4.14 of the General Ordinance, the Rebate Bond Year with respect to the Tax-Exempt Obligations shall be set forth in the Determination.

SECTION 11. 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”) meeting the requirements of Rule 15c2-12 promulgated under the Securities Exchange Act of 1934, as amended. The City covenants and agrees that it will comply with and carry out all of the provisions of any such Continuing Disclosure Agreement.

SECTION 12. Elections Under the General Ordinance. The Bond Committee is authorized on behalf of the City, without any further action by City Council, to make any and all elections under the General Ordinance as it shall determine to be in the best interest of the City as and when it shall deem such elections to be appropriate.

SECTION 13. Effect of Ordinance. This Ordinance is supplementary to the General Ordinance and all sections of the General Ordinance and the Act not inconsistent herewith are applicable to the Obligations authorized hereunder.

SECTION 14. Effective Date. This Ordinance shall take effect immediately, in accordance with the Act.