

# City of Philadelphia



(Bill No. 100005)

## AN ORDINANCE

Constituting the Thirteenth Supplemental Ordinance to the Restated General Water and Wastewater Revenue Bond Ordinance of 1989, as supplemented; authorizing the Bond Committee to issue and sell either at public or private sale Water and Wastewater Revenue Bonds; authorizing approval of the form of such Bonds; providing that such Bonds shall bear interest at prescribed fixed or variable rates, and authorizing agreements to provide credit enhancement and payment and liquidity sources for such Bonds; authorizing the Director of Finance to take certain actions with regard to the sale of such Bonds, the investment of proceeds thereof and the City's continuing disclosure obligation; setting forth the use of proceeds; covenanting the payment of interest and principal; and supplementing the Restated General Water and Wastewater Revenue Bond Ordinance of 1989.

### *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 one or more Series 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, or a majority of them, is hereby authorized on behalf of the City to borrow, by the issuance and sale of one or more series or subseries of Water and Wastewater Revenue Bonds of the City (the "Series 2010 Bonds"), a sum or sums which in the aggregate shall not exceed the principal amount of the Series 2010 Bonds authorized to be issued hereunder, to be expended as provided in Section 4 of this Supplemental Ordinance. In accordance with the General Ordinance, the Bond Committee, or a majority of them, shall approve final terms of the Series 2010 Bonds in a Determination of the Bond Committee (the "Determination") prior to, and as a condition of, the issuance of the Series 2010 Bonds. Such Determination shall be deemed a supplement to this Supplemental Ordinance.

The aggregate principal amount of the Series 2010 Bonds shall not exceed Four Hundred Sixty Million Dollars (\$460,000,000), exclusive of original issue discount, and in the event the Series 2010 Bonds are issued with original issue discount, the Bond Committee, or a majority of them, is hereby authorized to increase the aggregate principal amount of the Series 2010 Bonds so issued, by the amount of such original issue discount.

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The Bond Committee, or a majority of them, 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 Series 2010 Bonds, including, without limitation, letters of credit and bond insurance. Such Enhancement Agreements may provide for payment of the principal or purchase price of, or interest on, the Series 2010 Bonds if the City does not pay the Series 2010 Bonds when due and may provide for repayment with interest to the Provider from the date of such payment.

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 a majority of them, 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. Terms of Series 2010 Bonds. The Series 2010 Bonds shall be sold either at public competitive sale to the highest bidder or bidders or at a private negotiated sale, as the Bond Committee, or a majority of them, shall determine to be in the best interest of the City.

The Series 2010 Bonds may be sold in a single 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 Series 2010 Bonds and may include serial bonds, terms bonds, Capital Appreciation Bonds, Build America Bonds (Tax Credit or Direct Payment) or derivative financial instruments, as specified in the Determination. The Series 2010 Bonds shall bear interest from the dated date thereof, or the date of delivery, to maturity or prior redemption, if any, at prescribed fixed rates or variable rates (not exceeding any limitation prescribed by law), as specified in the Determination.

The interest on the Series 2010 Bonds may accrue, and may be payable, at fixed rates or variable rates, on such basis 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, the Act or the General Ordinance, all as set forth in the Determination.

The Series 2010 Bonds shall contain series or subseries, designations, terms and provisions (including without limitation, interest payment dates, record dates, redemption

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provisions, denominations, provisions for payments by wire transfer and provisions for issuance of the Series 2010 Bonds in book-entry form) 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, the Act or the General Ordinance, all as set forth in the Determination.

The Bond Committee, or a majority of them, or the Director of Finance, is authorized to terminate, amend, supplement or restate, or execute a new confirmation relating to, any existing Qualified Swap or Swaps (or an Exchange Agreement or Agreements) that relate to any existing Series of Bonds under the General Ordinance in order for such Qualified Swap or Swaps (or an Exchange Agreement or Agreements) to relate to any other Series of Bonds under the General Ordinance, if the Bond Committee, or a majority of them, or the Director of Finance determines such termination, amendment, supplement or restatement, or the execution of a new confirmation, to be in the best financial interests of the City and will not impair the financial viability of the System. Any additional Qualified Swap or Exchange Agreement or other derivative financial instruments shall require the further approval of City Council.

The Series 2010 Bonds 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 Series 2010 Bonds. Proceeds from the sale of the Series 2010 Bonds shall only be used to (a) refund or redeem all or any portion of the outstanding City of Philadelphia, Pennsylvania Water and Wastewater Revenue Refunding Bonds, Variable Rate Series 2003 (the "Series 2003 Bonds"), upon such terms and in such amounts as shall be determined by the Director of Finance; (b) provide funds in order to make a payment (the "Termination Payment") to terminate, in whole or in part, the Qualified Swap (the "Swap") entered into with respect to the Series 2003 Bonds pursuant to a Qualified Swap Agreement; (c) pay any other Project Costs, as such term is defined in the Act; (d) make the deposits referred to in Section 5 hereof; and (e) pay the issuance costs of the Series 2010 Bonds and any required deposit to the Debt Reserve Account.

The City hereby authorizes (a) the redemption of the Series 2003 Bonds, in whole or in part, in accordance with the terms of the General Ordinance, the Series 2003 Bonds and hereof, (b) the payment of the Termination Payment in accordance with the terms of the Swap, and (c) the Bond Committee, or a majority thereof, Director of Finance or any other applicable City officer to take any and all action to effect the issuance of the Series 2010 Bonds, the redemption of the Series 2003 Bonds, the amendment, supplement, restatement or termination of the Swap and the payment of the Termination Payment.

SECTION 5. Deposit of Series 2010 Bond Proceeds. As provided in Section 5.04(f) of the General Ordinance, accrued interest, if any, on the Series 2010 Bonds shall be deposited in the Sinking Fund.

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Remaining Series 2010 Bond proceeds shall be deposited first in the Debt Reserve Account in an amount equal to the Debt Reserve Requirement to the extent that such requirement is not satisfied in whole or in part by available funds of the City or by a surety bond, insurance policy or letter of credit in accordance with Section 4.09 of the General Ordinance; all other Series 2010 Bond 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 6. 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 7. Payments from Sinking Fund. The City covenants that, so long as any Series 2010 Bonds 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 (including Qualified Swap payments, if any) on the Series 2010 Bonds and the principal thereof when due.

SECTION 8. Tax Covenants; Series 2010 Bonds 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 Series 2010 Bonds as may be necessary or advisable in order that the Series 2010 Bonds 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 Series 2010 Bonds as more fully described in the Determination and in order to otherwise effect or maintain the exclusion of interest on the Series 2010 Bonds 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 Series 2010 Bonds. For purposes of Section 4.14 of the General Ordinance, the Rebate Bond Year with respect to the Series 2010 Bonds shall be set forth in the Determination. The Director of Finance or any other applicable City officer is authorized to make any elections under the Code in order that the Series 2010 Bonds constitute Build America Bonds (Tax Credit or Direct Payment), if applicable.

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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”) 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 the Continuing Disclosure Agreement.

SECTION 10. 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 Series 2010 Bonds authorized hereunder.

SECTION 11. Effective Date. 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 March 4, 2010. The Bill was Signed by the Mayor on March 5, 2010.

A handwritten signature in cursive script, reading "Michael A. Decker".

Michael A. Decker  
Chief Clerk of the City Council