

BOROUGH OF NORTH EAST
ERIE COUNTY, PENNSYLVANIA
ORDINANCE NO. 909 - 2019

AN ORDINANCE AUTHORIZING THE INCURRENCE OF LEASE RENTAL DEBT THROUGH THE ISSUANCE AND SALE OF A GUARANTEED DEBT OBLIGATION IN A MAXIMUM PRINCIPAL AMOUNT NOT TO EXCEED \$12,618,000.00 (THE "OBLIGATION") BY THE NORTH EAST BOROUGH SEWER AUTHORITY (THE "AUTHORITY") AND A GUARANTY AGREEMENT SECURING AND GUARANTEEING THE OBLIGATION (THE "GUARANTY") BY THE BOROUGH OF NORTH EAST ("BOROUGH") IN THE AGGREGATE MAXIMUM PRINCIPAL AMOUNT NOT TO EXCEED \$12,618,000.00, AT A PRIVATE SALE TO THE PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY ("PENNVEST"), FOR THE PURPOSES OF FINANCING A PUBLIC SEWER SYSTEM CAPITAL IMPROVEMENTS PROJECT CONSISTING OF THE DESIGN, CONSTRUCTION AND/OR INSTALLATION OF UPGRADES AND RENOVATIONS TO THE AUTHORITY'S PUBLIC SEWER SYSTEM, INCLUDING IMPROVEMENTS TO THE EXISTING SITE I AND SITE II WASTEWATER TREATMENT PLANTS, AN EFFLUENT PUMP STATION AT SITE II AND FORCE MAIN TO CONVEY TREATED EFFLUENT INTO LAKE ERIE, A NEW SECONDARY CLARIFIER TANK AT SITE I, A NEW CENTRIFUGE SLUDGE DEWATERING SYSTEM AT SITE I, NEW STANDBY ELECTRICAL GENERATING SYSTEMS AT SITE I, AND NEW CHLORINATION BUILDING AND EQUIPMENT AT SITE II (COLLECTIVELY, THE "PROJECT"), AND PAYING THE COSTS OF ISSUANCE OF THE OBLIGATION AND THE GUARANTY; APPROVING THE ISSUANCE OF THE GUARANTY TO PENNVEST AS THE PURCHASER OF THE OBLIGATION; APPROVING THE FORM OF THE OBLIGATION AND THE GUARANTY; PROVIDING THE ANNUAL RATE OF INTEREST AND THE MAXIMUM GUARANTEED PRINCIPAL AMOUNTS TO BE PAID UNDER THE GUARANTY; MAKING COVENANTS FOR THE PAYMENT OF THE GUARANTY OBLIGATIONS; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE BOROUGH FOR THE PAYMENT THEREOF; AUTHORIZING THE ASSIGNMENT TO PENNVEST OF THE "ACCOUNT COLLATERAL" (AS DEFINED IN THE GUARANTY) AND THE PLEDGE TO PENNVEST OF THE "SYSTEM REVENUES" (AS DEFINED IN THE GUARANTY); AUTHORIZING THE APPROPRIATE OFFICERS OF THE BOROUGH TO TAKE CERTAIN ACTIONS AND TO ISSUE, EXECUTE AND DELIVER CERTAIN DOCUMENTS, INCLUDING THE GUARANTY AND ANY NECESSARY AMENDMENT TO THE LEASE AGREEMENT BETWEEN THE BOROUGH AND THE AUTHORITY; TO OBTAIN THE APPROVAL OF THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT RELATING TO THE GUARANTY, TO CONSUMMATE THE GUARANTY TRANSACTION WITH PENNVEST, AND TO TAKE SUCH FURTHER ACTION AS IS NECESSARY TO EFFECT THE FOREGOING PURPOSES; AND PROVIDING FOR THE REPEAL OF ALL INCONSISTENT ORDINANCES OR PARTS OF ORDINANCES.

WHEREAS, the Borough of North East (the "Borough") is a local government unit under the provisions of the Pennsylvania Local Government Unit Debt Act (the "Act"); and

WHEREAS, The North East Borough Sewer Authority (the "Authority") is a municipal authority organized by appropriate action of the Borough and existing under the Pennsylvania Municipality Authorities Act (the "Authorities Act"); and

WHEREAS, the Authority owns the public sewer system (the "Sewer System") in and around the Borough, and the Borough operates the Sewer System pursuant to a Lease Agreement between the Authority and the Borough; and

WHEREAS, the Authority is undertaking a public sewer system capital improvements Project consisting of the design, construction and/or installation of upgrades and renovations to the Authority's public sewer system, including improvements to the existing Site I and Site II Wastewater Treatment Plants, an effluent pump station at Site II and force main to convey treated effluent into Lake Erie, a new secondary clarifier tank at Site I, a new centrifuge sludge dewatering system at Site I, new standby electrical generating systems at Site I, and new chlorination building and equipment at Site II (the "Project"); and

WHEREAS, the Pennsylvania Infrastructure Investment Authority ("Pennvest") has submitted a proposal to provide funding for the Project in the aggregate principal amount not to exceed \$12,618,000.00 (the "Loan") on the terms as set forth in Pennvest's proposal and this Ordinance as described below and subject to the approval of lease rental debt proceedings under the Act; and

WHEREAS, the Loan is to be evidenced by the Authority's Debt Obligation (the "Obligation") to be issued in favor of Pennvest in a principal amount not to exceed \$12,618,000.00 (the "Obligation"), and in order to secure the payment of all amounts due under the Obligation to Pennvest, the Borough is to enter into a Guaranty Agreement (the "Guaranty") in favor of Pennvest providing for the unconditional guarantee by the Borough of all amounts due under the Obligation and the pledge by the Borough of its full faith, credit and taxing power to discharge all of its obligations under the Guaranty; and

WHEREAS, the above-referenced Guaranty by the Borough constitutes the incurrence of lease rental debt under the Act; and

WHEREAS, it is necessary that the indebtedness of the Borough be increased by the incurrence of such lease rental debt for the purpose of providing funding for the Project; and

WHEREAS, in light of the Borough's prior qualified self-liquidating debt, the proposed increase of such lease rental debt, together with its nonelectoral indebtedness and its lease rental indebtedness presently outstanding, will not cause limitations of the Borough's lease rental debt incurring power, pursuant to constitutional and statutory authority, to be exceeded.

NOW, THEREFORE, BE IT ORDAINED AND ENACTED by the Borough of North East, Erie County, Pennsylvania, and it is hereby ordained and enacted by the authority of the Borough of North East as follows:

SECTION 1. The Borough has previously approved the Project, as described above, and by this Ordinance hereby confirms and ratifies that approval.

SECTION 2. The Borough hereby intends and determines to incur debt as such term is defined in the Act, which shall be lease rental debt of the Borough pursuant to the Act, in connection with the Project and as set forth in this Ordinance.

SECTION 3. The Borough has determined that the realistic estimated useful life of the facilities being funded by the Project is in excess of thirty (30) years.

SECTION 4. The maximum principal amount of the Obligation to be issued by the Authority and secured by the Borough's Guaranty is not to exceed \$12,618,000.00. The amortization period of the Obligation shall be two hundred forty (240) months, following an interest only period of up to 36 months. The interest rate on the Obligation shall be a fixed rate of (i) 1.00% per annum for the interest only period, (ii) 1.00% per annum for the first 5 years of the amortization period, and (iii) 1.743% per annum thereafter until maturity. Interest only on the outstanding principal balance of the Obligation shall be due and payable monthly during the interest only period. Level payments of principal and interest in the amount of (i) \$58,029.46 monthly for the first 5 years of the amortization period, and (ii) \$61,253.17 monthly thereafter until maturity, shall be due and payable on a monthly basis. All outstanding principal and accrued interest shall be due in full at maturity. The Obligation shall be secured by, among other things, the Guaranty of the Borough. The form of the Obligation shall be substantially as that attached as Exhibit A hereto, subject only to such amendments as may be agreed upon by Pennvest in accordance with Pennvest's Funding Offer dated April 17, 2019 (the "Funding Offer") and approved by the Borough's Solicitor and the Mayor of the Borough. The maximum annual debt service on the Obligation is \$735,038.04.

SECTION 5. The Borough hereby authorizes, directs and approves the incurring of lease rental debt of the Borough pursuant to the Act, in the maximum principal amount not to exceed \$12,618,000.00 to secure and guarantee the Obligation, and to be evidenced by the Guaranty to be issued by the Borough in favor of Pennvest and a Lease Amendment between the Borough and the Authority as described in this Ordinance. The form of the Guaranty is hereby approved and shall be filed with this Ordinance as Exhibit B hereto in the official records of the Borough, and shall be available for inspection at reasonable times by any interested persons. The Borough Council President and/or the Mayor of the Borough and the Borough Secretary or Assistant Secretary (the "Proper Officers") are hereby authorized to execute and deliver the Guaranty substantially in the form attached as Exhibit B hereto, subject only to such amendment as may be agreed upon by Pennvest in accordance with Funding Offer and approved by the Borough Solicitor and the Proper Officers of the Borough.

SECTION 6. The Borough has determined that a private sale of the Obligation by negotiation rather than public sale is in the best financial interest of the Borough. Therefore, the Borough hereby approves and authorizes the issuance of the Guaranty to Pennvest as the

purchaser of the Obligation, subject to and in accordance with the Authority's issuance and sale of the Obligation to Pennvest.

SECTION 7. As provided in the Guaranty, the Borough does hereby covenant with Pennvest and the Authority as follows: (i) to include the amounts payable in respect of its Guaranty for each of its fiscal years in which such sums shall be payable, in its budget for that fiscal year; (ii) to appropriate such amounts from its general revenues for payment of its obligations under the Guaranty; (iii) to duly and punctually pay or cause to be paid from its revenues or funds, the amount payable in respect of the Guaranty, at the dates and places and in the manner stated in the Guaranty, according to the true meaning and intent thereof; and (iv) for such budgeting, appropriation, and payment in respect to the Guaranty, the Borough shall, and hereby does pledge irrevocably, its full faith, credit, and taxing power. This covenant shall be specifically enforceable.

SECTION 8. The Borough hereby authorizes (i) the assignment to Pennvest of the "Account Collateral" (as defined in the Guaranty) and (ii) the pledge to Pennvest of the "System Revenues" (as defined in the Guaranty) pursuant to the provisions of the Guaranty.

SECTION 9. The maximum annual amounts of principal and interest covenanted to be paid by the Borough, with respect to the Obligation, as set forth in the Guaranty, shall be payable, if and as necessary, in such amounts as set forth in the Debt Service Schedule attached hereto as Schedule I.

SECTION 10. The Proper Officers of the Borough are authorized to enter into an Amendment to Lease Agreement with the Authority whereby the Borough will continue to make lease rental payments to the Authority in such amounts as will be necessary to pay the debt service on the Obligation with Pennvest and such Amendment to Lease Agreement. The Amendment to Lease Agreement and Assignment of Lease is approved and the Proper Officers are directed to execute the Amendment to Lease Agreement.

SECTION 11. The Proper Officers of the Borough are authorized and directed to (i) make application to the Pennsylvania Department of Community and Economic Development ("DCED") for approval of the Guaranty as required by Section 8111(b) of the Act, (ii) to prepare, certify, and file with DCED on behalf of the Borough the debt statement, as defined in Section 8110 of the Act, and the borrowing base certificate appended to such debt statement, and (iii) in connection with such application to pay or cause to be paid the applicable filing fee.

SECTION 12. The Proper Officers of the Borough are authorized and directed to prepare any statements required by the Act to qualify all or a portion of the lease rental debt for exclusion from the appropriate debt limit as self liquidating debt under the Act. The Borough's consulting engineer is hereby authorized and directed to prepare a report to the Borough in conformity with the provisions of Section 8026 of the Act in order that the debt evidenced by the Obligation may be excluded as self-liquidating debt in determining the net debt of the Borough under the Act. Nothing contained in this Section 12 shall limit, restrict or impair in any respect the covenants of the Borough contained in Section 7 hereof.

SECTION 13. After obtaining DCED's approval under the Act as referenced above, the Proper Officers of the Borough are authorized and directed to execute and deliver the Guaranty Agreement to Pennvest, and to execute and deliver all other required Loan documents and take all other necessary actions to consummate the Guaranty transaction with Pennvest.

SECTION 14. The Proper Officers of the Borough are authorized and directed to execute and deliver all other documents and to take all other action as may be necessary and proper to carry out the intent and purpose of this Ordinance and the undertakings of the Borough under the Guaranty Agreement.

SECTION 15. In the event any provision, section, sentence, or clause, or part of this Ordinance shall be held invalid, such invalidity shall not impair or affect any remaining provision, section, sentence, clause, or part of the Ordinance from remaining in full force and effect. This Ordinance shall become effective in accordance with the provisions of the Act.

SECTION 16. All ordinances or parts of ordinances that are inconsistent herewith are repealed.

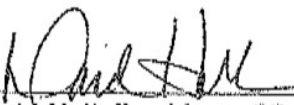
ORDAINED AND ENACTED this 5th day of August, 2019.

ATTEST:

BOROUGH OF NORTH EAST



Patrick J. Gehrlein, Borough Secretary

By: 

David Hall, President of Borough Council

Approved this 5th day of August, 2019



Steven L. Gregory, Mayor

(SEAL)

CERTIFICATE

I, the undersigned Secretary of the Borough of North East, Erie County, Pennsylvania, do hereby certify that the foregoing and attached is a true and correct copy of an Ordinance of said local government unit, which was duly enacted by the affirmative vote of the members of the governing body at a meeting thereof duly called and held on the 5th day of August, 2019, after due notice to the members and to the public and which was at all times open to the public, that the same was examined and approved by the members of the governing body and was duly recorded in the Ordinance Book of said local government unit and was published as required by law in the Erie Times-News, a newspaper of general circulation in said local government unit.

I further certify that the total number of members of the governing body of the local government unit is five (5); that the vote upon said Ordinance was called and duly recorded on the minutes of said meeting and that the members voted in the manner following:

<u>Member</u>	<u>Aye</u>	<u>Nay</u>	<u>Abstain</u>	<u>Absent</u>
David Hall	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Denise McCumber	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Heather Barnett	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mike Satterthwaite	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jeffrey Morealli	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Debra Wurst	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

WITNESS my hand and the seal of the Borough of North East, Erie County, Pennsylvania, this 5th day of August, 2019.

BOROUGH OF NORTH EAST

SEAL

By: 
Borough Secretary