

NORTH YORK BOROUGH
YORK COUNTY, PENNSYLVANIA

ORDINANCE NO. 2022-06

AN ORDINANCE OF THE BOROUGH OF NORTH YORK SETTING AUTHORIZING THE BOROUGH TO ENTER INTO AN INTERGOVERNMENTAL COOPERATION AGREEMENT WITH THE CITY OF YORK, SPRING GARDEN TOWNSHIP, WEST MANCHESTER TOWNSHIP, AND YORK TOWNSHIP, AND WITH THE YORK WATER COMPANY TO ESTABLISH AN INTERMUNICIPAL ESCROW FUND TO BE PLACED WITH THE MANUFACTURERS AND TRADERS TRUST COMPANY AS ESCROW AGENT TO BE DISBURSED TO PAY MUNICIPALITIES FOR OVERPAYMENT OF CERTAIN SEWER CHARGES AND TO PROVIDE FOR THE COMPLETION OF PAST-DUE RECONCILIATIONS.

The Borough Council of North York Borough, York County, Pennsylvania hereby adopts and ordains this Ordinance, as follows:

RECITALS

WHEREAS, York City is a political subdivision of the Commonwealth of Pennsylvania and is governed by the City Council (the “**Governing Body**”); and

WHEREAS, York City, acting through its Governing Body, has heretofore incorporated the York City Sewer Authority (the “**Authority**”) pursuant to the provisions of the Pennsylvania Municipality Authorities Act, pursuant to the Pennsylvania Municipality Authorities Act of 1945, Act of May 2, 1945, P.L. 382, as amended and supplemented, and as subsequently codified as the Pennsylvania Municipality Authorities Act, Act of Jun. 19, 2001, P.L. 287, 53 Pa.C.S. §5601 *et seq.* (the “**Act**”); and

WHEREAS, the Authority owns the assets comprising the wastewater utility system of York City (the “**System**”), and the Authority has leased the Sewer System to York City for operation pursuant to a Lease dated September 15, 1987, as supplemented to date (the “**City Lease**”); and

WHEREAS, York City in its capacity as lessee of the System pursuant to the City Lease has entered into intermunicipal agreements (each, a “**Sewer Service IMA**” and collectively, the “**Sewer Service IMAs**”) with North York Borough, Spring Garden Township, West Manchester Township, York Township, (the **Connecting Municipalities**), pursuant to which York City has agreed to provide certain wastewater utility services to the Connecting Municipalities; and

WHEREAS, under the Sewer Service IMAs the Connecting Municipalities are required to pay on an annual basis to York City as sewage treatment charges each Connecting Municipality's *pro rata* share of the operating expense for the System based on annual flow, such charges to be estimated and collected in each year by York City based on the prior year's audited costs of operation of the System flow from each Connecting Municipality; and

WHEREAS, under the Sewer Service IMA's York City is obligated to reconcile each year's estimated sewage treatment charges against the audited costs of operation of the System and flow, with any overpayments by the Connecting Municipalities resulting in credits against future payment obligations; and

WHEREAS, York City's most recent reconciliation of estimated sewage treatment charges against the audited costs of operation of the System is for calendar year 2018; and

WHEREAS, the Authority and York City have entered into an Asset Purchase Agreement dated as of April 6, 2021, with Pennsylvania-American Water Company (the "**Purchaser**"), pursuant to which the Authority has agreed to sell, and the Purchaser has agreed to purchase, all of the assets of the System (other than Excluded Assets as described therein) on the terms and conditions set forth therein (the "**Transaction**"); and

WHEREAS, based on past audit results, York City and the Connecting Municipalities reasonably believe that upon the completion of all past-due reconciliations for the calendar years 2019 -2022 (the "**Past-Due Reconciliations**") of estimated sewage treatment charges, one or more of the Connecting Municipalities will be owed refunds for past overpayments of the estimated sewage treatment charges under the Sewer Service IMAs; and

WHEREAS, York City, the Authority, the Purchaser, and the Connecting Municipalities, among others, have filed a Joint Petition for Approval (the "**Joint Petition**") with the Pennsylvania Public Utility Commission, providing for, among other things, the establishment of an account at closing on the Transaction in the amount of \$2,000,000, and to be applied toward York City obligations to the Connecting Municipalities arising because of the Past-Due Reconciliations; and

WHEREAS, York City desires to deposit \$2,000,000 (the "**Escrow Amount**") from the proceeds of the Transaction with the Escrow Agent, to be held in escrow and disbursed or released in accordance with an Escrow Agreement; and

WHEREAS, the Connecting Parties, the City of York, the York Water Company, and the Manufacturers and Traders Trust Company have negotiated and agreed to the terms of an Escrow Agreement.

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

SECTION 1: Adoption of Recitals. The foregoing recitals are hereby incorporated and made a part of this ordinance.

SECTION 2: Approval of the Escrow Agreement. The Borough Council of North York Borough hereby authorizes the execution of the attached Escrow Agreement with the City of York, Spring Garden Township, West Manchester Township, York Township, the York Water Company, and the Manufacturers and Traders Trust Company having the terms consistent with the recitals adopted herein.

SECTION 3: Authorization for Adoption. This Ordinance is adopted pursuant to the Intergovernmental Cooperation Act, 53 Pa.C.S. §2301 et. seq., as amended, and the authority hereby granted shall continue as provided in the Pennsylvania Borough Code, 8 Pa. C.S. 101 et. seq., as amended, and in accordance with the terms and conditions set forth in the Escrow Agreement.

SECTION 4: Implementation of Ordinance. Arrangements shall be made between the officials of the respective parties to the Escrow Agreement for the purpose of implementing the undertakings in accordance with the Escrow Agreement. Payments shall be as provided in the Escrow Agreement.

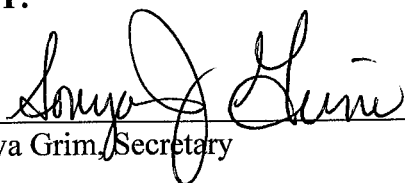
SECTION 5: Modification of the Escrow Agreement. The Escrow Agreement may be modified if done in writing, signed by all parties to the Agreement, and adopted by Resolution of each municipality.

SECTION 6: All ordinances or parts of ordinances inconsistent herewith are hereby repealed.


SECTION 7: This ordinance shall become effective five (5) days after passage as provided by law.

ORDAINED AND ENACTED this 14th day of June 2022.

ATTEST:

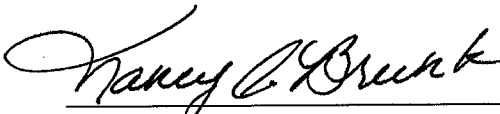
By: 
Sonya Grim, Secretary

THE BOROUGH OF NORTH YORK

By: 
Seth Hightman, President

Approved this 14th day of June 2022.

(SEAL)


Nancy Brunk, Mayor