

BOROUGH OF EVANS CITY
Butler County, Pennsylvania

ORDINANCE NO. 576

AN ORDINANCE OF THE COUNCIL OF THE BOROUGH OF EVANS CITY, BUTLER COUNTY, PENNSYLVANIA (THE "BOROUGH"), AUTHORIZING AND APPROVING A PROJECT TO BE UNDERTAKEN BY THE EVANS CITY WATER AND SEWER AUTHORITY (THE "AUTHORITY"); AUTHORIZING AND DIRECTING THE INCURRENCE OF LEASE RENTAL DEBT IN THE MAXIMUM AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$11,000,000, PURSUANT TO THE LOCAL GOVERNMENT UNIT DEBT ACT, 53 PA. C.S. § 8001 ET SEQ., AS AMENDED AND SUPPLEMENTED (THE "DEBT ACT"); DETERMINING THAT SUCH DEBT SHALL BE INCURRED AS LEASE RENTAL DEBT TO BE EVIDENCED BY A GUARANTY AGREEMENT OF THE BOROUGH SECURING THE AUTHORITY'S GUARANTEED WATER AND SEWER REVENUE BONDS, SERIES OF 2022, TO BE ISSUED BY THE AUTHORITY TO FINANCE A PROJECT CONSISTING OF: (I) THE REFUNDING AND DEFEASANCE OF ALL OF THE OUTSTANDING AUTHORITY'S GUARANTEED WATER AND SEWER REVENUE BONDS, SERIES OF 2017 (THE "2017 BONDS"); (II) THE ESTABLISHMENT OF NECESSARY RESERVES AND OTHER FUNDS; AND (III) PAYMENT OF THE COSTS AND EXPENSES ASSOCIATED WITH FINANCING THE PROJECT; BRIEFLY DESCRIBING THE PROJECT AND SPECIFYING THE REMAINING USEFUL LIFE OF SAID PROJECT ORIGINALLY FUNDED WITH THE 2017 BONDS; AUTHORIZING AND DIRECTING THE PRESIDENT OR VICE PRESIDENT OF THE COUNCIL AND THE SECRETARY OF THE BOROUGH TO PREPARE, VERIFY AND FILE THE DEBT STATEMENT AND OTHER APPROPRIATE DOCUMENTS REQUIRED BY THE DEBT ACT AND UPON RECEIPT OF APPROVAL OF THE PENNSYLVANIA DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT, TO EXECUTE, ATTEST, ACKNOWLEDGE AND DELIVER, AS APPROPRIATE, A REIMBURSEMENT AGREEMENT AND THE GUARANTY AGREEMENT WITH RESPECT TO AFORESAID GUARANTEED WATER AND SEWER REVENUE BONDS, SERIES OF 2022; APPROVING THE FORM OF THE REIMBURSEMENT AGREEMENT AND THE GUARANTY AGREEMENT; AUTHORIZING DELIVERY OF SAID GUARANTY AGREEMENT TO THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., AS TRUSTEE, UNDER A TRUST INDENTURE, BETWEEN SAID TRUSTEE AND THE AUTHORITY; GUARANTEEING PAYMENT OF THE PRINCIPAL OF AND INTEREST ON AFORESAID GUARANTEED WATER AND SEWER REVENUE BONDS, SERIES OF 2022 AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO; SPECIFYING THE MAXIMUM AMOUNT OF THE GUARANTY OBLIGATIONS OF THE BOROUGH PURSUANT TO SUCH GUARANTY AGREEMENT; PLEDGING THE FULL FAITH, CREDIT AND TAXING POWER OF THE BOROUGH WITH RESPECT TO THE GUARANTY AGREEMENT; AUTHORIZING THE PROPER OFFICERS OF THE BOROUGH TO TAKE ALL OTHER REQUIRED, NECESSARY OR DESIRABLE ACTION IN CONNECTION WITH SUCH PROJECT AND THE EXECUTION AND DELIVERY

OF THE REIMBURSEMENT AGREEMENT AND THE GUARANTY AGREEMENT; APPROVING A PRELIMINARY OFFICIAL STATEMENT AND AN OFFICIAL STATEMENT AS TO THE INFORMATION REGARDING THE BOROUGH; AUTHORIZING OFFICERS OF THE BOROUGH TO EXECUTE AND DELIVER A CONTINUING DISCLOSURE CERTIFICATE; PROVIDING FOR THE EFFECTIVENESS OF THIS ORDINANCE; PROVIDING FOR THE SEVERABILITY OF PROVISIONS OF THIS ORDINANCE; AND PROVIDING FOR THE REPEAL OF ALL INCONSISTENT ORDINANCES OR RESOLUTIONS OR PARTS OF ORDINANCES OR RESOLUTIONS.

WHEREAS, the Borough of Evans City, Butler County, Pennsylvania (the “**Borough**”) exists under laws of the Commonwealth of Pennsylvania (the “**Commonwealth**”) and is a “local government unit,” as such term is defined under the Local Government Unit Debt Act, 53 Pa. C.S. § 8001 *et seq.*, as amended and supplemented (the “**Debt Act**”); and

WHEREAS, The Evans City Water and Sewer Authority (the “**Authority**”), is a body politic and corporate organized and existing under the Municipality Authorities Act, 53 Pa. C.S. § 5601 *et seq.*, as amended and supplemented, from time to time, of the Commonwealth (the “**Authorities Act**”); and

WHEREAS, pursuant to that certain Purchase Agreement, dated as of September 7, 2011, but effective September 28, 2011, between the Borough and the Authority (the “**Asset Purchase Agreement**”), the Authority acquired from the Borough (1) a water distribution system, including related and necessary facilities, in and for rendering water supply and distribution service in and around the Borough (the “**Water System**”), and (2) a sewage collection and treatment system, including related and necessary facilities, in and for rendering sewer service in and around the Borough (the “**Sewer System**”, and together with the Water System, collectively, the “**Water and Sewer Systems**”); and

WHEREAS, the Authority heretofore issued a series of water and sewer revenue bonds designated Guaranteed Water and Sewer Revenue Bonds, Series of 2013, in the aggregate principal amount of \$9,295,000 (the “**2013 Bonds**”), under the provisions of a Trust Indenture, dated as of October 15, 2013 (the “**2013 Indenture**”), the proceeds of which were used to, *inter alia*, finance certain capital improvements to the Water and Sewer Systems, including the design and construction of modifications to the existing treatment plant (the “**2013 Improvement Project**”); and

WHEREAS, the Authority heretofore issued a series of water and sewer revenue bonds designated Guaranteed Water and Sewer Revenue Bonds, Series of 2017, in the aggregate principal amount of \$9,245,000 (the “**2017 Bonds**”), under the provisions of a Trust Indenture, dated as of May 1, 2017 (the “**2017 Indenture**”), the proceeds of which were used to, *inter alia*, refinance the outstanding 2013 Bonds (the “**2013 Refunding Project**”); and

WHEREAS, the Authority heretofore issued a subordinate debt obligation to the Pennsylvania Infrastructure Investment Authority, in the original principal amount of \$1,766,000, dated July 30, 2020 (the “**2020 Bond**”), which 2020 Bond was issued as a “Subordinated Obligation,” as defined in the 2017 Indenture, the proceeds of which were used to, *inter alia*, fund the replacement of certain water mains of the Water System (the “**2020 Capital Project**”); and

WHEREAS, the 2017 Bonds are presently outstanding in the aggregate principal amount of \$8,020,000; and

WHEREAS, the Authority and the Borough desire to undertake a project (the “**Project**”) consisting of (i) the refunding of all of the Authority’s outstanding 2017 Bonds; (ii) the establishment of necessary reserves and other funds; and (iii) the payment of the costs and expenses associated with financing the Project; and

WHEREAS, the Authority has received realistic cost estimates of the Project from persons qualified by experience; and

WHEREAS, the Authority, in order to undertake and to fund the costs of the Project, is willing, upon certain terms and conditions, to issue and sell its Guaranteed Water and Sewer Revenue Bonds, Series of 2022 (the “**Series 2022 Bonds**”), in the maximum aggregate principal amount of \$11,000,000, under and pursuant to a Trust Indenture (the “**Indenture**”) between the Authority and The Bank of New York Mellon Trust Company, N.A., having offices in Pittsburgh, Pennsylvania, as trustee (the “**Trustee**”); and

WHEREAS, the Series 2022 Bonds will be secured by, among other things, (i) a Municipal Bond Insurance Policy (the “**Bond Insurance Policy**”) issued by a municipal bond insurer (the “**Bond Insurer**”), that guarantees the scheduled payment of principal of and interest on the Series 2022 Bonds when due, and (ii) a Municipal Bond Debt Service Reserve Insurance Policy (the “**DSRF Policy**”), issued by the Bond Insurer pursuant to a Debt Service Reserve Agreement (the “**Debt Service Reserve Agreement**”), which will be deposited in lieu of a cash to the Series of 2022 Debt Service Reserve Account, as defined and established under the Indenture, in an amount equal to the debt service reserve requirement for the Series 2022 Bonds; and

WHEREAS, the Council of the Borough has determined that the Project is in the best interests of the Borough and its residents; and

WHEREAS, the Borough, pursuant to authority granted to it under provisions of the Debt Act, may guarantee debt incurred by an “authority,” which term includes the Authority; and

WHEREAS, the Borough desires the Authority to undertake the Project and, as an inducement to the purchasers and to any and all subsequent owners of the Series 2022 Bonds to purchase the Series 2022 Bonds and to the Bond Insurer to issue the DSRF Policy and the Bond Insurance Policy, and thereby to achieve interest cost and other savings to the Authority and to the residents and taxpayers of the Borough and other users of the Water and Sewer Systems, desires to enter into: (i) the Reimbursement Agreement (the “**Reimbursement Agreement**”) with the Authority; and (ii) the Guaranty Agreement (the “**Guaranty**”), with the Authority and the Trustee pursuant to which the Borough will guarantee (i) the payment of principal of and interest on the Series 2022 Bonds, when due, (ii) all amounts due and payable to the Bond Insurer under or in connection with the Bond Insurance Policy, including without limitation administrative costs and reimbursement amounts to the Bond Insurer, and (iii) all amounts due and payable to the Bond Insurer under or in connection with the DSRF Policy and the Debt Service Reserve Agreement between the Authority and the Bond Insurer, including without limitation policy costs and administrative expenses, pursuant to the Guaranty, all as permitted by and in accordance with the terms and conditions of the Debt Act.

NOW, THEREFORE, BE IT ENACTED AND ORDAINED by the Council of the Borough of Evans City, Butler County, Pennsylvania, as follows:

1. The Project and Recitals. The Council of the Borough hereby authorizes and approves the Project and requests the Authority to proceed to undertake the Project, including the financing thereof, and the payment of all “costs” related thereto as permitted under the Authorities Act and the Indenture

and as set forth herein. The description of the Project contained in the recitals to this Ordinance is hereby incorporated into this Paragraph by reference as if set out at length. The foregoing recitals and all terms defined therein are incorporated herein, and such defined terms may hereafter be used as if set out at length.

2. Incurrence of Lease Rental Debt. The Council of the Borough hereby determines to incur "debt," as such term is defined in the Debt Act, as "lease rental debt," as such term is defined in the Debt Act, for the purpose of assisting in the financing of the Project. The debt evidenced by the Series 2022 Bonds is being incurred for the purpose of realizing debt service savings over the life of the 2017 Bonds being refunded pursuant to Section 8241(b)(1) of the Debt Act.

3. Amount of Lease Rental Debt. The debt to be incurred, as lease rental debt, as set forth in Section 5 hereof, shall be evidenced by the Borough's execution and delivery of the Guaranty in the maximum principal amount of \$11,000,000, pursuant to which the Borough agrees to guarantee the payment of principal of and interest on the Series 2022 Bonds, when due. The Series 2022 Bonds, to be issued in the principal amount not to exceed \$11,000,000, and for a maximum term of twenty-seven (27) years, shall be secured, in part, by, *inter alia*, the Guaranty executed and delivered by the Borough, substantially in the form referred to in Section 5 hereof.

4. Cost and Realistic Useful Life. Reasonable cost estimates have been obtained for the Project with the assistance of financial advisors and other persons qualified by experience. The cost of the Project is at least \$11,000,000. The Borough hereby finds and determines that the remaining useful life of the Project is at least twenty-one (21) years.

5. Guaranty and Reimbursement Agreement. The Borough shall execute, attest, seal and deliver the Guaranty and the Reimbursement Agreement, each dated and effective as of the date of delivery of the Series 2022 Bonds, substantially in the forms referred to in this Section, with respect to the Series 2022 Bonds to be issued by the Authority. The Guaranty and the Reimbursement Agreement shall be substantially in the forms set forth in Exhibit A and Exhibit B hereto with such additions, changes and deletions as the officers of the Borough executing the Guaranty and the Reimbursement Agreement and the Borough Solicitor shall deem necessary, which forms are approved. The execution, attestation and delivery of the Guaranty and the Reimbursement Agreement by appropriate officers of the Borough shall constitute conclusive evidence of such approval.

6. Filing with Department of Community and Economic Development. The President or Vice President of the Council and the Secretary of the Borough are authorized and directed to make application to the Pennsylvania Department of Community and Economic Development (the "**Department**") for approval with respect to the Guaranty, as required by the Debt Act, and to pay or cause to be paid to the Department all proper filing fees required by the Debt Act and to take all other required and appropriate action.

Accordingly, the President or Vice President of the Council and Secretary of the Borough are authorized and directed: (a) to prepare, verify and file with the Department, a debt statement as required by the Debt Act; (b) to prepare, execute and file with the Department the borrowing base certificate to be appended to the debt statement referred to in subparagraph (a) of this Section; (c) to prepare, execute and file the application with the Department, together with a complete and accurate transcript of the proceedings relating to the incurring of debt, of which debt the Series 2022 Bonds, upon issue, and the Guaranty, upon execution and delivery, will be evidence, as required by the Debt Act; (d) to pay or cause to be paid to the Department all filing fees required by the Debt Act in connection with the foregoing; and (e) to take other required, necessary and/or appropriate action, and further, the same proper officers are authorized, at their discretion hereafter, to prepare and file, as required, with the Department,

appropriate statements required by the Debt Act which are necessary to qualify all or a portion of lease rental debt of the Borough, which is subject to exclusion as self liquidating debt, for exclusion from the appropriate debt limit of the Borough as self-liquidating debt.

For such purpose, the Council of the Borough hereby directs the firm of Herbert, Rowland & Grubic, Inc., having an office in Harrisburg, Pennsylvania, to prepare a self-liquidating debt report in conformance with Section 8026 of the Debt Act, with respect to the Water and Sewer Systems and with respect to the Series 2022 Bonds.

7. Execution of Documents. The President or Vice President, or in the alternative, each member, of the Council and Secretary of the Borough are authorized and directed to execute, attest and deliver, as applicable, on behalf of the Borough, any other document, agreement, instrument or certificate deemed necessary and proper, in substantially the form approved by this Ordinance, or with such changes as such officers shall approve, their execution to constitute conclusive evidence of such approval; provided that, such execution and delivery of the Guaranty shall be subject to compliance by the Borough with applicable provisions of the Debt Act.

8. Guaranty Covenant. The Borough covenants to and with the owners of the Series 2022 Bonds, from time to time, that, subject to the terms and conditions of and as set forth more fully in the Guaranty, the Borough (a) shall include the amounts payable in respect of the Guaranty for each fiscal year in which such sums are payable in its budget for that year, (b) shall appropriate such amounts from its general revenues for the payment of such payment, and (c) shall duly and punctually pay or cause to be paid from any of its revenues or funds the amount payable in respect of the Guaranty, at the dates and place and in the manner stated in such Guaranty, according to the true intent and meaning thereof. The Borough pledges its full faith, credit and taxing power for such budgeting, appropriation and payment in respect of the Guaranty. For the purpose of complying with the covenants of this Section, the Borough shall, subject to the terms and conditions hereof and of the Guaranty, budget the amounts set forth in Exhibit C hereto for the fiscal year in which such amounts are payable and shall appropriate and shall pay, in the manner provided in the Guaranty, such amounts; provided, however, the Borough shall be entitled to take as a credit against such amounts from time to time, amounts on deposit and available in the Debt Service Reserve Fund created under the Indenture, all as more fully set forth in the Guaranty. This covenant shall be specifically enforceable in accordance with the Debt Act.

In the event that the Borough is obligated to make payments under the Guaranty, the maximum amounts required to be paid thereunder, if and as necessary on a semiannual and annual basis, from the general revenues of the Borough, shall be as set forth on Exhibit C hereto. Exhibit C is incorporated herein by reference with the same force and effect as if fully set forth in the text hereof. If at any time the Borough is required to make any payment under the Guaranty, the proper officers of the Borough are hereby authorized and directed to do so.

9. Official Statement. The Borough hereby authorizes and approves the inclusion of certain information with respect to the Borough in the Preliminary Official Statement and the final Official Statement to be prepared with respect to the Series 2022 Bonds. The President or Vice President of the Council of the Borough, or the Secretary of the Borough, as appropriate, are hereby authorized and directed to execute on behalf of the Borough such certificates as to the Preliminary Official Statement, including a certificate that as of its date the Preliminary Official Statement is "deemed final" by the Borough in accordance with Rule 15c2-12 of the Securities and Exchange Commission as to information regarding the Borough, and final Official Statement as may reasonably be required and counsel may recommend.

10. Continuing Disclosure Certificate. Upon notice from the Authority that the Series 2022 Bonds are subject to the continuing disclosure requirements of the Securities and Exchange Commission Rule 15c2-12, the Borough covenants that it will execute and deliver and comply with a Continuing Disclosure Certificate (the “**Disclosure Certificate**”) for the benefit of the owners of the Series 2022 Bonds. Pursuant to the Disclosure Certificate, the Borough will provide certain financial and operating information on an annual basis and notice of certain events to the Municipal Securities Rulemaking Board, Electronic Municipal Market Access System (EMMA), in accordance with Securities and Exchange Commission Rule 15c2-12. The President or Vice President of the Council of the Borough is hereby authorized and directed to execute and deliver the Disclosure Certificate on behalf of the Borough with such changes as have been approved by the Solicitor and Bond Counsel.

11. General Authorization. Proper officers of the Borough are authorized and directed to execute all documents and to take such other action as may be necessary to carry out the intent and purposes of this Ordinance and the undertakings of the Borough under the Guaranty and the Reimbursement Agreement.

12. Effective Date. This Ordinance shall become effective in accordance with the provisions of the Debt Act.

13. Severability. In the event any provision, section, sentence, clause or part of this Ordinance shall be held to be invalid, such invalidity shall not affect or impair any remaining provision, section, sentence, clause or part of this Ordinance, it being the intent of the Borough that the remainder of the Ordinance shall remain in full force and effect.


14. Repealer. All ordinances and resolutions or parts thereof, insofar as the same are inconsistent herewith, are repealed hereby.

DULY ENACTED AND ORDAINED this 4th day of April, 2022, by the Council of the Borough of Evans City, Butler County, Pennsylvania, in lawful session duly assembled.

BOROUGH OF EVANS CITY
Butler County, Pennsylvania


President, Council

ATTEST:


Secretary

(SEAL)

EXAMINED AND APPROVED this 4th day of April, 2022.

