

MUNICIPALITY OF NORRISTOWN
A Home Rule Municipality
Montgomery County, Pennsylvania

ORDINANCE NO. _____ of 2020

AN ORDINANCE AMENDING THE MUNICIPALITY OF NORRISTOWN ORDINANCE NO. 11 OF 2020 AUTHORIZING THE EXECUTION BY THE MUNICIPALITY OF NORRISTOWN (THE “MUNICIPALITY”) OF AN ASSET PURCHASE AGREEMENT (THE “PURCHASE AGREEMENT”) BETWEEN THE MUNICIPALITY AND THE PURCHASER AQUA PENNSYLVANIA WASTEWATER, INC. (“AQUA”); AUTHORIZING THE ASSIGNMENT OF THE MUNICIPALITY’S RIGHTS AND OBLIGATIONS IN ALL RELEVANT AGREEMENTS TO AQUA; AUTHORIZING AND APPROVING ALL CONVEYANCE INSTRUMENTS; AUTHORIZING COMMUNICATIONS OF INFORMATION AND COOPERATION WITH AQUA; AUTHORIZING ALL ACTIONS RELATING TO THE EXECUTION OF THE PURCHASE AGREEMENT AND THE ASSIGNMENT OF ALL RELEVANT AGREEMENTS; AUTHORIZING INCIDENTAL ACTION TO BE TAKEN BY SPECIFIED OFFICERS OF THE MUNICIPALITY; AUTHORIZING THE REMOVAL OF THE NORRISTOWN MUNICIPAL WASTE AUTHORITY AS A PARTY TO THE PURCHASE AGREEMENT AND REPEALING INCONSISTENT ORDINANCES AND RESOLUTIONS.

WHEREAS, the Municipality is a Home Rule Municipality organized and operating in accordance with the Charter of the Municipality of Norristown as permitted by the Home Rule Charter and Optional Plans Law, 53 Pa. C.S. 2901 *et seq*; and

WHEREAS, the Municipality created the Norristown Municipal Waste Authority (the “Authority”) in 1993 and the Authority currently owns and operates a sanitary wastewater collection and disposal system (the “System”) that provides wastewater service to various customers primarily within the Municipality; and

WHEREAS, the Municipality previously decided to pursue the sale of all of the assets, properties and rights (whether tangible, real, personal or mixed) which are exclusively held and used by it in connection with the System, as set forth in the Purchase Agreement (the "System Assets") through a competitive bidding process (the "Assets Sale"); and

WHEREAS, the Municipality has heretofore issued a Request for Qualifications (the "RFQ") and qualified two bidders and a subsequent Request for Bids (the "RFB") to solicit binding bids from interested and qualified companies and entities to purchase the System; and

WHEREAS, the Municipality received two responses to the RFQ and, after the opportunity for due diligence, received binding bids from two interested entities (“Potential Bidders”) that were found to be qualified; and

WHEREAS, the Municipality has reviewed the binding bids submitted in response to the RFB from the qualified bidders, and has determined that Aqua has submitted a bid that is in the best interest of the Municipality and offers the greatest value to the Municipality, as determined by the Municipal Council of the Municipality based on the advice of the Municipality’s Financial Advisor and the Special Counsel; and

WHEREAS, to the extent the Municipality has determined that the Assets Sale is in the best interests of the Municipality, such determination to be evidenced through the execution by the Municipality of the Purchase Agreement, the Municipality will sell the System Assets to Aqua by entering into the Purchase Agreement with Aqua; and

WHEREAS, pursuant to the Purchase Agreement, the Municipality will assign the Municipality's rights and obligations under all relevant Agreements to Aqua as necessary and appropriate and in accordance with the Purchase Agreement; and

WHEREAS, under the Purchase Agreement, the Municipality will transfer to Aqua the ownership of the System Assets through the execution and delivery of all necessary and required bills of sale, instruments of assignment, consents to transfer, deeds, and other agreements, documents, and instruments of conveyance (collectively, the "Conveyance Instruments"); and

WHEREAS, the Municipality, as the Authority’s successor, currently receives information as to water consumption by customers within the service area of the System from companies and to facilitate accurate billing (the "System Billing Information") and intends to pass on the System Billing Information and any and all rights of the Municipality in connection therewith, (except liens), to Aqua and cooperate with Aqua as is required for the continued operation of the System;

WHEREAS, the Municipality, through the Municipal Council enacted Ordinance No. 11 of 2020, authorizing the Assets Sale to Aqua, which sale was to be completed with the cooperation of the Authority; and

WHEREAS, the Authority has failed to fulfill its obligations with respect to the sale of the System Assets to Aqua and has actively attempted to prevent such sale; and

WHEREAS, the Municipality has now decided to obtain the System Assets from the Authority pursuant to provisions of the Municipal Authorities Act, 53 Pa. C.S. including §§5619; 5622 (the “Act”) to effect the Assets Sale which will provide a great benefit to the residents of Norristown; and

WHEREAS, the Municipality now desires to approve the form and substance of the revised Purchase Agreement which removes the Authority as a party to the Purchase Agreement.

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Municipal Council of the Municipality of Norristown that Ordinance No. 11 of 2020 is hereby repealed in its entirety and is amended to read as follows:

1. Approval of the Purchase Agreement

The Municipal Council hereby authorizes and approves the execution, delivery, and performance of the Purchase Agreement substantially in the form attached hereto as *Exhibit A*. The President or Vice President of the Municipal Council are hereby authorized and directed on behalf of the Municipality to execute any and all papers and documents and to do and cause to be done any and all actions and things necessary or proper to execute the Purchase Agreement. The Municipal Council understands that there are conditions to the closing of the Purchase Agreement and acknowledges that certain consents and authorizations are required by statute and regulation, and if certain consents and authorizations were not required by statute or regulation the same would not be conditions to closing the Purchase Agreement.

2. Assignment of Intermunicipal Agreements and Other Relevant Agreements

The Municipal Council hereby authorizes and approves the assignment of the Municipality's rights and obligations under all relevant agreements. The President or Vice President of the Municipal Council are hereby authorized and directed on behalf of the Municipality to execute any and all papers and document and to do and cause to be done any and all actions and things necessary or proper to effectuate such assignment, provided that the terms and conditions of all such papers and documents are satisfactory to the Municipal Solicitor and Special Counsel to the Municipality.

3. Approval of Deeds, Certificates, and Related Documents

The Municipal Council hereby authorizes the execution and delivery by the President or Vice President of the Municipal Council of the Conveyance Instruments necessary and required to be executed.

4. Disposition of Proceeds

The proceeds of the sale shall be utilized at the discretion of the Municipal Council in a manner consistent with the Charter of the Municipality and other applicable law.

5. Information and Cooperation

The Municipal Council hereby authorizes the Municipality, its agents and employees, to obtain and communicate the System Billing Information and any and all rights of the Municipality in connection therewith and other information required or desirable in the sole discretion of the President or Vice President of the Municipal Council to Aqua and to cooperate with Aqua for the continued operation of the System and the use of the System Assets.

6. General Authorization

The Municipal Council hereby further authorizes the Municipality, its agents and employees, to take any and all necessary actions required by the with the Charter of the Municipality and other applicable law to complete the sale of the System assets.

7. Severability

The provisions of this Ordinance are intended to be severable, and if any section, sentence, clause, part or provision hereof shall be held illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not affect or impair the remaining sections, sentences, clauses, parts or provisions of this Ordinance. It is hereby declared to be the Intent of the Municipal Council that this Ordinance would have been adopted even if such illegal, invalid or unconstitutional section, sentence, clause, part or provisions had not been included herein.

8. Effective Date

This Ordinance shall take effect and be in force five (5) days from and after its approval as required under the Charter of the Municipality.

9. Repealer

All other ordinances and resolutions or parts thereof as they are inconsistent with this Ordinance are hereby repealed.

ENACTED AND ORDAINED this _____ day of _____, 2020.

Seal:

**Municipality of Norristown
Municipal Council**

By: _____
Derrick Perry
Council President

Attest: _____
Crandall O. Jones
Municipal Administrator