

1st READING 10/7/19
2nd READING _____
3rd READING _____

ORDINANCE 2019-25

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN
ASSET PURCHASE AGREEMENT BETWEEN THE CITY OF ST. CLAIRSVILLE,
OHIO, AS SELLER AND AQUA OHIO WATER, INC., AS PURCHASER, AND
AUTHORIZING THE ASSIGNMENT OF THE CITY'S RIGHTS AND
OBLIGATIONS THEREUNDER AND DECLARING AN EMERGENCY**

WHEREAS, the City currently owns and operates a water treatment and distribution system (the "System") that provides water service to various customers primarily within the City, but also within certain areas of the County of Belmont, State of Ohio (the "Belmont County"); and

WHEREAS, the City previously decided to pursue the potential sale of all of the improvements, assets, and rights of the City which are exclusively held and used by it in connection with the System (the "System Assets") through a competitive bidding process (the "Assets Sale"); and

WHEREAS, the City has heretofore issued a Request for Qualifications (the "RFQ") and a request for Proposals ("RFP") to solicit bids from interested and qualified companies and entities to purchase the System; and

WHEREAS, the City received responses to the RFQ and, after the opportunity for due diligence, received a bid from an interested entity ("Potential Bidder") that was found to be qualified; and

WHEREAS, the City, by enactment of this Ordinance, selects Aqua Ohio, Inc., as the successful bidder (the "Purchaser"), determining that such selection is in the best interests of the City, as determined by City Council; and

WHEREAS, the City Council determines that the Assets Sale is in the best interests of the City, such determination to be evidenced through the execution by the City of that certain Asset Purchase Agreement by and between the City and Purchaser for the System Assets (the "Purchase Agreement"), and the City will sell the System Assets to the Purchaser by entering into the Purchase Agreement; and

WHEREAS, the City has previously entered into an Agreement dated September 9, 1991, between the City and Belmont County Sanitary Sewer Districts No. 2 and 3 for water distribution, as amended September 10, 2003 (the "Intermunicipal Agreement"); and

WHEREAS, pursuant to the Purchase Agreement, the City will assign the City's rights and obligations under the Intermunicipal Agreement to the Purchaser as necessary and appropriate and in accordance with the Purchase Agreement; and

WHEREAS, under the Purchase Agreement, the City will enter into an escrow agreement with Purchaser (the "Escrow Agreement"), whereupon the funds for the Water Tank Project (as defined in the Purchase Agreement) shall be placed into escrow until the project is complete and placed into service, whereby the Water Tank Project becomes a System Asset, and the funds shall be released; and

WHEREAS, under the Purchase Agreement, the City will transfer to the Purchaser 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, easements, and other agreements, documents, and instruments of conveyance (collectively, the "Conveyance Instruments"); and

WHEREAS, the City currently receives information as to water consumption by customers within the service area of the System from companies and municipalities to facilitate the accurate billing, including that certain Master Purchase Agreement by and between Cooper Power Systems, LLC and the City dated July 4, 2013 (the "System Billing Information"), and intends to assign the System Billing Information related to the water system and any and all rights of the City in connection therewith, to the Purchaser and cooperate with the Purchaser as is required for the continued operation of the water System.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF ST. CLAIRSVILLE, OHIO:

SECTION 1: That the City Council determines that the Assets Sale is in the best interest of the City, such determination to be evidenced through the execution by the City of the Purchase Agreement, and the City will sell the System Assets to the Purchaser by entering into the Purchase Agreement with the Purchaser.

SECTION 2: That the City Council hereby authorizes and approves the execution, delivery, and performance of the Purchase Agreement substantially in the form attached hereto as Exhibit A. The Mayor is hereby authorized and directed on behalf of the City 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, provided that the terms and conditions of all such papers and documents are satisfactory to the Director of Law and Special Counsel to the City.

SECTION 3: That the City Council hereby authorizes and approves the assignment of the City's rights and obligations under the Intermunicipal Agreements. The Mayor is hereby authorized and directed on behalf of the City 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 effectuate such assignment, provided that the terms and conditions of all such papers and documents are satisfactory to the Director of Law and Special Counsel to the City.

SECTION 4: That the City Council hereby authorizes the execution and delivery by the Mayor the Escrow Agreement, provided that the terms and conditions of such Escrow Agreement are satisfactory to the Director of Law and Special Counsel to the City.

SECTION 5. That the City Council hereby authorizes the execution and delivery by the Mayor the Conveyance Instruments necessary and required to be executed and delivered under the Purchase Agreement, provided that the terms and conditions of such Conveyance Instruments are satisfactory to the Director of Law and Special Counsel to the City.

SECTION 6: That the proceeds of the sale shall be utilized at the discretion of the City Council in a manner consistent with Ohio Law, provided, however, that the proceeds of the sale shall be utilized, at a minimum, to pay down all existing water System debt of the City.

SECTION 7: That the City Council hereby authorizes the City, its agents and employees, to assign the System Billing Information and any and all rights of the City in connection therewith and other information required or desirable in the sole discretion of the Mayor to the Purchaser and cooperate with the Purchaser for the continued operation of the System and the use of the System Assets as it related to the water System.

SECTION 8: That the City Council hereby further authorizes the City, its agents and employees, to take any and all necessary actions required by Ohio law and other applicable law and to execute such other documents and agreements as may be necessary to effectuate the sale of the System Assets as

contemplated herein, provided that the terms and conditions of all such documents and agreements are satisfactory to the Director of Law and Special Counsel to the City.

SECTION 9: 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 City 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.

SECTION 10: That this Ordinance is declared to be an emergency measure necessary for the immediate preservation of the public peace, health, and safety of the residents of the City, so that the residents of the City and others may receive safe and reliable water service.

SECTION 11: That this Ordinance shall take effect and be in force from and after the earliest period allowed by the Charter of the City of St. Clairsville, Ohio.

Passed at a meeting of the Council of the City of St. Clairsville, Ohio, on this _____ day of November 2019, by the affirmative vote of _____ members of the Council.

Passed: _____

President of Council

Approved: _____

Mayor

Clerk of Council