

1st READING 10/1/19  
2nd READING \_\_\_\_\_  
3rd READING \_\_\_\_\_

ORDINANCE 2019-26

**AN ORDINANCE AUTHORIZING THE MAYOR TO ENTER INTO AN ASSET PURCHASE AGREEMENT BETWEEN THE CITY OF ST. CLAIRSVILLE, OHIO, AS SELLER AND AQUA OHIO WASTEWATER, 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 wastewater treatment and collection system (the "Wastewater System") that provides wastewater service to various customers within the City; 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 "Wastewater 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 Wastewater, 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 Wastewater System Assets (the "Purchase Agreement"), and the City will sell the Wastewater System Assets to the Purchaser by entering into 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 Bellview Project (as defined in the Purchase Agreement) shall be placed into escrow until the project is complete and placed into service, whereby the Bellview Project becomes a Wastewater 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 Wastewater 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").

**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 Wastewater 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 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 4:** 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 5:** 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 Wastewater System debt of the City.

**SECTION 6:** 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 Wastewater 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 7:** 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 8:** 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 be provided with safe collection and treatment of wastewater.

**SECTION 9:** 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