

**BOROUGH OF SHENANDOAH, PENNSYLVANIA**

**ORDINANCE NO. \_\_\_\_**

**AN ORDINANCE OF THE BOROUGH OF SHENANDOAH, SCHUYLKILL COUNTY, PENNSYLVANIA (THE "BOROUGH") AUTHORIZING AND APPROVING THE SALE OF ITS WATER ASSETS AND THE WATER ASSETS OF THE MUNICIPAL AUTHORITY OF THE BOROUGH OF SHENANDOAH ("MABS") TO AQUA PENNSYLVANIA ("AQUA"); AUTHORIZING AND APPROVING THE ASSET PURCHASE AGREEMENT BETWEEN THE BOROUGH AND AQUA SUBSTANTIALLY IN THE FORM PRESENTED AT THIS MEETING; AUTHORIZING AND DIRECTING THE EXECUTION AND DELIVERY OF THE ASSET PURCHASE AGREEMENT; AUTHORIZING AND DIRECTING THE PROPER OFFICERS OF THE BOROUGH TO DO ALL THINGS NECESSARY TO CARRY OUT THE ORDINANCE AND THE SALE OF THE WATER ASSETS OF THE BOROUGH AND MABS TO AQUA ("THE SALE"); AUTHORIZING INCIDENTAL ACTIONS; RESCINDING INCONSISTENT ORDINANCES AND RESOLUTIONS; RECOGNIZING SEVERABILITY; AND STATING THE EFFECTIVE DATE.**

**WHEREAS**, the Borough is governed by Pennsylvania's Borough Code (the "Code"); and

**WHEREAS**, MABS owns a significant portion of the water system, which includes approximately fifty-six (56) miles of 16" cast iron transmission and distribution pipes and water mains that produce, convey and distribute water within the Borough, four (4) reservoirs, two (2) pump houses, one (1) underground pump station, four (4) storage tanks and one (1) Filter Plant as well as various mechanisms and treatment equipment contained within the pump stations and Filter Plant that aid in providing water to residential, commercial and industrial customers (which, together with the property rights and facilities owned by the Borough are hereinafter referred to as the "Water System Assets"); and

**WHEREAS**, the Borough desires to enact this Ordinance to authorize and approve the sale of the Water System Assets (the "Sale"), the execution and delivery of the Asset Purchase Agreement, and the undertaking of all incidental action in connection therewith.

**NOW, THEREFORE, BE IT ENACTED AND ORDAINED**, by the Borough of Shenandoah, Schuylkill County, Pennsylvania, and it is hereby enacted and ordained by the authority of the same as follows:

**SECTION 1.** The Sale of the Water System Assets to Aqua is hereby approved.

**SECTION 2.** The Borough Council President, Vice-President, and the Borough Supervisor and such other authorized officers of the Borough (each, a "Proper Officer") is hereby authorized, directed and empowered to execute and deliver the Asset Purchase Agreement. The Asset Purchase Agreement shall be substantially in the form presented to this meeting, which form is approved, together with such changes therein as shall be approved by the Proper Officer

executing the same after consultation with legal counsel to the Borough, with the execution thereof to be and demonstrate such Proper Officer's approval of the same.

**SECTION 3.** Any of the Proper Officers of the Borough are hereby authorized, directed and empowered to execute any and all agreements, consents, assignments, certificates, instruments, permits, licenses and other documents determined to be necessary or proper by such Proper Officer to effectuate the Sale and the transactions contemplated by the Asset Purchase Agreement.

**SECTION 4.** Any of the Proper Officers of the Borough is hereby authorized, directed and empowered on behalf of the Borough to execute any and all papers and documents and to do or cause to be done any and all acts and things necessary or proper for the carrying out of the provisions of this Ordinance.

**SECTION 5.** All ordinances or resolutions or parts of ordinances or resolutions inconsistent herewith be and the same hereby are rescinded, cancelled and annulled.

**SECTION 6.** It is the desire of the Borough that MABS cooperate with the Borough in connection with all aspects of the sale. If MABS does cooperate with the Borough, the Asset Purchase Agreement shall incorporate such changes as are necessary to effectuate the Sale by both the Borough and MABS. If MABS does not cooperate, the Borough intends contemporaneously to: 1. terminate the existence of MABS, 2. require MABS to convey by appropriate instruments all of the Water System Assets it has any right or title to pursuant to Section 5622(a) of the Municipality Authorities Act, 3. assume all of MABS' obligations, 4. pay off or otherwise satisfy all debt and other obligations of MABS, required to be satisfied under applicable law, and 5. consummate the Sale with Aqua.

**SECTION 7.** In the case any one or more of the provisions of this Ordinance shall, for any reason, be held to be illegal or invalid, such illegality or invalidity shall not affect any other provisions of this Ordinance and this Ordinance shall be construed and enforced as if such illegal or invalid provisions had not been contained herein.

**[Remainder of Page Intentionally Left Blank]**