

BOROUGH OF MOUNT PENN
Berks County, Pennsylvania

ORDINANCE NO. 910

AN ORDINANCE REQUIRING THE MOUNT PENN BOROUGH MUNICIPAL AUTHORITY (THE “AUTHORITY”) TO CONVEY THE WATER SYSTEM AND ALL PROPERTY AND ASSETS OF THE AUTHORITY TO THE BOROUGH UNDER PROVISIONS OF SECTION 5619 AND SECTION 5622 OF THE MUNICIPALITY AUTHORITIES ACT; ESTABLISHING A CONVEYANCE DATE BY WHICH THE AUTHORITY SHALL CONVEY BY APPROPRIATE INSTRUMENT THE WATER SYSTEM AND ALL PROPERTY AND ASSETS; AUTHORIZING THE ASSUMPTION OF THE AUTHORITY’S FINANCIAL OBLIGATIONS AND NON-FINANCIAL OBLIGATIONS; NOTIFYING THE AUTHORITY AND ALL OTHER PARTIES TO IMMEDIATELY CEASE AND DESIST FROM ALL ACTIONS OR ACTIVITIES THAT COULD DECREASE THE VALUE OF THE WATER SYSTEM OR OTHERWISE INTERFERE WITH OR DELAY THE CONVEYANCE OF THE WATER SYSTEM TO THE BOROUGH; AUTHORIZING INCIDENTAL ACTION TO BE TAKEN BY SPECIFIED OFFICERS OF THE BOROUGH; AND REPEALING INCONSISTENT ORDINANCES AND RESOLUTIONS.

WHEREAS, the Borough of Mount Penn (the “Borough”) is a Borough organized and operating in accordance with the laws of the Commonwealth of Pennsylvania; and

WHEREAS, the Borough created the Authority in 1941 and the Authority currently owns and operates a drinking water system (the “System”) that provides drinking water service to various customers within the Borough, several neighboring municipalities and customers pursuant to certain water services agreements; and

WHEREAS, the System is a project of a character which the Borough has the power to establish, maintain or operate pursuant to the existing law; and

WHEREAS, the Borough has decided to acquire the System and to assume or pay off the outstanding obligations of the Authority pursuant to provisions of the Municipality Authorities Act, 53 Pa. C.S. including §§5619; 5622 (the “Act”).

NOW THEREFORE, BE IT ORDAINED AND ENACTED by the Borough Council of the Borough of Mount Penn as follows:

1. Borough’s Acquisition of System

The Borough Council hereby authorizes the acquisition of the System, including all monies, funds and property, real, personal and mixed, and all contracts related to the Authority’s ownership, maintenance and operation of the System, and all right, title and interest of the Authority thereto, pursuant to the rights and powers vested in the Borough under the Act. The Borough Council further authorizes the operation of the System by the Borough or a municipal

authority from the date of the acquisition forward and authorizes Borough staff, agents and representatives to prepare for the transition of the System from Authority to Borough control.

To effectuate the Borough's right to own, operate and maintain the System for its customers, the Borough Council hereby commands and orders the Authority, through its board members, to convey the System and all property of the Authority to the Borough pursuant to the Act by written instrument(s) in form and substance acceptable to the Borough five (5) days after the Borough's assumption or discharge of all of the Authority Obligations as defined hereinafter and in accordance with the Act (the "Conveyance Date").

2. Assumption or Payment of Authority Financial Obligations

Pursuant to the Act, the Borough Council hereby authorizes and approves the assumption or payment (or the provision of payment) by the Borough on or before the Conveyance Date, of all outstanding financial obligations incurred or owing by the Authority with respect to the System (the "Authority Financial Obligations"). The Borough Council hereby orders the Authority to, commencing on the Effective Date of this Ordinance, cooperate with the Borough, its agents and representatives, to effectuate the assignment and assumption of all Authority Financial Obligations. The Authority is ordered to use its best efforts to effectuate the assignment or repayment of the Authority Financial Obligations by the Borough in accordance with the Act, including, without limitation, promptly providing copies of documents and records relating to all Authority Obligations (defined below) to the Borough and requesting the consent of such assignment from any lender associated with any Authority Financial Obligations.

3. Assignment and Assumption of Authority Non-Financial Obligations

The Borough Council hereby authorizes and approves the assumption by the Borough on or before the Conveyance Date, of all other Authority obligations with respect to the System, including without limitation the assumption of the Authority's regulatory obligations and permits (the "Authority Non-Financial Obligations" and together with the Authority Financial Obligations, the "Authority Obligations"). For the avoidance of doubt, the Authority Obligations constitute all of the obligations incurred by the Authority with respect to the System in accordance with the Act. The Borough Council hereby orders the Authority to, commencing on the Effective Date of this Ordinance; cooperate with the Borough, its agents and representatives, to effect the assignment and assumption of the Authority Non-Financial Obligations. The Authority is ordered to use its best efforts to make the assignment of the Authority Non-Financial Obligations from the Authority to the Borough in accordance with all applicable law, including the Act, the Pennsylvania Public Utility Code (if applicable) and the Department of Environmental Protection's regulations.

4. Prohibition of Authority Action

Other than the ordinary operation of the System and any System-related projects related to existing debt financing, the Authority and any agents or representatives of the Authority shall not take any action upon or expend any funds: (i) related to any projects, including, but not limited to the incurrence by the Authority of any obligations or indebtedness for any purpose, or

the expansion, encumbrance transfer or other disposition of any of the System or any property of the Authority; (ii) on or in connection with ordering or obtaining any valuation, study or report of or in connection with the System; or (iii) which could have a negative effect on the value or operation of the System or could deplete or make unavailable any asset of the Authority. Notwithstanding the foregoing, the Authority is expressly permitted to undertake and complete certain improvements and upgrades to the System in compliance with the direction and the requirements of the Pennsylvania Department of Environmental Protection. For the avoidance of doubt, the Authority is expressly permitted to take all necessary and appropriate actions to comply with all outstanding debt obligation and related ongoing capital project of the System.

5. Authority's Use of Funds

The Authority or any other party is hereby expressly prohibited from taking any action or expending any funds, for the purpose of challenging the right of the Borough to take the actions set forth in this Ordinance or which would have the effect of directly or indirectly, hindering, impeding or otherwise adversely affecting the Borough's ability to obtain control and ownership of the System. Unless approved by Borough Council on or after the Effective Date, the Authority is ordered to formally rescind any agreement or settlement of claims ("Anticipated Obligations") that, while approved by the Authority board of directors, is not yet enforceable against the Authority. Unless approved by Borough Council on or after the Effective Date, all Anticipated Obligations on the Effective Date are void and do not constitute Authority Obligations. Borough Council interprets a violation of this provision as cause for the removal of members of the board of the Authority under Section 5610(d) of the Act and grounds for surcharge and Borough hereby directs its agents and employees, to take any and all necessary actions required to vindicate the violation.

6. Borough's Use of Authority Funds

Pursuant to Section 5622(d) of the Act, following the Authority's conveyance of the System to the Borough, the Borough shall only use the Authority's reserves derived from the Authority's operations, for the purposes of operating, maintaining, repairing, improving and extending the System. In furtherance of the foregoing, the Borough is hereby directed to hold Authority reserves in a separate fund, which shall only be used for operating, maintaining, repairing, improving and extending the System. Further, money received from the Authority which represents the proceeds of financing shall be retained by the Borough in a separate fund which shall only be used for improving or extending the System or other capital purposes related to it.

7. Existing Agreements

Any and all existing agreements between the Borough and the Authority shall be terminated and shall be null and void and no longer of any force or effect upon the Conveyance Date.

8. General Authorization

The Borough Council hereby further authorizes and directs the Borough, its agents and employees, to take any and all necessary actions required by the Act and other applicable law to complete the conveyance of the System as permitted by applicable law.

9. 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 Borough 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.

10. Effective Date

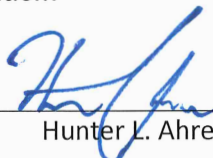
This Ordinance shall take effect and be in force five (5) days from and after its approval as required by the law (the "Effective Date").

11. Repealer

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

ENACTED AND ORDAINED this 29th day of April, 2026.

Attestation:



Hunter L. Ahrens
Borough Manager

Borough Council
Mount Penn Borough
Berks County, Pennsylvania



Ryan Thirlwall Maurer
Mayor



Richard Lombardo, Jr.
Council President

SEAL:

