

**TOWNSHIP OF MONROE,  
Cumberland County, Pennsylvania**

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**ORDINANCE NO. 2011-08**

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**AN ORDINANCE**

**OF THE TOWNSHIP OF MONROE, CUMBERLAND COUNTY, PENNSYLVANIA, AUTHORIZING AND APPROVING A 2011 SUBSIDY AGREEMENT BETWEEN DILLSBURG AREA AUTHORITY AND THIS TOWNSHIP UNDER WHICH SAID AUTHORITY WILL MAKE SEMI-ANNUAL PAYMENTS FOR AND TOWARD PAYMENT OF THE DEBT SERVICE ON CERTAIN BONDS OF THIS TOWNSHIP; AUTHORIZING AND DIRECTING EXECUTION, ACKNOWLEDGMENT AND DELIVERY OF SAID SUBSIDY AGREEMENT ON BEHALF OF THIS TOWNSHIP; AND AUTHORIZING AND DIRECTING OTHER NECESSARY AND PROPER ACTION.**

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WHEREAS, The Dillsburg Area Water Authority (the "Authority") heretofore acquired and constructed certain sewers, sewer collection lines and related facilities to provide sanitary sewer service in and for a portion of this Township (the "Sewer System"); and

WHEREAS, This Township heretofore provided to the Authority, for the payment of a portion of the costs of making certain capital additions and improvements to the Sewer System, a portion of the proceeds of this Township's General Obligation Bonds, Series of 2005 (the "2005 Bonds"), and in consideration thereof the Authority entered into an agreement with this Township whereby the debt service on an allocable portion of the 2005 Bonds is being paid by the Authority; and

WHEREAS, This Township has authorized and sold, and is about to issue, its "General Obligation Bonds, Series of 2011" (the "Bonds"), a portion of the proceeds of which are to be applied to refund the 2005 Bonds, for the purpose of realizing debt service savings; and

WHEREAS, The Township desires to enter into a new agreement with the Authority under which the Authority will agree to make payments to this Township in respect of debt service on the portion of the Bonds properly allocable to the Sewer System.

NOW THEREFORE, BE IT ENACTED AND ORDAINED, by the Board of Supervisors of this Township, as follows:

SECTION 1. This Township shall enter into a 2011 Subsidy Agreement (the "Subsidy Agreement"), with the Authority substantially in the form referred to in Section 2, with respect to the Bonds and the Sewer System.

SECTION 2. The Subsidy Agreement shall be substantially in the form presented to this meeting, which form is approved, and a copy of the Subsidy Agreement, in the form so presented to this meeting and so approved, shall be filed with the Secretary of this Township and shall be made available for inspection at reasonable times by interested persons requesting such inspection.

SECTION 3. The Chairman or Vice Chairman of the Board of Supervisors and the Secretary or Assistant Secretary, respectively, of this Township, as applicable, are authorized and directed to execute, to attest, to acknowledge, if required, and to deliver, on behalf of this Township, the Subsidy Agreement, substantially in the form approved as provided in Section 2, together with such changes and modifications therein as are approved by the officers of this Township executing the Subsidy Agreement, their execution and delivery thereof to constitute conclusive evidence of such approval.

SECTION 4. Proper officers of this Township are authorized and directed to execute all documents and to do all other acts as may be necessary and proper to carry out this Ordinance and the undertakings of this Township under the Subsidy Agreement.

SECTION 5. All prior ordinances or resolutions or parts of prior ordinance or resolutions inconsistent herewith shall be and the same expressly are repealed.

DULY ENACTED, this \_\_\_ day of November, 2011, by the Board of Supervisors of the Township of Monroe, Cumberland County, Pennsylvania, in lawful session duly assembled.

TOWNSHIP OF MONROE, Cumberland  
County, Pennsylvania

By: Sean S. Connor  
(Vice) Chairman of Board of  
Supervisors

ATTEST:

Marjorie E. Metzger  
(Assistant) Secretary

(SEAL)

**CERTIFICATE**

I, the undersigned, (Assistant) Secretary of the Township of Monroe, Cumberland County, Pennsylvania (the "Township"), certify that: the foregoing is a true and correct copy of an Ordinance of the Board of Supervisors of the Township which duly was enacted by affirmative vote of a majority of the members of the Board of Supervisors of the Township at a meeting duly held on the 10<sup>th</sup> day of November, 2011; such Ordinance duly has been recorded in the ordinance book of the Township; such Ordinance duly has been published as required by law; such Ordinance, upon enactment, was assigned number 2011-08; and such Ordinance remains in effect, unaltered and unamended, as of the date of this Certificate.

I further certify that the Board of Supervisors met the advance notice and public comment requirements of the Sunshine Act, 65 Pa.C.S. Ch. 7, as amended, by advertising said meeting, by posting prominently a notice of said meeting at the principal office of the Township or at the public building in which said meeting was held, and by providing a reasonable opportunity for public comment at said meeting prior to the adoption of said Resolution, all in accordance with such Act.

IN WITNESS WHEREOF, I set my hand and affix the official seal of the Township, this \_\_\_ day of November, 2011.

Margine E. Metzger  
(Assistant) Secretary

(SEAL)

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**2011 SUBSIDY AGREEMENT**

Dated as of November 15, 2011

Between

**DILLSBURG AREA AUTHORITY**

and

**TOWNSHIP OF MONROE,  
Cumberland County, Pennsylvania,**

With Respect To

An \$790,000 Portion of  
\$8,650,000 Principal Amount of  
General Obligation Bonds, Series of 2011  
Dated as of November 22, 2011

of

Township of Monroe,  
Cumberland County, Pennsylvania

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WHEREAS, The parties hereto desire to set forth the terms and conditions under and pursuant to which certain Debt Service related to the 2011 Bonds shall be paid by the Municipality from certain available Authority funds to the extent and in the manner provided herein and related matters.

NOW, THEREFORE, The parties hereto, intending to be legally bound hereby, covenant and agree as follows:

*“Commonwealth”* shall mean the Commonwealth of Pennsylvania;

*“Consulting Engineers”* shall mean a Person, appointed by the Board, who shall be Independent, qualified to pass upon engineering questions relating to sewer systems and having a favorable reputation for skill and experience in supervising and inspecting construction and operation of sewer systems. If such Person shall be an individual, he shall be a professional engineer duly registered under the laws of the Commonwealth. If such Person shall be a partnership, corporation or association, it shall have a partner, officer, employee or member who is a professional engineer duly registered under laws of the Commonwealth;

*“Consulting Engineers’ Certificate”* shall mean a certificate executed by the Consulting Engineers;

*“Debt Act”* shall mean the Pennsylvania Local Government Unit Debt Act, 53 Pa.C.S. Chs. 80-82;

*“Debt Service”* shall mean, with respect to any Fiscal Year, the sum of amounts required to be set aside in such Fiscal Year for payment of interest on and principal of the portion of the 2011 Bonds under consideration and amounts required to be deposited in such Fiscal Year to the credit of any sinking, purchase, redemption or analogous fund established for such 2011 Bonds (such “Debt Service” being more particularly specified on Schedule A attached hereto and hereby made a part hereof);

*“First Supplemental Indenture”* shall mean the *“First Supplemental Indenture”*, as such phrase is defined in the Third Supplemental Indenture;

*“Fiscal Year”* shall mean the fiscal year of the Municipality as provided by laws of the Commonwealth;

*“Governing Body”* shall mean the Board of Supervisors of the Municipality;



*“Third Supplemental Indenture”* shall mean the Third Supplemental Indenture, dated as of November 15, 2008, between the Authority and the Trustee, which constitutes part of the Indenture;

*“Trustee”* shall mean Manufacturers and Traders Trust Company, a banking corporation with trust powers organized and existing under laws of the State of New York and having a corporate trust office in Harrisburg, Pennsylvania, successor trustee under the Indenture, and any successor thereto in the trust under the Indenture;

*“2001 Indenture”* shall mean the *“2001 Indenture”*, as such phrase is defined in the Third Supplemental Indenture;

*“2005 Bonds”* shall mean the Municipality’s General Obligation Bonds, Series of 2005, dated as of December 15, 2005, in the original aggregate principal amount of \$3,500,000, certain of the debt service on which has been payable by the Authority in accordance with the 2008 Subsidy Agreement;

*“2008 Capital Additions”* shall mean the *“2008 Capital Additions”*, as such phrase is defined in the Third Supplemental Indenture; and

*“2008 Subsidy Agreement”* shall mean the 2008 Subsidy Agreement, dated as of September 15, 2008, between the Municipality and the Authority, with respect to an \$815,000 portion of the 2005 Bonds;

*“2011 Bonds”* shall mean the Municipality’s General Obligation Bonds, Series of 2011, dated as of November 22, 2011, in the original aggregate principal amount of \$8,650,000, initially authorized for issuance under the 2011 Bonds Enabling Ordinance, as more specifically are described therein, for purposes which include the 2011 Refunding Project;

*“2011 Bonds Enabling Ordinance”* shall mean an Ordinance of the Municipality, enacted December 5, 2011, authorizing issuance and delivery of the 2011 Bonds;

## ARTICLE II

### *Covenants and Agreements of the Municipality*

**SECTION 2.01.** The Municipality shall undertake and shall complete the 2011 Refunding Project by application of the net proceeds of sale of \$790,000 aggregate principal amount of the 2011 Bonds.

**SECTION 2.02.** The Municipality covenants that it has enacted an ordinance requiring owners of certain property located within the boundaries of the Municipality to make connection of such property with the Sewer System and providing for the enforcement of such ordinance as may be permitted by law. The Municipality also covenants and agrees to keep such ordinance or a subsequent similar ordinance or ordinances requiring such connections in full force and effect continuously during the term hereof and to enforce the same as may be permitted by law.

**SECTION 2.03.** The Municipality confirms and grants to the Authority, its successors and assigns, to the extent necessary and/or desirable, all easements, rights of way and other rights and privileges necessary and desirable in, along, over and under streets, roads, lanes, courts, cul-de-sacs, alleys, public ways, public squares and other properties of the Municipality, together with free ingress, egress and regress therein and thereto, along with other Persons having interests or rights therein, for use in connection with constructing, replacing, repairing, altering and maintaining the Sewer System; Subject, however, to all applicable rules and regulations from time to time established by resolution or ordinance of the Municipality with respect thereto.

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## ARTICLE IV

### *Payment of Sums by the Authority*

**SECTION 4.01.** The Authority hereby unconditionally agrees to pay to the Municipality, or its assigns, *but only from the Receipts and Revenues from the Sewer System and from other receipts, revenues and money of the Authority available, in either such case, for the purposes permitted under the Indenture or otherwise available*, the following sums as hereunder set forth at the following times (or less frequently if paid in advance, subject to Section 4.02 hereof) in immediately available funds:

A. Commencing January 25, 2012, and on or before January 5 of each year thereafter, the amount which, together with other available funds, is required to pay the Debt Service on the 2011 Bonds, as specified on Schedule A hereto, on the next succeeding February 1;

B. Commencing July 25, 2012, and on or before July 25 of each year thereafter, the amount which, together with other available funds, is required to pay the Debt Service on the 2011 Bonds, as specified on Schedule A hereto, on the next succeeding August 1; and

C. Additionally, the Authority shall also pay to the Municipality or its assigns, when and as required, a *pro rata* portion of all Administrative Expenses of the Municipality, including Paying Agent's fees and expenses, reasonably required and fairly attributable to the 2011 Bonds (attributable to the Sewer System) and any sums

covenant or agreement contained herein or in any other agreement between the Authority and the Municipality, any indebtedness or liability at any time owing to the Authority by the Municipality, any commercial frustration of purpose, any change in the tax or other laws of the United States or of the Commonwealth or any political subdivision of either or any failure of the Municipality to perform and observe any agreement, whether expressed or implied, or any duty, liability or obligation arising out of or in connection with this Agreement, the 2011 Bonds Enabling Ordinance, the 2011 Bonds, the Indenture or the Sewer System. Amounts required to be paid by the Authority hereunder shall be received by the Municipality as net sums and the Authority covenants to pay all charges against or which might diminish such net sums.

Nothing contained in this Section 4.03 shall be construed to release the Municipality from the performance of any of the agreements on its part herein contained; in the event the Municipality should fail to perform any such agreement on its part, the Authority may deem it necessary to compel performance so long as such action does not affect the performance of the obligations of the Authority contained herein. The Authority may, however, at its own cost and expense and in its own name or in the name of the Municipality, prosecute or defend any action or proceeding or take any other action involving third Persons which the Authority deems reasonably necessary in order to secure or protect its rights hereunder, and in such event the Municipality hereby agrees to cooperate fully with the Authority and to take all actions necessary to effect the substitution of the Authority for the Municipality in any such action or proceeding if the Authority shall so request.

The Authority hereby waives, to the extent permitted by applicable law, any and all rights which it may now have or which at any time hereafter may be conferred upon it, by statute or otherwise, to terminate or cancel or to limit its liability under this Agreement, except in accordance with the express terms hereof.

**SECTION 4.05.** In order to facilitate the budgeting of anticipated credits by the Municipality as provided in Section 4.04, the Authority agrees to furnish to the Municipality, on or before November 1 of each Fiscal Year, a Consulting Engineers' Certificate with respect to the money anticipated to be available for payment by the Authority to the Paying Agent on or before January 25 and on or before July 25 of the following Fiscal Year for deposit in the 2011 Sinking Fund and to be available for Debt Service.

**SECTION 4.06.** The obligations of the Authority under this Agreement shall be absolute and unconditional, subject to the limitations contained herein, irrespective of any other agreement or instrument to which the Authority shall be a party, and shall remain in full force and effect until the entire principal of and interest on the 2011 Bonds (attributable to the Sewer System) shall have been paid or shall have been provided for to the satisfaction of the Paying Agent, and shall not be affected, modified, diminished or impaired upon the happening, from time to time, of any event, including, without limitation, any of the following, whether or not with notice to or consent of the Municipality, unless such notice or consent is required hereunder:

A. The failure of the Authority to perform any obligation contained in any other agreement (including the Indenture), for any reason whatsoever, including, without limiting the generality of the foregoing, insufficiency of funds, negligence or willful misconduct on the part of the Authority or its agents or independent contractors, legal action of any nature that shall delay construction relating to, or operation of, the Sewer System, labor disputes, war, insurrection, natural catastrophe or laws, rules or regulations of any body, governmental or otherwise, having proper jurisdiction;

I. The extension of the time for payment of the principal of any 2011 Bonds or any part thereof owing or payable under this Agreement or of the time for performance of any other obligations, covenants or agreements under or arising out of the 2011 Bonds Enabling Ordinance or this Agreement;

J. The modification or amendment (whether material or otherwise) of any obligation, covenant or agreement set forth in the 2011 Bonds Enabling Ordinance;

K. The taking of, or the omission to take, any action referred to in the 2011 Bonds Enabling Ordinance or in this Agreement;

L. Any failure, omission or delay on the part of the Municipality and/or the Paying Agent to enforce, to assert or to exercise any right, power or remedy conferred upon or vested in the Municipality and/or the Paying Agent hereunder or under the 2011 Bonds Enabling Ordinance, or to enforce, to assert or to exercise any other right or rights on the part of the Municipality, the Paying Agent or any of the holders, at any time or from time to time, of the 2011 Bonds;

M. The voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all the assets, marshalling of assets and liabilities, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition with creditors or readjustments or other

## ARTICLE V

### *Limitation of Obligations*

**SECTION 5.01.** Anything to the contrary herein notwithstanding, there shall not be any obligation on the part of the Authority to make any payment hereunder except from the Receipts and Revenues from the Sewer System and from other receipts, revenues and money of the Authority available, in either such case, for the purposes permitted under the Indenture or otherwise available, and this Agreement shall not constitute a general obligation of the Authority, but shall, pursuant to the Authorities Act, constitute a special obligation of the Authority, payable solely from the Receipts and Revenues from the Sewer System and such other available receipts, revenues and money of the Authority specified above.

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## ARTICLE VII

### *Additional Covenants and Agreements of the Authority*

**SECTION 7.01.** The Authority covenants and agrees: (a) as long as the 2011 Bonds (attributable to the Sewer System) shall remain outstanding, to furnish the Municipality with all certificates and information required hereunder and such other financial information as the Municipality reasonably may require with respect to the Sewer System; (b) to continuously maintain all of its agreements, covenants and obligations under the Indenture with respect to the operation, maintenance and management of the Sewer System, or otherwise; and (c) while the 2011 Bonds (attributable to the Sewer System) shall be outstanding under the 2011 Bonds Enabling Ordinance, to maintain its corporate existence and its right to own and operate the Sewer System.

**SECTION 7.02.** The Authority covenants to furnish to the Municipality each annual audited financial statement relating to the Sewer System, prepared by its certified public accountant, and to promptly furnish its annual budget upon adoption.

**SECTION 7.03.** The Authority covenants that it shall not take any action or suffer or permit any action to be taken or any condition to exist (inclusive of the application, use or investment of the "proceeds" of the 2011 Bonds) that causes or may cause the interest payable on the 2011 Bonds to be subject to Federal income taxes, or that will cause the Municipality to be in violation of the Municipality's covenants under the 2011 Bonds Enabling Ordinance, or which, if the Municipality were taking such action, would cause the Municipality to be in violation of the Municipality's covenants under the 2011 Bonds Enabling Ordinance; and the Authority covenants to take all action, to do all things and to cause all things to be done that may be necessary so that the interest payable on the 2011 Bonds shall be and shall continue to be exempt from Federal income taxes.



## ARTICLE VIII

### *Representations and Warranties of the Authority*

**SECTION 8.01.** The Authority makes the following representations and warranties, upon which the Municipality may rely, and upon which the Authority understands the Municipality is relying in entering into this Agreement, and the Authority covenants and agrees that such representations and warranties shall be deemed to be continuing during the entire life of this Agreement:

A. The Authority duly has been created and is existing under the Authorities Act and is authorized and empowered to acquire, construct, own, hold and operate the Sewer System;

B. The Authority duly is authorized and empowered to enter into this Agreement and to incur the obligations provided for in this Agreement;

C. The Authority, by due and legal action of its Board, has authorized execution and delivery of this Agreement;

D. There is no litigation, pending or threatened, against the Authority, the outcome of which might affect the ability of the Authority to own and/or operate the Sewer System or which otherwise might affect the validity of this Agreement;

E. There is no statute, rule, regulation, contract or agreement which is binding upon the Authority, which will be contravened by execution and delivery hereof or by performance of any term, condition, agreement or undertaking of the Authority provided for herein; and

## ARTICLE IX

### *Miscellaneous*

**SECTION 9.01.** No amendment, change, modification, alteration or termination of the 2011 Bonds Enabling Ordinance that would in any way increase obligations of the Authority under this Agreement shall be effective without obtaining the prior written consent of the Authority.

**SECTION 9.02.** The obligations of the Authority hereunder shall arise absolutely and unconditionally upon execution and delivery hereof.

**SECTION 9.03.** The Authority covenants with the Municipality that it duly and punctually will perform every covenant and agreement undertaken by the Authority under this Agreement.

**SECTION 9.04.** In the event of default by the Authority in the punctual discharge of its obligations hereunder, the Municipality shall be entitled to exercise such remedies as are provided under the Debt Act, together with any other remedies that otherwise may be provided at law or in equity, including specific performance, or by other statutes, including but not limited to the remedies provided under the Authorities Act.

**SECTION 9.05.** No remedy conferred upon or reserved to the Municipality hereunder is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any default, omission or failure of performance hereunder shall impair any such right or power or shall be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient.

execution of such assignment; and (ii) agrees to pay directly to the Paying Agent the sums payable hereunder.

**SECTION 9.11.** Provisions of this Agreement shall be severable; if any one or more of the phrases, sentences, clauses, Articles, Sections or parts contained in this Agreement shall be deemed or declared invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of remaining portions of this Agreement or any remaining parts thereof

**SECTION 9.12.** This Agreement may be amended or supplemented, from time to time, by a written document duly signed by the parties hereto; Provided, however, that no amendment and/or supplement shall be made that shall diminish or discontinue the obligations of the Authority and of the Municipality hereunder.

**SECTION 9.13.** This Agreement shall be construed in accordance with and shall be governed by laws of the Commonwealth.

**SECTION 9.14.** This Agreement shall be effective as of the date on which the Municipality issues and delivers the 2011 Bonds, and the parties hereto agree that this Agreement shall supersede and replace the 2008 Subsidy Agreement, effective as of such date.

**SCHEDULE A**

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**Debt Service, as such phrase is defined in the Agreement to which this Schedule A is attached, on the 2011 Bonds (attributable to the Sewer System), as such phrase is defined the Agreement, issued by the Municipality.**

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**[See Attached Schedules]**

**Monroe Township**

Series 2011 (Dillsburg Service Area Portion)

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**Series 2011 (Dillsburg Service Area Portion)**

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<b>Date</b>	<b>Principal</b>	<b>Coupon</b>	<b>Interest</b>	<b>Total P+I</b>	<b>Fiscal Total</b>
08/01/2032	50,000.00	3.875%	1,968.75	\$1,968.75	53,937.50
02/01/2033	-	-	1,000.00	1,000.00	-
08/01/2033	50,000.00	4.000%	1,000.00	\$1,000.00	52,000.00
<b>Total</b>	<b>\$790,000.00</b>	<b>-</b>	<b>\$340,314.66</b>	<b>\$1,130,314.66</b>	<b>-</b>