

BOROUGH OF MONTROSE,
Susquehanna County, Pennsylvania

AN ORDINANCE

OF THE COUNCIL OF THIS BOROUGH DETERMINING TO INCUR DEBT IN THE MAXIMUM PRINCIPAL AMOUNT OF \$10,000,000; DETERMINING THAT SUCH DEBT SHALL BE INCURRED AS LEASE RENTAL DEBT TO BE EVIDENCED BY A GUARANTEED CONSTRUCTION NOTE, SERIES OF 2011, IN THE MAXIMUM PRINCIPAL AMOUNT OF \$10,000,000, TO BE DATED AS OF THE DATE OF DELIVERY AND TO BE AUTHORIZED AND TO BE ISSUED BY MONTROSE MUNICIPAL AUTHORITY; UNDERTAKING TO GUARANTY PAYMENT OF THE PRINCIPAL OF AND INTEREST ON SAID GUARANTEED CONSTRUCTION NOTE AND MAKING CERTAIN COVENANTS WITH RESPECT THERETO; BRIEFLY DESCRIBING THE PROJECT IN CONNECTION WITH WHICH SUCH DEBT IS TO BE INCURRED AND SPECIFYING THE REALISTIC USEFUL LIFE OF SAID PROJECT; APPROVING THE CONSULTING ENGINEERS REPORT RELATED TO NET LEASE RENTAL DEBT; AUTHORIZING AND DIRECTING APPROPRIATE OFFICERS OF THIS BOROUGH TO PREPARE, EXECUTE, VERIFY AND FILE THE DEBT STATEMENT, THE BORROWING BASE CERTIFICATE TO BE APPENDED TO THE DEBT STATEMENT, THE APPLICATION FOR EXCLUSION OF SELF-LIQUIDATING DEBT AND OTHER APPROPRIATE DOCUMENTS REQUIRED BY THE LOCAL GOVERNMENT UNIT DEBT ACT, 53 PA.C.S.A. §8001 *ET SEQ.*, AS AMENDED AND SUPPLEMENTED; AUTHORIZING PROPER OFFICERS OF THIS BOROUGH TO EXECUTE, ATTEST, ACKNOWLEDGE AND DELIVER, AS APPLICABLE AND APPROPRIATE, A GUARANTY AGREEMENT APPLICABLE TO SAID GUARANTEED CONSTRUCTION NOTE; SETTING FORTH THE DEBT SERVICE TO WHICH SAID GUARANTY IS APPLICABLE; AND PROVIDING FOR PROPER OFFICERS OF THIS BOROUGH TO TAKE ALL OTHER REQUIRED, NECESSARY OR DESIRABLE RELATED ACTION IN CONNECTION WITH SAID GUARANTY.

WHEREAS, this Borough is existing under laws of the Commonwealth of Pennsylvania and is a Local Government Unit, as defined in The Local Government Unit Debt Act, 53 Pa.C.S. §8001 *et seq.* (the "Debt Act"); and

WHEREAS, Montrose Municipal Authority (the "Authority") is a municipality authority organized and existing under the Pennsylvania Municipality Authorities Act, 53 Pa.C.S. §5601 *et seq.*, as amended and supplemented; and

WHEREAS, the Authority, with the approval of this Borough, heretofore acquired and constructed a sanitary sewage collection and treatment system (the "Existing Sewer System"), in and for rendering sewage service in and for portions of this Borough and sewage treatment services for adjacent municipalities; and

WHEREAS, this Authority, in order to comply with the requirements of the Pennsylvania Chesapeake Bay Tributary Strategy, has determined to undertake the design, acquisition and construction of certain improvements to its existing wastewater treatment plant and related facilities, which undertakings herein are referred to as the "Project", at an estimated cost of \$12,424,400; and

WHEREAS, the facilities contemplated by the Project, together with the Existing Sewer System and all appurtenant facilities and properties which the Authority has acquired or hereafter shall acquire in connection therewith, including all property, real, personal and mixed, rights, powers, licenses, easements, rights-of-way, privileges, franchises and any and all other property or interests in property of whatsoever nature, used or useful in connection with such facilities, and together with all additions, extensions, betterments, alterations and improvements thereto which may be made or acquired, from time to time, by the Authority, are referred to herein as the "Sewer System"; and

WHEREAS, the Authority, in order to fund a portion of the costs of the Project, heretofore has applied to and has received approval for a loan, in an amount not to exceed \$12,424,400 (the "Government Loan"), from the United States of America, acting by and through the United States Department of Agriculture (the "Government", which term shall include any successor agency of the United States Department of Agriculture), administered by its agency known as the Rural Development; and

WHEREAS, the Government, as a condition of the Government Loan, requires that the Authority provide interim funding to be applied for and toward costs and expenses with respect to the Project pending consummation of the Government Loan; and

WHEREAS, the Authority heretofore has applied and received approval for a construction loan from Fulton Bank, N.A. (the "Bank"), in the principal amount not to exceed \$10,000,000 (the "Interim Loan"), which Interim Loan will be used solely to fund the costs of the Project, pending receipt of the proceeds from the Government Loan; and

WHEREAS, the Interim Loan is to be evidenced by a Guaranteed Construction Note, in the maximum principal amount of \$10,000,000, to be designated as "Guaranteed Construction Note, Series of 2011" (the "Construction Note"), which Construction Note will be issued under and secured pursuant to a Loan and Security Agreement, to be entered into between the Authority and the Bank (the "Loan Agreement"), under which Loan Agreement the Authority will covenant to apply the proceeds derived from the Government Loan to retire the Construction Note and, to further secure the Construction Note, grant to the Bank a pledge of the Authority's receipts and revenues derived from the Sewer System; and

WHEREAS, as a condition of the Interim Loan and to further secure the Construction Note, the Bank is requiring the guaranty of this Borough; and

WHEREAS, this Borough, pursuant to the authority set forth in the Debt Act, is willing to guarantee the payment of the principal of and the interest on the Construction Note.

NOW THEREFORE, BE IT ENACTED AND ORDAINED by the Council of the Borough of Montrose, Susquehanna County, Pennsylvania, as follows:

1. This Borough does hereby authorize and direct the Authority to undertake and consents to and approves of the Authority undertaking the Project, the financing thereof and the payment of all "Costs" related thereto. The description of the Project contained in the recitals to this Ordinance is hereby incorporated into this Paragraph by reference as if set out at length. The foregoing recitals and all terms defined therein are incorporated herein.

2. Reasonable cost estimates have been obtained for the Project based upon bids received and estimates received from consulting engineers, and other persons qualified by experience. This Borough hereby determines that the realistic estimated useful life of the Project is in excess of 40 years.

3. This Borough hereby determines to incur "debt" as "lease rental debt", as both terms are defined in the Debt Act, in the maximum principal amount of \$10,000,000 in connection with the Interim Loan, as evidenced by the Construction Note, to finance the Project.

4. The debt to be incurred, as lease rental debt, in the maximum principal amount not to exceed \$10,000,000, as set forth in Paragraph 3 hereof, shall be evidenced by the Construction Note. The Construction Note shall be secured, in part, by a guaranty agreement executed by this Borough, substantially in the form referred to in Paragraph 6.

5. This Borough shall enter into a Guaranty Agreement, effective as of the date of delivery of the Construction Note (the "Guaranty Agreement"), substantially in the form referred to in Paragraph 6 hereof, with respect to the Construction Note to be issued by the Authority as set forth herein.

6. The Guaranty Agreement shall be substantially in the form presented to this meeting, which form is approved; and a copy of the Guaranty Agreement, in the form so presented to this meeting and so approved, shall be filed with the Secretary of this Borough for inspection, at reasonable times, by interested persons requesting such inspection.

7. The President or Vice President of Council of this Borough and Secretary or Assistant Secretary of this Borough are authorized and directed: (a) to prepare, verify and file with the Pennsylvania Department of Community and Economic Development (the "Department"), a debt statement as required by Section 8110 of the Debt Act; (b) to prepare and execute a borrowing base certificate required by the Debt Act to be appended to the debt statement of this Borough referred to in subsection (a) of this Paragraph; and (c) to prepare or have prepared and file originally and thereafter, as required, with the Department, appropriate statements required by Section 8026 of the Debt Act which are necessary to qualify all or a portion of lease rental debt of this Borough, which is subject to exclusion as self-liquidating debt, for exclusion from the appropriate debt limit of this Borough as self-liquidating debt.

For such purpose, this Borough hereby accepts a self-liquidating report prepared by ARRO Consulting, Inc., Consulting Engineers, in conformance with Section 8026 of the Debt Act, with respect to the Sewer System.

8. The President or Vice President of Council, the Mayor and the Secretary or Assistant Secretary of this Borough are authorized and directed to execute, attest and deliver, as applicable, the Guaranty Agreement, in behalf of this Borough, in substantially the form approved in Paragraph 6 hereof, or with such changes as such officers shall approve, their execution to constitute conclusive evidence of such approval; Provided, however, that such execution and delivery of the Guaranty Agreement shall be subject to compliance by this Borough with applicable provisions of the Debt Act.

This Borough authorizes delivery of the Guaranty Agreement to the Bank for the purposes set forth in the Guaranty Agreement.

9. The President or Vice President of Council of this Borough and Secretary or Assistant Secretary of this Borough are authorized and directed to make application for approval with respect to the Guaranty Agreement, as required by Section 8111(b) of the Debt Act, and to pay or cause to be paid to

the Department all proper filing fees required by the Debt Act and to take all other required and appropriate action.

10. This Borough hereby guarantees the full and prompt payment of the principal of and interest on the Construction Note and in furtherance thereof covenants and agrees with the holder of the Construction Note that if the Authority shall fail to pay the full amount of the principal of and interest on the Construction Note when the same becomes due and payable, at the times and place, under the terms and conditions, and in the manner prescribed in the Construction Note and in the Loan Agreement, this Borough will pay the full amount of the principal, together with interest thereon, to the holder of such Construction Note.

This Borough agrees and hereby covenants with the holder of such Construction Note that this Borough shall include the amount of the debt service on the Construction Note, including interest thereon, for each fiscal year of this Borough in which such sums are payable in its budget for that fiscal year, and that this Borough, in the event the Authority shall fail to pay the full amount of the principal of and interest on such Construction Note when due and payable, at the times and place, under terms and conditions and in the manner prescribed in said Construction Note, shall appropriate from its general revenues and duly and punctually pay or cause to be paid from its sinking fund or any other of its funds or revenues the amount of such principal together with interest on such principal amount on the dates and at the place and in the manner stated in such Construction Note. For such budgeting, appropriation and payment this Borough hereby does pledge its full faith, credit and taxing power and hereby does agree that this covenant shall be specifically enforceable.

For such budgeting, appropriation and payment this Borough may take credit in each Fiscal Year budget for the moneys available and anticipated to be available to the Authority to be applied for and toward payment on the Construction Note in such fiscal year; provided, however, that such credit shall not relieve this Borough of its obligation under this Guaranty to pay the full amount of the principal of and interest on the Construction Note if the Authority shall fail to make such payment.

This Borough agrees that maximum debt service in each of its fiscal years with respect to the Construction Note to which the foregoing guarantee shall apply is attached hereto as Exhibit A and hereby is incorporated herein as though fully set forth.

11. Proper officers of this Borough are authorized and directed to execute all documents and to take such other action as may be necessary to carry out the intent and purposes of this Ordinance and the undertakings of this Borough under the Guaranty Agreement.

12. No recourse under or upon any obligation, covenant or agreement contained in the Guaranty Agreement, or because of any indebtedness secured thereby, shall be had against any past, present or future member, officer, or employee of this Borough under any rule of law, statute, or constitutional provision, or by enforcement of any assessment or by any legal or equitable proceeding or otherwise, it expressly being agreed and understood that the Guaranty Agreement and obligations thereby secured are solely corporate obligations of this Borough and that no personal liability whatsoever shall attach to or shall be incurred by such members, officers, or employees of this Borough, because of incurring of indebtedness authorized hereby or under or by reason of any obligation, covenant, or agreement contained in the Guaranty Agreement or implied herefrom or therefrom.

DULY ENACTED AND ORDAINED this 14 day of July, 2011, by the Council of the Borough of Montrose, Susquehanna County, Pennsylvania, in lawful session duly assembled.

ATTEST:

Elin A. Jenner
(Assistant) Secretary

BOROUGH OF MONTROSE,
Susquehanna County, Pennsylvania

By: Todd Ombrello
(Vice) President of Council

EXAMINED AND APPROVED this 14 day of July, 2011.

John R. Wilson
Mayor

(SEAL)

EXHIBIT A

EXHIBIT A

MONTROSE MUNICIPAL AUTHORITY*INTERIM NOTE:*Maximum Annual Debt Service Schedule*

<i>Fiscal Year Ending</i>	<i>Principal Outstanding</i>	<i>Interest Rate</i>	<i>Interest Payments</i>	<i>Max. Annual Debt Service</i>
12/31/11	9,045,825.77	3.350%	127,948.18	127,948.18
12/31/12	9,173,773.95	3.350%	311,589.78	311,589.78
12/31/13	9,485,363.73	3.350%	321,290.35	321,290.35
8/1/14 **	9,876,841.28	3.350%	194,848.13	10,071,689.41
Totals			955,676.44	

* Assumes:

(i) a closing date of August 1, 2011.

(ii) a draw of entire principal less estimated interest during remaining term of loan.

** Maturity Date.

CERTIFICATE

I, the undersigned (Assistant) Secretary of the Borough of Montrose, Susquehanna County, Pennsylvania (the "Borough"), certify: that the foregoing is a true and correct copy of an Ordinance which duly was enacted by affirmative vote of a majority of all members of the Council of the Borough at a meeting duly held on July 14, 2011; that said Ordinance duly has been recorded in the minute book of the Council of the Borough; that said Ordinance has been published, in summary form, as required by law, in a newspaper of general circulation published or circulating in the Borough and notice of enactment of said Ordinance, setting forth matters required by law was advertised, as required by law; and that said Ordinance is in full force and effect, without amendment, alteration or repeal, as of the date of this Certificate.

I further certify that the Borough met the public notice requirement of the Sunshine Act, 65 Pa.C.S. §701 *et seq.*, by advertising the place, date and time of said meeting in a newspaper of general circulation, and by posting a notice of the place, date and time of said meeting at the meeting place of the Council of the Borough, and by giving notice to parties upon request as required under Section 709 of said Act.

IN WITNESS WHEREOF, I affix my hand and the official seal of the Borough, this 14 day of July, 2011.

By: Erin A. Jenner
(Assistant) Secretary

(SEAL)