

AN ORDINANCE OF JACKSON TOWNSHIP  
CAMBRIA COUNTY, PENNSYLVANIA  
ENACTED August 10, 1998 AND NUMBERED 106,

AUTHORIZING THE INCURRING OF SELF LIQUIDATING LEASE RENTAL DEBT CONSISTING OF A LIMITED GUARANTY OF THE REPAYMENT OF UP TO \$837,329.00 OF THE OBLIGATION OF THE JACKSON/EAST TAYLOR SEWER AUTHORITY (THE "AUTHORITY") TO THE PENNSYLVANIA INFRASTRUCTURE INVESTMENT AUTHORITY WITH RESPECT TO A SUPPLEMENTAL LOAN IN THE AGGREGATE PRINCIPAL AMOUNT OF UP TO \$1,473,912.00, SUCH INDEBTEDNESS TO BE INCURRED BY THE AUTHORITY FOR THE PURPOSE OF PROVIDING ADDITIONAL FUNDS TO FINANCE THE DESIGN AND CONSTRUCTION BY THE AUTHORITY OF A SEWAGE COLLECTION AND CONVEYANCE SYSTEM IN JACKSON TOWNSHIP AND EAST TAYLOR TOWNSHIP; FIXING THE FORM OF THE GUARANTY AND THE COVENANTS AND OTHER PROVISIONS THEREOF; COVENANTING TO PAY THE OBLIGATIONS UNDER THE GUARANTY PURSUANT TO THE TERMS OF SUCH GUARANTY; PLEDGING ITS FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER FOR THE PAYMENT OF THE GUARANTY; AUTHORIZING CERTAIN FILINGS OF REQUIRED DOCUMENTS WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT; RATIFYING CERTAIN ACTIONS OF OFFICERS AND DIRECTING OTHER ACTIONS; AND MAKING CERTAIN OTHER COVENANTS IN RESPECT OF THE GUARANTY.

Bond Counsel: Tucker Arensberg, P.C.  
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PREAMBLE

WHEREAS, the Governing Body (as hereinafter defined) of Jackson Township (as more fully defined hereinafter, the "Local Government Unit"), after due consideration of the public welfare and with full legal competence pursuant to its enabling legislation, has created jointly with East Taylor Township the Jackson/East Taylor Sewer Authority (hereinafter the "Authority"); and

WHEREAS, the Authority and the Local Government Unit have previously determined that there is a need for the design and construction of the System (as hereinafter defined) in and for portions of Jackson Township and East Taylor Township, Cambria County, Pennsylvania; and

WHEREAS, the Authority has commenced undertaking the design and construction of the System (hereinafter defined as the "Project") with financing therefor being provided in part by the Pennsylvania Infrastructure Investment Authority ("PENNVEST"); and

WHEREAS, due to additional costs being incurred by the Authority in connection with the Project, supplemental financing in the principal amount not to exceed \$1,473,912.00 is required and is being provided by PENNVEST to the Authority; and

WHEREAS, PENNVEST requires that the Local Government Unit provide a limited guaranty of the repayment of a portion of the supplemental financing to be provided by PENNVEST to the Authority; and

WHEREAS, the Governing Body of the Local Government Unit desires to incur Lease Rental Debt constituting Self-Liquidating Debt (as hereinafter defined), within constitutional and statutory limitations, in order to provide a limited guaranty of the repayment of a portion of the supplemental financing provided to the Authority for the undertaking of said Project; and

WHEREAS, the execution and delivery of the limited guaranty is governed by the provisions of the Pennsylvania Local Government Unit Debt Act, Act of July 12, 1972, P.L. 781, No. 185, as amended and reenacted by Act No. 1978-52, approved April 28, 1978, as amended (the "Debt Act"); and

WHEREAS, it is deemed to be in the best financial interest of the Local Governmental Unit to provide a limited guaranty of the repayment of a portion of the obligations of the Authority as hereinafter described.

NOW, THEREFORE, BE, AND IT HEREBY IS, ORDAINED AND ENACTED by the affirmative vote of a majority of all members of the Governing Body of the Local Government Unit as follows:

#### ARTICLE 1 - DEFINITIONS

Section 1.01. Definitions and Conventions. Unless the context clearly indicates otherwise, the following terms shall, for all purposes of this Lease Rental Debt Ordinance (including the preamble hereto), have the meanings hereby ascribed to them. Moreover, such terms, together with all other provisions of this Lease Rental Debt Ordinance, shall be read and understood in a manner consistent with the provisions of the Debt Act, as generally interpreted by the Department of Community and Economic Development or by courts maintaining competent jurisdiction. Words or phrases importing the masculine, feminine or neuter gender shall be read and understood to include the other two genders and those importing number shall include singular or plural, both as appropriate to the context.

"Authority" shall mean the Jackson/East Taylor Sewer Authority, a body politic and corporate organized and existing under the Commonwealth of Pennsylvania Municipality Authorities Act of 1945 (53 P.S. §§301 et seq.), and its successors and assigns.

"Bond Counsel" means Tucker Arensberg, P.C., 1500 One PPG Place, Pittsburgh, Pennsylvania 15222.

"Borrowing Base" shall mean the annual arithmetic average of the total revenues for the three full fiscal years ended next preceding the date of the incurring of Lease Rental Debt as set forth in a certificate stating the total revenues in each of such years and stating such average, executed by the appropriately authorized officials of the Local Government Unit or by an independent accountant. If, within such three-year period, there shall have been an expansion or contraction of the territorial or functional jurisdiction of a Local Government Unit through transfer, merger, annexation, or assumption, in whole or in part, in relation to another local government unit or an authority, the Borrowing Base shall be calculated as if such expansion or contraction had occurred within or prior to the commencement of such three-year period in such manner as the statutes, charter, provisions or court decree shall provide or direct, or in the absence of such provisions, as the Department of Community and Economic Development shall approve.

"Debt" shall mean the obligations to be incurred by the Local Government Unit, under the terms of this Lease Rental Debt Ordinance, as a limited guarantor of a portion of the Supplemental PENNVEST Loan.

"Debt Act" shall mean the Pennsylvania Local Government Unit Debt Act as more fully described in the preamble to this Lease Rental Debt Ordinance.

"Debt Statement" shall mean the written certification by a Designated Officer that complies with Section 410 of the Debt Act.

"Department of Community and Economic Development" shall mean the Department of Community and Economic Development of the Commonwealth of Pennsylvania, and any Person or Persons succeeding to the functions thereof.

"Designated Officer" or "Designated Officers" shall mean and include, individually or jointly, each member of the Governing Body (including the Chairman thereof) and the Secretary and Treasurer of the Local Government Unit, being those duly elected or appointed and acting officials of the Local Government Unit, and their successors, hereby authorized to undertake and perform the actions herein specified as necessary and proper to the execution and delivery of the Guaranty and compliance with the Debt Act and this Lease Rental Debt Ordinance.

"East Taylor Township" shall mean East Taylor Township, a township of the second class of the Commonwealth of Pennsylvania duly organized and existing under the constitution and laws of the Commonwealth of Pennsylvania, particularly the Second Class Township Code (53 P.S. §§ 65101 et seq.), and its successors and assigns.

"Governing Body" shall mean the Board of Supervisors of the Local Government Unit, being that entity authorized by law to fix the rate of, and to levy, taxes within the Local Government Unit.

"Guaranty" shall mean the Supplemental PENNVEST Guaranty.

"Lease Rental Debt" means "Lease Rental Debt" as that term is defined in the Debt Act.

"Lease Rental Debt Ordinance" shall mean this document, being the formal action taken by the Local Government Unit according to the requirements of Section 403 of the Debt Act in order to authorize and incur the Lease Rental Debt represented by the Guaranty. Such term shall apply whether, under the law and existing practices of the Local Government Unit, it would normally take formal action by enactment of an ordinance, adoption of a resolution or some other similar means.

"Local Government Unit" shall mean Jackson Township, a township of the second class of the Commonwealth of Pennsylvania duly organized and validly existing under the constitution and

laws of the Commonwealth, particularly the Second Class Township Code (53 P.S. §§65101 et. seq.), and its successors and assigns.

"Net Nonelectoral Debt" means "Net Nonelectoral Debt" as that term is defined in the Debt Act.

"Net Lease Rental Debt" means "Net Lease Rental Debt" as that term is defined in the Debt Act.

"Nonelectoral Debt" means "Nonelectoral Debt" as that term is defined in the Debt Act.

"PENNVEST" shall mean the Pennsylvania Infrastructure Investment Authority, a body corporate and politic organized and existing under the laws of the Commonwealth of Pennsylvania.

"Person" or "person" shall mean an individual, a corporation, an association, a partnership, a trust or estate, a government, foreign or domestic, and any agency or political subdivision thereof, or any other entity.

"Project" shall mean (a) the engineering, design, construction, personal property acquisition, land acquisition, preparation, surveying, land, right of way and easement acquisition, and other services, activities and events related to the engineering, design, acquisition and construction of the System in accordance with the plans and specifications prepared by the consulting engineers of the Local Government Unit, as such plans and specifications may be amended or modified from time to time; and (b) payment of the necessary and proper costs of incurring indebtedness in respect of the foregoing. The useful life of the Project is estimated to be at least 40 years.

"Self-Liquidating Debt" shall mean Lease Rental Debt of the Local Government Unit which is excluded in determining Net Nonelectoral Debt or Net Lease Rental Debt within the meaning of Section 206 of the Debt Act.

"Supplemental PENNVEST Guaranty" shall mean the limited guaranty by the Local Government Unit of up to \$837,729.00 of the indebtedness, obligations and liabilities of the Authority under the Supplemental PENNVEST Loan, including the payment of principal of, interest on, and other obligations with respect to the Supplemental PENNVEST Loan, as evidenced by a guaranty agreement substantially in the form of Exhibit "A" attached hereto, and other instruments and documents to be executed by the Local Government Unit in form and substance acceptable to PENNVEST, and the Local Government Unit.

"Supplemental PENNVEST Loan" shall mean the indebtedness, obligations and liabilities of the Authority pursuant to the promissory note and amended loan agreement executed or to be executed by the Authority, evidencing a

supplemental loan from PENNVEST to the Authority in the principal amount of up to \$1,473,912.00, in order to partially finance the Project, as further described in the commitment letter of the PENNVEST dated April 3, 1998, as amended or modified by the Authority and PENNVEST.

"System" shall mean a sewage collection and conveyance system in Jackson Township and East Taylor Township for purposes of conveying a portion of such Townships' wastewater to the City of Johnstown's Dornick Point wastewater treatment plant. The useful life of the System is estimated to be at least 40 years.

"Solicitor" shall mean Calvin J. Webb, II, Esquire, Smorto, Persio, Webb & McGill, 129 South Center Street, P.O. Box 239, Ebensburg, Pennsylvania 15931

## ARTICLE 2 - AUTHORIZATION OF LEASE RENTAL DEBT

Section 2.01. Incurrence. The Local Government Unit does hereby authorize and direct the incurrence of Lease Rental Debt consisting of the Supplemental PENNVEST Guaranty, for the purposes of the Project, and Lease Rental Debt within the meaning of Article XI of the Debt Act; such Lease Rental Debt shall be evidenced by the Guaranty, to be issued according to the provisions of this Lease Rental Debt Ordinance and the Debt Act, as general obligations of the Local Government Unit. Except as otherwise provided in the Debt Act: (i) the Local Government Unit shall not incur any new Nonelectoral Debt, if the aggregate net principal amount of such new Nonelectoral Debt together with all other Net Nonelectoral Debt outstanding would cause the total Net Nonelectoral Debt of such Local Government Unit to exceed 250% of its Borrowing Base; and (ii) the Local Government Unit shall not incur any new Lease Rental Debt or new Nonelectoral Debt, if the aggregate net principal amount of such new debt together with all other Net Nonelectoral Debt and Net Lease Rental Debt outstanding would cause the outstanding total of Net Nonelectoral Debt plus Net Lease Rental Debt of such Local Government Unit to exceed 350% of its Borrowing Base.

Section 2.02. Preparation of Debt Statement; Proceedings Before the Secretary. The Designated Officers are hereby authorized and directed to prepare and verify under oath or affirmation, according to the requirements of Sections 102(c)(3), 102(c)(16) and 410 of the Debt Act, the Debt Statement of the Local Government Unit, including therewith a certification of the Borrowing Base, and, any statements required by Article II of the Debt Act necessary to qualify all or any portion of the Debt for exclusion from the appropriate debt limit as Self-Liquidating Debt.

The Designated Officers are hereby further authorized and directed to prepare and file all proceedings of the Local

Government Unit relative to this incurrence of Debt with the Department of Community and Economic Development, and to respond to all inquiries or requests and to perform all other actions necessary to obtain the approval of the Secretary of the Department of Community and Economic Development to issue and deliver the Guaranty.

Section 2.03. General Obligation Covenant. The Local Government Unit hereby covenants with the holders of the Guaranty to: (a) include the amounts payable in respect of the Guaranty for each fiscal year in which such sums are payable in its budget for that year, (b) appropriate such amounts from its general revenues to the payment of the amounts payable in respect of the Guaranty, and (c) duly and punctually pay or cause to be paid from its revenues or funds, to the extent of its obligations, the amounts payable in respect of such Guaranty at the dates and places and in the manner stated in the Guaranty according to the true intent and meaning thereof.

For such budgeting, appropriation and payment under the Guaranty, the Local Government Unit hereby irrevocably pledges its full faith, credit and taxing power.

As provided in the Debt Act, the foregoing covenants are specifically enforceable.

### ARTICLE 3 - EXECUTION, FORM AND DELIVERY OF Guaranty

Section 3.01. Execution of the Guaranty. The Guaranty shall be executed on behalf of the Local Government Unit by any one of the Designated Officers and shall have the corporate seal of the Local Government Unit affixed thereto either manually or by engraved or lithographic facsimile, duly attested by its Secretary or Assistant Secretary, and any one of the Designated Officers are hereby authorized to execute the Guaranty as aforesaid as well as take all other appropriate and necessary action in connection therewith.

Section 3.02. Form of the Guaranty. The Guaranty shall be substantially in the form attached hereto as Exhibit "A", with such changes as the Designated Officers, or any one of them, may approve, such approval to be conclusively evidenced by their execution and delivery thereof. The Guaranty in the form executed and delivered by the Designated Officers are incorporated herein by reference.

Section 3.03. Delivery of the Guaranty. The Designated Officers are hereby authorized and directed, at the date of closing of the PENNVEST Loan to deliver the Guaranty to PENNVEST.

## ARTICLE 4 - FINANCIAL INFORMATION

Section 4.01. Financial Information. The Local Government Unit covenants that it shall deliver to PENNVEST, as may be required by PENNVEST pursuant to the Guaranty or other related documents, financial information of the Local Government Unit, including, without limitation, (a) a copy of the Local Government Unit's audited financial and income statements; and (b) a copy of the Local Government Unit's proposed budget for the next fiscal year.

## ARTICLE 5 - MISCELLANEOUS

Section 5.01. Expeditious Settlement. The Local Government Unit hereby authorizes and directs Bond Counsel and/or the Solicitor to undertake and perform all actions on behalf of the Local Government Unit necessary and proper to the expeditious execution and delivery of the Guaranty.

Section 5.02. Publications of Lease Rental Debt Ordinance. The action of the proper officers or agents in advertising a summary notice of this Lease Rental Debt Ordinance, as required by law, is ratified and confirmed. The advertisement of the enactment notice of this Lease Rental Debt Ordinance is hereby directed.

Section 5.03. Inconsistencies. All prior ordinances, resolutions, or other official acts or parts thereof inconsistent herewith are hereby repealed to the extent of such inconsistencies.

Section 5.04. Statutory References. All references to specific provisions of statutory law herein contained may be read and interpreted by reference to amended, successor or replacement laws, but only to the extent consistent with the intent and clear meaning of this Lease Rental Debt Ordinance. All inconsistencies shall be resolved with recognition of, and in favor of, the rights of the holders of the Guaranty, whose rights shall not be impaired.

### Section 5.05. Amendment and Waiver.

(a) Any term, covenant, agreement or condition of this Lease Rental Debt Ordinance or of the Guaranty may, with the consent of the Local Government Unit, be amended, or compliance therewith may be waived (either generally or in a particular instance and whether retroactively or prospectively), by a written instrument signed by the holder of the Guaranty.

(b) Any amendment or waiver pursuant to the foregoing clause (a) of this Section 5.05 shall be binding upon such holders of the Guaranty, upon each respective future holder

of the Guaranty and upon the Local Government Unit. No notation need be made on the Guaranty at the time outstanding in respect of any such amendment or waiver, but any Guaranty executed and delivered thereafter may, at the option of the Local Government Unit, bear a notation referring to any such amendment or waiver then in effect.

Section 5.06. Costs, Expenses and Taxes. The Local Government Unit is authorized to pay all expenses incident to execution of the Guaranty. By way of example and not in limitation of the foregoing, such expenses shall be deemed to include the obligations, if any, of the Local Government Unit to pay the legal costs to the holders of the Guaranty, printing, copying, document production and other expenses incident to such transactions (including the fees and disbursements of the Solicitor and Bond Counsel for their services with relation to such transactions).

Section 5.07. Reliance on and Survival of Representations. All agreements, representations and warranties of the Local Government Unit herein and in any certificates or other instruments delivered pursuant to this Lease Rental Debt Ordinance shall survive the execution and delivery of this Lease Rental Debt Ordinance and the execution and delivery of the Guaranty, and shall continue in effect so long as the Guaranty, or any of them, is outstanding and thereafter until all obligations under the Guaranty and this Lease Rental Debt Ordinance have been satisfied.

Section 5.08. Successors and Assigns. This Lease Rental Debt Ordinance shall bind and inure to the benefit of and be enforceable by the Local Government Unit, the holders of the Guaranty and their respective successors and assigns.

Section 5.09. Communications. All communications and notices provided for herein shall be hand delivered, or mailed by registered mail or any receipted courier, postage prepaid, and addressed as follows:

A. If to the Local Government Unit:

Jackson Township  
Board of Supervisors  
R.D. 6, Box 184  
Johnstown, Pennsylvania 15909  
Attention: Chairman

B. If to the Person who is a holder of the Guaranty, to the address provided to the Local Government Unit by such holder.

The address for any purpose hereof of the Local Government Unit, may be changed at any time and from time to time and shall be the most recent such address furnished in writing by the Local Government Unit to the holders of the Guaranty at such time. The address for any purpose hereof of any Person who is a holder of the Guaranty shall be the most recent such address furnished in writing by such Person to the Local Government Unit.

Any notice or other communication herein provided to be given to the holders of the Guaranty shall be deemed to have been duly given if delivered or mailed as aforesaid to the holders of the Guaranty at the time at the address for such purpose of such of such holder as it appears on the on the records of the Local Government Unit.

Section 5.10. Governing Law. This Lease Rental Debt Ordinance and the Guaranty and (unless otherwise provided) all amendments, supplements, waivers and consents relating hereto or thereto shall be construed in accordance with and governed by the law of the Commonwealth of Pennsylvania.

Section 5.11. Counterparts. This Lease Rental Debt Ordinance may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

Section 5.12. Lease Debt Ordinance a Contract. This Lease Debt Ordinance shall be a contract with the holder, from time to time, of the Guaranty.

Section 5.13 No Personal Liability. No covenant or agreement contained in any of the Guaranty or in this Debt Ordinance shall be deemed to be the covenant or agreement of any member, officer, agent, attorney or employee of the Local Government Unit in his individual capacity, and neither the members of the Governing Body nor any Designated Officer executing the Guaranty shall be personally liable on the Guaranty or be subject to any personal liability or accountability by reason of the issuance thereof.

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