

\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998

DISTRIBUTION LIST

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TRANSCRIPT LIST

\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998

Closing: May 20, 1998

A. BASIC

1. Grant Letters
2. County Commission Orders on Creation and Expansion of Mt. Zion Public Service District (the "Issuer")
3. County Commission Orders on Appointments of Board Members
4. Oaths of Office of Board Members
5. Issuer's Rules of Procedure
6. Certified Copy of Bond Resolution of the Issuer adopted on May 18, 1998
7. Notice of Public Hearing and Affidavit of Publication Thereof
8. Minutes on Adoption of Bond Resolution

B. CERTIFICATES AND RECEIPTS

9. General Certificate of Issuer and Counsel on:
  1. Terms
  2. Award of Bond
  3. No Litigation
  4. Governmental Approvals and Bidding
  5. No Adverse Financial Change; Indebtedness
  6. Signatures
  7. Certification of Copies of Documents
  8. Public Service Commission Order; Rates
  9. Incumbency and Official Name
  10. Delivery and Payment
  11. Land and Rights of Way
  12. Meetings
  13. Contractors' Insurance
  14. Connections
  15. Management
  16. Rates and Charges
  17. Conflict of Interest
10. Consulting Engineer's Certificate

11. Accountant's Certificate
12. Issuer's Non-Arbitrage Certificate
13. Water Rate Resolution or Tariff
14. West Virginia Public Service Commission Certificate of Convenience and Necessity
15. Financing Statements

#### C. LEGAL OPINIONS

16. Issuer's Counsel Opinion
17. Bond Counsel Opinion
18. Arbitrage Opinion

#### D. MISCELLANEOUS

19. Specimen Bond
20. Bond Registry Form
21. Receipt for Bond and Transcript
22. Consent to Issuance of Parity Debt and Waiver of Debt Service Coverage Requirements
23. West Virginia Infrastructure and Jobs Development Council approval letter
24. IRS Form 8038-G and Evidence of Filing Thereof
25. 1966 Bond Resolution
26. 1974 Bond Resolution
27. 1984 Bond Resolution
28. Copy of Statutory Authority

The closing of the sale of \$40,000 in aggregate principal amount of Mt. Zion Public Service District, Water Revenue Bonds, Series 1998, will take place at the Arnoldsburg Volunteer Fire Department, Arnoldsburg, West Virginia, at 10:00 a.m., Eastern Time, on May 20, 1998. No transaction shall be deemed to have been completed and no documents shall be deemed to have been delivered unless and until all transactions are complete and all documents are delivered. Any document which references an Exhibit or Schedule to be attached thereto shall be considered completed and attached if the referenced Exhibit or Schedule appears elsewhere in this Transcript.

(August 1996)

## GRANT AGREEMENT

This Grant Agreement entered into between the West Virginia Water Development Authority (the "Authority") on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") and the Mt. Zion Public Service District (the "Governmental Agency").

### RECITALS

WHEREAS, the Council has authorized the Authority to make a grant to the Governmental Agency in the amount not to exceed \$169,200 (the "Grant") for the purpose of the acquisition and construction/design/planning of a project for which a preliminary application has been submitted and approved by the Council;

WHEREAS, the Governmental Agency wishes to accept the Grant upon such terms and conditions as are hereinafter set forth for the purpose of constructing the project described in Exhibit A attached hereto and incorporated herein by reference (the "Project");

WHEREAS, this Agreement sets forth the Council, the Authority and the Governmental Agency's understanding and agreements with regard to the Grant.

NOW, THEREFORE, in consideration of the premises and the mutual agreements hereinafter contained, the Authority and the Governmental Agency hereby agree as follows:

### TERMS

1. Prior to the distribution of the Grant, the Governmental Agency shall provide the Authority with a Project budget and an anticipated monthly draw schedule reflecting the receipt dates and amounts from other funding sources.
2. The Authority shall advance the Council's share of the Project costs from the Grant from time to time upon receipt of a requisition evidencing the costs incurred, which requisition must be satisfactory to the Authority and the Council.
3. The monthly requisition will also set forth (i) the amounts requested for that requisition period from all other funding agencies, and (ii) the amounts advanced for the Project to date from all other funding agencies.
4. The Governmental Agency will use the proceeds of the Grant only for the purposes specifically set forth in Exhibit A.
5. The Governmental Agency shall comply with and is bound by the Council's rules set forth as Title 167, Series 1 and more particularly Section 5.9 with respect to the sale of the Project.



6. The Governmental Agency acknowledges that the Grant may be reduced, from time to time, to reflect actual Project costs and availability of other funding.

7. The Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Grant held in "contingency" as set forth in the final Schedule B. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Grant available due to bid/construction/project underruns.

8. This Agreement shall be governed by the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties hereto have caused this Grant Agreement to be executed by the respective duly authorized officers as of the date executed below by the Authority.

MT. ZION PUBLIC SERVICE DISTRICT

By: Shawn Postlewait  
Its: Chairman

Date: 5/20/98

SEAL

ATTEST

Wilma L. Mace  
Its: Secretary

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

By: Daniel B. Gombosky  
Director

Date: 5/20/98

SEAL

ATTEST

Barbara B. Meadows  
Secretary - Treasurer

## EXHIBIT A

The project consists of construction of a 115,000 gallon water storage tank including access road improvements, foundations, piping, site work and painting, booster stations modifications consisting of pump replacements and water system improvements consisting of approximately 10,900 LF of 8" waterline and all necessary appurtenances. The total project cost is \$470,000.

# WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

## Schedule B

Mt. Zion Public Service District

Water System Project 96W-217

### FINAL TOTAL COST OF PROJECT, SOURCES OF FUNDS AND COST OF FINANCING

A. Cost of Project	Total	RUS Funding	IJDC Grant
1. Construction (Based on Actual Bids):	364,699.25	195,499.25	169,200.00
2. Technical Services:	67,800.00	67,800.00	
3. Legal & Fiscal:	6,000.00	6,000.00	
4. Administrative:	1,500.00	1,500.00	
5. Sites and Other Lands (including appraisal fee):	2,900.00	2,900.00	
6. Bond Counsel:	5,500.00	5,500.00	
7. Interim Financing Costs:	5,000.00	5,000.00	
8. Contingency:	16,600.75	16,600.75	
9. Total of Lines 1 through 8:	470,000.00	300,800.00	169,200.00
<b>B. Source of Funds</b>			
10. Federal Grants:			
a. RUS Grant	260,800.00		
b.			
11. State Grants:			
a.			
b.			
12. Other Grants:			
13. Any Other Source <sup>1</sup> :			
a. RUS Loan	40,000.00		
b.			
14. Infrastructure Fund Grant:	169,200.00		
15. Total of Lines 10 through 14:	470,000.00		
16. Net Proceeds Required from Bond Issue: (Line 9 minus Line 15)	-		
<b>C. Cost of Financing</b>			
17. Funded Reserve Account <sup>2</sup> :			
18. Other Costs <sup>3</sup> :			
a.			
b.			
19. Total Cost of Financing: (Lines 17 and 18)			
20. Size of Bond Issue: (Lines 16 Plus Line 19)			

GOVERNMENTAL AGENCY

6/5/98

DATE

CONSULTING ENGINEER

MAY 20, 1998

DATE

<sup>1</sup> Include the proceeds of any parity or subordinate bond issue to be used for such purpose and attach supporting documentation

<sup>2</sup> Consult with bond counsel and the Council before assuming a funded reserve

<sup>3</sup> For example, fees of accountants, bond counsel, and local counsel for the Governmental Agency

UNITED STATES DEPARTMENT OF AGRICULTURE  
FARMERS HOME ADMINISTRATION

FEB 18 1997

ASSOCIATION WATER OR SEWER SYSTEM GRANT AGREEMENT

THIS AGREEMENT dated 2-12, 19 97, between

Mt. Zion Public Service District

a public corporation organized and operating under \_\_\_\_\_

Chapter 16, Article 13A, West Virginia Code

(Authorizing Statute)

herein called "Grantee," and the United States of America acting through the Farmers Home Administration, Department of Agriculture, herein called "Grantor," WITNESSETH:

WHEREAS

Grantee has determined to undertake a project of acquisition, construction, enlargement, or capital improvement of a (water)~~XXXXXX~~ system to serve the area under its jurisdiction at an estimated cost of \$ 470,000 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 209,200 of the development costs through revenues, charges, taxes or assessments, or funds otherwise available to Grantee resulting in a reasonable user charge.

Said sum of \$ 209,200 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 260,800 or 75 percent of said development costs, whichever is the lesser, subject to the terms and conditions established by the Grantor. Provided, however, that the proportionate share of any grant funds actually advanced and not needed for grant purposes shall be returned immediately to the Grantor. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of the grant.

NOW, THEREFORE, In consideration of said grant by Grantor to Grantee, to be made pursuant to Section 306 (a) of the Consolidated Farm and Rural Development Act for the purpose only of defraying a part not to exceed 75 percent of the development costs, as defined by applicable Farmers Home Administration instructions.

GRANTEE AGREES THAT GRANTEE WILL:

- A. Cause said project to be constructed within the total sums available to it, including said grant, in accordance with the project plans and specifications and any modifications thereof prepared by Grantee and approved by Grantor.
- B. Permit periodic inspection of the construction by a representative of Grantor during construction.
- C. Comply with any measures identified in the Government's environmental impact analysis for this facility for the purpose of avoiding or reducing the adverse environmental impacts of the facility's construction or operation.
- D. Comply with all applicable state and federal laws and regulations and manage, operate and maintain the system, including this project if less than the whole of said system, continuously in an efficient and economical manner.
- E. Make the services of said system available within its capacity to all persons in Grantee's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental handicap (possess capacity to enter into legal contract for services) at reasonable charges, including assessments, taxes, or fees in accordance with a schedule of such charges,

as approved by the West Virginia Public Service Commission whether for one or more classes of service, ~~as approved by the West Virginia Public Service Commission~~ as may be modified from time to time by Grantee. The initial rate schedule must be approved by Grantor. Thereafter, Grantee may make such modifications to the rate system as long as the rate schedule remains reasonable and nondiscriminatory.

Public reporting burden for this collection of information is estimated to average 2 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, Room 404-W, Washington, D.C. 20250; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0575-0074), Washington, D.C. 20503.

F. Adjust its operating costs and service charges from time to time to provide for adequate operation and maintenance, emergency repair reserves, obsolescence reserves, debt service and debt service reserves.

G. Expand its system from time to time to meet reasonably anticipated growth or service requirements in the area within its jurisdiction.

H. Provide Grantor with such periodic reports as it may require and permit periodic inspection of its operations by a representative of the Grantor.

I. To execute Forms FmHA 400-1, "Equal Opportunity Agreement," and FmHA 400-4, "Assurance Agreement," and any other agreements required by Grantor which Grantee is legally authorized to execute. If any such forms have been executed by Grantee as a result of a loan being made to Grantee by Grantor contemporaneously with the making of this Grant, another form of the same type need not be executed in connection with this Grant.

J. Upon any default under its representations or agreements set forth in this instrument, or in the instruments incident to the awarding of the grant, Grantee, at the option and demand of Grantor, to the extent legally permissible, will repay to grantor forthwith the original amount of the grant received with the interest accruing thereon from the date of default at the market rate for water and waste disposal loan assistance in effect on the date hereof or at the time the default occurred, whichever is greater. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Grant Agreement may be enforced by Grantor, at its option and without regard to prior waivers by it of previous defaults of Grantee, by judicial proceedings to require specific performance of the terms of this Grant Agreement or by such other proceedings in law or equity, in either Federal or State courts, as may be deemed necessary by Grantor to assure compliance with the provisions of this Grant Agreement and the laws and regulations under which this grant is made.

K. Return immediately to Grantor, as required by the regulations of Grantor, any grant funds actually advanced and not needed by Grantee for approved purposes.

L. Use the real property including land, land improvements, structures, and appurtenances thereto, for authorized purposes of the grant as long as needed.

1. Title to real property shall vest in the recipient subject to the condition that the Grantee shall use the real property for the authorized purpose of the original grant as long as needed.

2. The Grantee shall obtain approval by the Grantor agency for the use of the real property in other projects when the Grantee determines that the property is no longer needed for the original grant purposes. Use in other projects shall be limited to those under other Federal grant programs or programs that have purposes consistent with those authorized for support by the Grantor.

3. When the real property is no longer needed as provided in 1 and 2 above, the Grantee shall request disposition instructions from the Grantor agency or its successor Federal agency. The Grantor agency shall observe the following rules in the disposition instructions:

(a) The Grantor may be permitted to retain title after it compensates the Federal Government in an amount computed by applying the Federal percentage of participation in the cost of the original project to the fair market value of the property.

(b) The Grantee may be directed to sell the property under guidelines provided by the Grantor agency and pay the Federal Government an amount computed by applying the Federal percentage of participation in the cost of the original project to the proceeds from sale (after deducting actual and reasonable selling and fix-up expenses, if any, from the sale proceeds). When the Grantee is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(c) The Grantee may be directed to transfer title to the property to the Federal Government provided that in such cases the Grantee shall be entitled to compensation computed by applying the Grantee's percentage of participation in the cost of the program or project to the current fair market value of the property.

*The Grant Agreement covers the following described real property (use continuation sheets as necessary).*

Approximately 10,500 LF of eight-inch PVC waterline, a 100,000 gallon water storage tank and necessary valves and appurtenances to serve the new Calhoun County High/Middle School Complex on Route 16 in Calhoun County, West Virginia.

M. Abide by the following conditions pertaining to nonexpendable personal property which is furnished by the Grantor or acquired wholly or in part with grant funds. Nonexpendable personal property means tangible personal property having a useful life of more than one year and an acquisition cost of \$300 or more per unit. A Grantee may use its own definition of nonexpendable personal property provided such definition would at least include all tangible personal property as defined above.

1. Use of nonexpendable property.

(a) The Grantee shall use the property in the project for which it was acquired as long as needed. When no longer needed for the original project, the Grantee shall use the property in connection with its other Federally sponsored activities, if any, in the following order of priority:

(1) Activities sponsored by FmHA.

(2) Activities sponsored by other Federal agencies.

(b) During the time that nonexpendable personal property is held for use on the project for which it was acquired, the Grantee shall make it available for use on other projects if such other use will not interfere with the work on the project for which the property was originally acquired. First preference for such other use shall be given to FmHA sponsored projects. Second preference will be given to other Federally sponsored projects.

2. Disposition of nonexpendable property. When the Grantee no longer needs the property as provided in paragraph (a) above, the property may be used for other activities in accordance with the following standards:

(a) Nonexpendable property with a unit acquisition cost of less than \$1,000. The Grantee may use the property for other activities without reimbursement to the Federal Government or sell the property and retain the proceeds.

(b) Nonexpendable personal property with a unit acquisition cost of \$1,000 or more. The Grantee may retain the property for other uses provided that compensation is made to the original Grantor agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the property. If the Grantee has no need for the property and the property has further use value, the Grantee shall request disposition instructions from the original Grantor agency.

The Grantor agency shall determine whether the property can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the property shall be reported, in accordance with the guidelines of the Federal Property Management Regulations (FPMR), to the General Services Administration by the Grantor agency to determine whether a requirement for the property exists in other Federal agencies. The Grantor agency shall issue instructions to the Grantee no later than 120 days after the Grantee request and the following procedures shall govern:

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the Grantee's request, the Grantee shall sell the property and reimburse the Grantor agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the Grantee shall be permitted to deduct and retain from the Federal share \$100 or ten percent of the proceeds, whichever is greater, for the Grantee's selling and handling expenses.

(2) If the Grantee is instructed to ship the property elsewhere the Grantee shall be reimbursed by the benefitting Federal agency with an amount which is computed by applying the percentage of the Grantee participation in the cost of the original grant project or program to the current fair market value of the property, plus any reasonable shipping or interim storage costs incurred.

(3) If the Grantee is instructed to otherwise dispose of the property, the Grantee shall be reimbursed by the Grantor agency for such costs incurred in its disposition.

3. The Grantee's property management standards for nonexpendable personal property shall also include:

(a) Property records which accurately provide for: a description of the property; manufacturer's serial number or other identification number; acquisition date and cost; source of the property; percentage (at the end of budget year) of Federal participation in the cost of the project for which the property was acquired; location, use and condition of the property and the date the information was reported; and ultimate disposition data including sales price or the method used to determine current fair market value if the Grantee reimburses the Grantor for its share.

(b) A physical inventory of property shall be taken and the results reconciled with the property records at least once every two years to verify the existence, current utilization, and continued need for the property.

(c) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the property. Any loss, damage, or theft of nonexpendable property shall be investigated and fully documented.

(d) Adequate maintenance procedures shall be implemented to keep the property in good condition.

(e) Proper sales procedures shall be established for unneeded property which would provide for competition to the extent practicable and result in the highest possible return.

*This Grant Agreement covers the following described nonexpendable property (use continuation sheets as necessary).*

None

N. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis.

2. Records which identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income.

3. Effective control over and accountability for all funds, property and other assets. Grantees shall adequately safeguard all such assets and shall assure that they are used solely for authorized purposes.

4. Accounting records supported by source documentation.

O. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm copies may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's government which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts and transcripts.

P. Provide information as requested by the Grantor to determine the need for and complete any necessary Environmental Impact Statements.

Q. Provide an audit report prepared in sufficient detail to allow the Grantor to determine that funds have been used in compliance with the proposal, any applicable laws and regulations and this Agreement.

R. Agree to account for and to return to Grantor interest earned on grant funds pending this disbursement for program purposes when the Grantee is a unit of local government or a nonprofit organization. States and agencies or instrumentalities of states shall not be held accountable for interest earned on grant funds pending their disbursement.

S. Not encumber, transfer or dispose of the property or any part thereof, furnished by the Grantor or acquired wholly or in part with Grantor funds without the written consent of the Grantor except as provided in items K and L above.

T. Include in all contracts for construction or repair a provision for compliance with the Copeland "Anti-Kick Back" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR, Part 3). The Grantee shall report all suspected or reported violations to the Grantor.

U. In construction contracts in excess of \$2,000 and in other contracts in excess of \$2,500 which involve the employment of mechanics or laborers, to include a provision for compliance with Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR, Part 5).

V. To include in all contracts in excess of \$100,000 a provision that the contractor agrees to comply with all the requirements of Section 114 of the Clean Air Act (42 U.S.C. §1875C-9) and Section 308 of the Water Pollution Control Act (33 U.S.C. §1318) relating to inspection, monitoring, entry, reports, and information, as well as all other requirements specified in Section 114 of the Clean Air Act and Section 308 of the Water Pollution Control Act and all regulations and guidelines issued thereunder after the award of the contract. Such regulations and guidelines can be found in 40 CFR 15.4 and 40 FR 17126 dated April 16, 1975. In so doing the Contractor further agrees:

1. As a condition for the award of contract, to notify the Owner of the receipt of any communication from the Environmental Protection Agency (EPA) indicating that a facility to be utilized in the performance of the contract is under consideration to be listed on the EPA list of Violating Facilities. Prompt notification is required prior to contract award.

2. To certify that any facility to be utilized in the performance of any nonexempt contractor subcontract is not listed on the EPA list of Violating Facilities pursuant to 40 CFR 15.20 as of the date of contract award.

3. To include or cause to be included the above criteria and the requirements in every nonexempt subcontract and that the Contractor will take such action as the Government may direct as a means of enforcing such provisions.

As used in these paragraphs the term "facility" means any building, plan, installation, structure, mine, vessel or other floating craft, location, or site of operations, owned, leased, or supervised by a Grantee, cooperator, contractor, or subcontractor, to be utilized in the performance of a grant, agreement, contract, subgrant, or subcontract. Where a location or site of operation contains or includes more than one building, plant, installation, or structure, the entire location shall be deemed to be a facility except where the Director, Office of Federal Activities, Environmental Protection Agency, determines that independent facilities are co-located in one geographical area.

W. The following clause is applicable to nonprofit organizations:

As a condition of this Grant or Cooperative Agreement, the recipient assures and certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders and other generally applicable requirements, including those set out in 7 CFR 3015.205(b), which hereby are incorporated in this Agreement by reference, and such statutory provisions as are specifically set forth herein.

#### GRANTOR AGREES THAT IT:

A. Will make available to Grantee for the purpose of this Agreement not to exceed \$ 260,800

which it will advance to Grantee to meet not to exceed 75 percent of the development costs of the project in accordance with the actual needs of Grantee as determined by Grantor.

B. Will assist Grantee, within available appropriations, with such technical assistance as Grantor deems appropriate in planning the project and coordinating the plan with local official comprehensive plans for sewer and water and with any State or area plans for the area in which the project is located.

C. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be (1) advisable to further the purpose of the grant or to protect Grantor's financial interest therein and (2) consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

#### TERMINATION OF THIS AGREEMENT

This Agreement may be terminated for cause in the event of default on the part of the Grantee as provided in Paragraph I above or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the project will not produce beneficial results commensurate with the further expenditure of funds.

IN WITNESS WHEREOF Grantee on the date first above written has caused these presence to be executed by its duly authorized

Chairman

and attested and its corporate seal affixed by its duly authorized Secretary



ATTEST:

By

Wilma Mace

Wilma Mace

Secretary

(Title)

By

Sharon Postwait

Sharon Postwait

Chairman

(Title)

UNITED STATES OF AMERICA  
FARMERS HOME ADMINISTRATION

By

Gary D. Wilson

Gary D. Wilson

Rural Development Specialist5/20/98

(Title)

☆ U.S. Government Printing Office: 1995-655-046/50179



ORDER

RE: Appointment of Committee for William Saltkeld.

This day Ottis Susie Greathouse, a resident of Calhoun County, West Virginia appeared in open Court upon her petition heretofore filed praying that she be appointed Committee for William Saltkeld, a mentally incompetent person; upon the statement made by Dr. Joseph G. Vazquez, a medical doctor who states that said William Saltkeld is incompetent and incapable of transacting any business; and, upon written notice served upon the said William Saltkeld more than five days prior to this date that a hearing of the matters arising on said petition would be heard on this date.

Whereupon, the Court, after considering evidence pertaining to the mental condition of said William Saltkeld finds and is of the opinion that he is now mentally incompetent and that a Committee should be appointed to take charge of his person and property.

It is therefore ORDERED that said Ottis Susie Greathouse be and she is hereby appointed as Committee for the said William Saltkeld and to qualify as such Committee the said Ottis Susie Greathouse appeared before the Clerk of said Court and took the oath required by law and together with Holly R. Greathouse of Annamoriah, West Virginia, as her surety, entered into and acknowledged a bond in the penalty of One Hundred Dollars (\$100.00), conditioned according to law and payable to the State of West Virginia, for her faithful performance as such Committee.

It is ORDERED that said estate be and the same is hereby referred to Stanley D'Crazio, a Commissioner of Accounts of this County for settlement.

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This being the date fixed by prior action of the County Court for conducting the public hearing on the creation of the proposed Mt. Zion Public Service District, as contemplated and provided for in a resolution and order adopted by the County Court on October 5, 1964, the President announced that all persons residing in or owning or having any interest in property in such proposed Public Service District desiring to be heard for or against the creation of said District would be heard and all such interested persons desiring to be heard were given full opportunity.

The County Court then further discussed the creation of said Public Service District, whereupon Donald W. Morris introduced and caused to be read a proposed resolution and order, entitled:

"A RESOLUTION AND ORDER creating Mt. Zion Public Service District  
in Calhoun County, West Virginia"

and moved that all rules otherwise requiring deferred consideration or several readings be suspended and said proposed resolution and order be adopted. Loyd Wright seconded the motion and after due consideration the President put the question on the motion and the roll being called, the following voted:

Aye: Unanimous

Nay: None

Whereupon the President declared the motion duly carried and said resolution and order duly adopted.

Donald W. Morris introduced and caused to be read a proposed resolution and order, entitled:

" A RESOLUTION AND ORDER appointing members to the Public Service Board  
of the Mt. Zion Public Service District, "

and moved that all rules otherwise requiring deferred consideration or several readings be suspended and said proposed resolution and order be adopted. Loyd Wright seconded the motion and after due consideration the President put the question on the motion and the roll being called, the following voted:

Aye: Unanimous

Nay: None

420  
Whereupon the President declared the motion duly carried and said resolution and order duly adopted.

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WHEREAS the County Court of Calhoun County, West Virginia, did heretofore by resolution and order adopted November 2, 1964, create the MT. ZION PUBLIC SERVICE DISTRICT; and

WHEREAS, under the provisions of Article 13-a of Chapter 16 of the West Virginia Code, the powers of said Public Service District shall be vested in and exercised by a Public Service Board; and

WHEREAS, since there is no city, incorporated town or other municipal corporation included within said District, it is provided by said Article 13-a of Chapter 16 of the West Virginia Code that this County Court shall appoint three members of said Board, who shall be persons residing within the District:

NOW, THEREFORE, Be it and it is hereby resolved and Ordered by the County Court of Calhoun County, West Virginia, as follows:

Section 1. That the County Court of Calhoun County, West Virginia, hereby finds and determines that Mildred Kerby, Fred Shock and Duane Poling are persons residing within the MT. ZION PUBLIC SERVICE DISTRICT, and the aforesaid persons are hereby appointed as members of the Public Service Board of said District and their respective terms of office shall be as follows:

Mildred Kerby for a term of six years from the first day of the month in which this resolution and order is adopted;

Fred Shock for a term of four years from the first day of the month in which this resolution and order is adopted; and

Duane Poling for a term of two years from the first day of the month in which this resolution and order is adopted.

Section 2. The aforesaid persons shall meet as soon as practicable, at the office of the Clerk of said County Court and shall qualify by taking an oath of office, and thereafter said appointees constituting the initial Public Service Board of the Mt. Zion Public Service District shall meet and organize in compliance with the provisions of Article 13-a of Chapter 16 of the West Virginia Code.

ADOPTED BY THE COUNTY COURT November 2, 1964.

The following bills were approved for payment from the General County Fund:

Ben Franklin Store	Supplies for Co. Offices	\$ 17.97
Cabot Corporation	Gas for Court House	13.37
Nina Pearcy	Ballot Commissioner	80.00
Rymer Law	do	80.00
Mrs. Roscoe D. Gainer	Delivering Ballots etc to 16 Precincts-Gen. Election	40.00
Casto & Harris, Inc.	General Election Ballots et al	483.66
do	Supplies for Assessor's Office	9.51
do	Supplies for Circuit Clerk's Office	4.60
do	Supplies for County Clerk's Office	43.48
Casto & Harris, Inc.	Lease Book 52 & Deed Book 107	117.30
Burroughs Corporation	Maintenance Agreement on Machines #P1104471D & A860255	55.00
do	Adding Machine Tape	31.40
Hope Nicholas	Registrar Fees for 3rd Quarter, 1964	34.00
Noe Office Equipment	Supplies for Co. Ex. Office	5.60
United Telephone Co.	Dues & Toll Calls for County Offices	163.49
James E. Morford	Sheriff's Mileage for October, 1964	42.84
Tona K. Haddox	Dep. Sheriff's Mileage, October, 1964	16.24
Burroughs Corporation	Ribbon for Sheriff's Office	3.10
Int. Business Machines Corp.	Maintenance Agree. on Typewriters 11/1/64 to 10/31/65	225.00
Monongahela Power Co.	Electric for Court House	66.03
Town of Grantsville	Water & Waste for October, 1964	38.85
Spencer Business Forms Co.	Supplies for Circuit Clerk's Office	4.65
James D. Stiles	Travel expense for October, 1964	24.86
Calhoun Insurance Agency	Premium on Policy # 371 39 34	79.00
Rochester Germicide Company	1 Bbl Sanor X Fluid	175.83
Martha Ferrell	Ex. help in Assessor's Office \$18.00 less .65 S.S.	17.35
Stanley D'Orazio	Re-imburement for postage in Pros. Atty's Office	5.00
Mrs. Lucile McNary	Regional Librarian's Expense Account	30.88
Calhoun Chronicle	Pub. Fees	167.25
Euna Ann Reed	Ex. help in Co. Clerk's Office \$39.00 less \$1.41 S.S.	37.59

WEST VIRGINIA, TO WIT:

At a Special Session of the County Commission of Calhoun County held at the Courthouse hereof on May Twenty Fourth, Nineteen Hundred Seventy Five.

Present: Ronald R. Blankenship, President; Deward L. Offutt and Martin Metz, Jr., Commissioners; Victor Hamilton, Prosecuting Attorney.

\* \* \* \* \*

Other people present were Mildred Kerby, Mary and Bernard McDonald, Willis Morris, Loyd Yoak, Jr., Steve Lesack, John Galligher, Mary Ann Barrows, Terry Tamberino and wife, together with other interested persons.

Session was called to order by Mr. Blankenship, President of the County Commission.

The first order of business, pertaining to the enlargement of the Mt. Zion Public Service District with respect to Resolutions and Plats of said addition as presented at previous meetings.

Mr. Blankenship, invited any individual having anything to say or comments to make about the enlargement of said District to speak in their behalf.

Mary McDonald commented against the enlargement, with various reasons such as chance of water shortage, drinking river water and possible increase in water rates or cost to the customers of the original Mt. Zion Public Service District.

Steve Lesack spoke mostly explaining that were treatments for water that had natural gas in it and that the water in the Arnoldsburg Area could be treated and made safe to use.

Mary Ann Barrows spoke in regard to the management of the water system by the Board of Directors as to who would be eligible to participate in the construction of the new system and the feasibility study to be made before any definite decision would be made.

John Galligher requested the County Commission to employ some firm to make a feasibility study, who would not be employed or in any way be concerned with the extension of said Public Service District, and to distribute copies of the study before offering the contract for bid. The Commission unanimously agreed to Mr. Galligher's request.

The Commission recessed for a few minutes with the Prosecuting Attorney. After returning to the meeting, Mr. Blankenship, President of said Commission moved that the Mt. Zion Public Service District be enlarged as proposed. All three members of Commission voting in favor of said motion; that the enlargement of the Mt. Zion Public Service District be accepted and approved as previously submitted.

\* \* \* \* \*

The next order of business was the Resolution for the Flood Insurance Program; The Resolution of Compliance with Section 1910 3 A of the Flood Insurance Program Regulations and the Regulations which were read to the public.

RESOLUTION  
for the  
FLOOD INSURANCE PROGRAM

WHEREAS, the County County Commission being cognizant to the recurring flooding and the threat of flooding of Little Kanawha River and the resulting damage to property located within Calhoun County; and,

A motion by Richard Kirby to appoint Hays Haymaker as of June 15, 1988, until the General Election Canvas to replace Glenn Hanlin who resigned as of May 20, 1988. Was seconded by Tony Morgan.

Motion was unanimous.

The meeting was adjourned until June 17, 1988.

COUNTY OF CALHOUN, STATE OF WEST VIRGINIA, TO-WIT:

At a continued session of the Calhoun County Commission held at the Courthouse, thereof, Grantsville, West Virginia, on June 17, 1988.

The meeting was called to order by Richard Kirby. Also present were Tony Morgan and Hays Haymaker.

A deligation from the Mt. Zion-Arnoldsburg area was present concerning the Mt. Zion Public Service

District request to include a Sewer System within its current boundaries. After much discussion

Mr. Hays Haymaker made a motion to add a sewer system within the boundaries of the Mt. Zion Public

Service District. Motion was seconded by Mr. Tony Morgan. Motion was unanimous.

A motion by Tony Morgan to denythe request from Allen Parsons requesting Larry Jarvis be bonded to carry a gun was seconded by Hays Haymaker. Motion was unanimous.

A motion by Hays Haymaker to approve the delinquent tax sheets presented by the Sheriff's Office was seconded by Tony Morgan. Motion was unanimous.

A motion by Tony Morgan permitting Richard Kirby to alter the contract with the Calhoun County General Hospital concerning the food and drugs for the prisoners of the Calhoun County Jail.

Was seconded by Hays Haymaker. Motion was unanimous.

THE FOLLOWING BILLS WERE APPROVED AND CONFIRMED BY SAID COMMISSION ON JULY 01, 1988:

GENERAL COUNTY:

10546	WV Association	Dues	\$1,000.00
10547	Radisson Hotel	Assessor/Convention	312.04
10548	Trapuzzano's Uniforms	Boots	121.40
10549	WV Uniforms	paratrooper boot (Ballengee)	82.14
10550	Spencer Business Forms	Supplies/Office	1,098.09
10551	WV Department of Highways	Gasoline	323.49
10552	Bernhardt's Clothes, Inc.	Hat, Chin Strap, Crown Strap	33.60
10553	Law Enforcement Equipment Co.	Jarvis Whistle & Chain	13.45
10554	Calhoun County Publishing Co.	Legal Advertisement	1,139.36
10555	Calhoun General Hospital	Prisoners Doctor Bills	217.65
10556	Calhoun Radiologist Association	Prisoners Bills	18.00
10557	Lloyd's Electronics, Inc.	Labor/Service Antenna Repair	171.60
10558	Grantsville Printing	Assessors Office Supplies	449.70
10559	Western Auto	Courthouse Supplies	12.59
10560	Furnace & Fireplace Shop	Repair Work, Jail	68.75
10561	Mhongoahela Power Company	Utilities	788.30
10562	Pursley's Furniture	Sweeper for jail	118.00
10563	Cabot Corporation	Courthouse Utilities	113.82
10564	Xerox Corporation	Contracted Service	979.50
10565	Calhoun General Hospital	Prisoner Meals	2,880.00
10566	State Tax Department		100.00
10567	The Michie Company	WV CD-Books	356.81
10568	Wirt County Commission	Prisoner feeding & keeping	96.00
10569	District Office Supplies	P.A. Office (Mag Developer)	439.80
10570	Casto & Harris	Office Supplies	290.70
10571	Drakes Auto Sales	Automobile Seervice	302.08
10504	Diskette Connection	Computer Discs	58.80
10520	Grantsville Postmaster	Postage	25.00
10515	Grantsville Postmaster	Postage	64.00
10572	Flinn's Septic Tank Maintenance	Rental Portable Toilets	45.00
10573	Ron Layfield	Travel Expense	44.00
10574	Allen Parsons	Transportation	10.38
10576	Town of Grantsville	Utilities (Library \$27.06)	925.97
10579	Contel	Telephone Bill	478.64
10580	Contel	Telephone Bill	138.22

The meeting was adjourned until July 01, 1988.

STATE OF WEST VIRGINIA, COUNTY OF CALHOUN, TO-WIT:

At a regular session of the Calhoun County Commission held at the Courthouse, Grantsville, on July 01, 1988.

The meeting was called to order by Richard Kirby. Also present was Tony Morgan and Hays Haymaker.

A motion by Tony Morgan to approve the minutes of the last meeting was seconded by Haymaker. Motion was unanimous.

PUBLIC HEARING 07-01-88

A motion by Tony Morgan to approve the Pleasant Hill Service District water line to the Ritchie County Line. Was seconded by Hays Haymaker. Motion was unanimous.

CALHOUN COUNTY COMMISSION MEETING

December 03, 1994

The Calhoun County Commission meeting was called to order at 9:00 a.m. on December 03, 1994 by Commission President Willis L. Gainer. Commissioners Rue Hays Haymaker, Larry Cottrell and Clerk Richard Kirby were also present.

Others present were Susan Starr, David Curry, Joey Curry, Curt Garretson, Travis McCartney, Eric McCartney, Chris Butt, Russell Underwood, Ronald Layfield, Larry McCallister, Don Dennis Lyle Kerby and Georgia Metz.

Motion by Hays Haymaker to approve the minutes of the November 05, 1994; November 14, 1994; November 16, 1994; November 16, 1994 and November 21, 1994 Commission meetings, seconded by Willis Gainer. Motion passed Willis Gainer and Hays Haymaker voting yes and Larry Cottrell voting no.

Concerning the Fax Machine in the Magistrate Court Clerks' office, Clerk Richard Kirby reported that the Judges' office had called him and asked him to hook up the machine on the regular telephone line.

Concerning the resolution for Ferris, Baker & Watts, Inc., Tony Morgan was still reviewing the papers.

Lyle Kerby was present to ask the Commission to allow his mother, Katheryn Kerby to retire and use two (2) days of sick time a month to pay for her insurance, and he said this was state policy and was asking that the County do it also.

Motion by Larry Cottrell to allow Katheryn Kerby to retire and use two (2) sick days per month to pay for her Health Insurance through the County, seconded by Hays Haymaker. Motion passed unanimously.

The Commission reviewed a letter from Ronald Layfield, requesting that Christina Church be hired full-time with benefits effective immediately.

Motion by Larry Cottrell to hire the person Ronald Layfield wants after giving all the employees a notification of the opening in his office, seconded by Hays Haymaker. Motion passed unanimously.

Georgia Metz was present to complain about the taxes on her property being too high. Ronald Layfield the Assessor stated that he reviewed her property and found that it was right. The Commission took no action.

The Commission reviewed an application for the insurance coverage for the Sheriff's Department which was about the same as last year.

Motion by Hays Haymaker to approve the Sheriff's Department Insurance application, seconded by Larry Cottrell. Motion passed unanimously.

The delay of the Sewer line project at Arnoldsburg was discussed.

Motion by Hays Haymaker for the Commission to send a letter to the Mt. Zion P.S.D., concerning bidding of the project the way the Governor's Office had suggested, seconded by Willis L. Gainer. Motion passed unanimously.

No action was taken on the appointment to the Building Commission.

Willis Gainer stated that a private citizen had come to him and wanted to purchase items at the State Surplus Supply, using the County Commissions name.

Motion by Hays Haymaker not to allow private citizens to use the Commissions name to buy items at State Surplus Supply, because it would be wrong, seconded by Willis L. Gainer. Motion passed unanimously.

Motion by Willis Gainer to appoint Sharon Postalwait to the Mt. Zion Public Service District Board for a term of six (6) years, seconded by Larry Cottrell. Motion passed unanimously.

## CALHOUN COUNTY COMMISSION MEETING


June 16, 1995

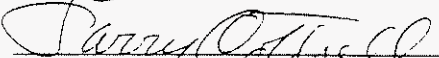
The meeting of the Calhoun County Commission was called to order at 1:00 p.m. on June 16, 1995 by Willis Gainer, President. Other Commissioners present were Larry Cottrell and Larry McCallister.

Motion by Larry McCallister to appoint Shirley Mace to the Mt. Zion Public Service District for a term of six (6) years, seconded by Larry Cottrell. Motion passed unanimously.

Motion by Larry McCallister to change the term of Della Nichols, who was appointed to the Mt. Zion Public Service District for a term of three (3) years on November 17, 1992 by the County Commission to a six (6) year term, seconded by Larry Cottrell. Motion passed unanimously.

The meeting of the Calhoun County Commission was adjourned at 1:15 p.m. on June 16, 1995.

  
Willis Gainer, President

  
Larry Cottrell, Commissioner

  
Larry McCallister, Commissioner

Della Nichols

OATH OF OFFICE

State of West Virginia, ss:

In the office of the Clerk of the County Commission of Calhoun County, on June 16, 19 95.  
This day came Della Nichols a resident of Calhoun County, West Virginia,  
who was appointed to the office of Board Member Mt. Zion Public Servn the 16th.  
day of June, 19 95,  
and delivered to the undersigned Clerk the following certificate of his having taken the oath prescribed by law  
for such office:

State of West Virginia,  
County of Calhoun, To-wit:

I, Della Nichols do solemnly swear that I will support the Constitution  
of the United States and the Constitution of this State; and that I will faithfully discharge the duties of the  
office of Board Member on the Mt. Zion Public Service Board of Calhoun County, West Virginia,  
to the best of my skill and judgment. So help me God.

/s/ Della Nichols

Subscribed and sworn to before the undersigned this 16th day of June 19 95

/s/ Richard Kirby

And thereupon the said certificate is recorded by me as required by law.

Attest: *Richard Kirby*  
Clerk of the County Commission of Calhoun County,  
West Virginia.

STATE OF WEST VIRGINIA, TO-WIT

Richard Kirby, Clerk of the Calhoun County

Commission, do hereby certify that the foregoing is a true and correct copy of the original attached and here-  
by writing the same in my

and office.

given under my

Commission

this 16th day of

June 19 98

Attest:

*Richard Kirby*

Clerk.

By:

*Anna M. Kirby*

Deputy



State of West Virginia, ss:

In the office of the Clerk of the County Commission of Calhoun County, on June 16, 19 95  
This day came Shirley C. Mace a resident of Calhoun County, West Virginia,  
who was appointed to the office of Board Member of the Mt. Zion Public Service Board on the 16th.  
day of June, 19 95,  
and delivered to the undersigned Clerk the following certificate of his having taken the oath prescribed by law  
for such office:

State of West Virginia,  
County of Calhoun, To-wit:

I, Shirley C. Mace do solemnly swear that I will support the Constitution  
of the United States and the Constitution of this State; and that I will faithfully discharge the duties of the  
office of Board Member of the Mt. Zion Public Service Board of Calhoun County, West Virginia,  
to the best of my skill and judgment. So help me God.

/s/ Shirley C. Mace

Subscribed and sworn to before the undersigned this 16th. day of June 19 95

/s/ Richard Kirby

And thereupon the said certificate is recorded by me as required by law.

Attest: *Richard Kirby*  
Clerk of the County Commission of Calhoun County,  
West Virginia.

STATE OF WEST VIRGINIA, TO-WIT

I, Richard Kirby, Clerk of the Calhoun County  
Commission, do hereby certify that the attached and fore-  
going writing is a true copy as taken from the records in my  
aid office.

Given under my hand and the Seal of said Commission

this 12th day of January, 1998

Attest: *Richard Kirby*, Clerk.

By: *Anna M. Kirby*, Deputy.

Sharon Postalwait.....OATH OF OFFICE

State of West Virginia, ss:

In the office of the Clerk of the County Commission of Calhoun County, on June 16, 1995  
This day came Sharon Postalwait a resident of Calhoun County, West Virginia,  
who was appointed to the office of Board Member of the Mt. Zion on the 16th.  
Public Service Dist.  
day of June, 1995,  
and delivered to the undersigned Clerk the following certificate of his having taken the oath prescribed by law  
for such office:

State of West Virginia,  
County of Calhoun, To-wit:

I, Sharon Postalwait do solemnly swear that I will support the Constitution  
of the United States and the Constitution of this State; and that I will faithfully discharge the duties of the  
office of Board Member of the Mt. Zion Public Service Dist. of Calhoun County, West Virginia,  
to the best of my skill and judgment. So help me God.

/s/ Sharon Postalwait

Subscribed and sworn to before the undersigned this 16th day of June 1995

/s/ Richard Kirby

And thereupon the said certificate is recorded by me as required by law.

Attest: *Richard Kirby*  
Clerk of the County Commission of Calhoun County,  
West Virginia.

STATE OF WEST VIRGINIA, TO-WIT

I, Richard Kirby, Clerk of Calhoun County  
Commission, do hereby certify that the foregoing and fore-  
going written certificate is a true and correct copy of the records in my  
said office  
Given under my hand and the seal of the County Commission

this 17th day of January, 1998

Attest: *Richard Kirby* Clerk.

By: *Anna M. Person* Deputy.

## RULES OF PROCEDURE

### MT. ZION PUBLIC SERVICE DISTRICT

#### ARTICLE I

##### NAME AND PLACE OF BUSINESS

Section 1. Name: Mt. Zion Public Service District (the "District")

Section 2. The principal address of the District will be P.O. Box 122, Grantsville, Calhoun County, West Virginia.

Section 3. The Common Seal of the District shall consist of 2 concentric circles between which circles shall be inscribed Mt. Zion Public Service District, and in the center "seal" as follows:

Section 4. The fiscal year of the District shall begin the 1st day of July in each year and shall end on the following June 30.

#### ARTICLE II

##### PURPOSE

The District is organized exclusively for the purposes set forth in Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended (the "Act").

#### ARTICLE III

##### MEMBERSHIP

Section 1. The members of the Public Service Board (the "Board") of the District shall be those persons appointed by The County Commission of Calhoun County, West Virginia, or otherwise appointed pursuant to the Act, who shall serve for such terms as may be specified in the order of the County Commission or otherwise.

Section 2. Should any member of the Board resign or otherwise become legally disqualified to serve as a member of the Board, the Secretary shall immediately notify the County Commission or other entity provided under the Act and request the appointment of a qualified person to fill such vacancy. Prior to the end of the term of any member of the Board, the Secretary shall notify the County Commission or other entity provided under the Act of the pending termination and request the County Commission or other entity provided under the Act to enter an order of appointment or re-appointment to maintain a fully qualified membership of the Board.

## ARTICLE IV

### MEETINGS OF THE PUBLIC SERVICE BOARD

Section 1. The members of the Board of the District shall hold regular monthly meetings on the second Wednesday of each month at 6:00 p.m. at such location as the members shall determine from time to time. If the day stated shall fall on a legal holiday, the meeting shall be held on the following day. Special meetings of the Board may be called at any time by the Chairman or by a quorum of the Board.

Section 2. At any meeting of the Board of the District, 2 members shall constitute a quorum. Each member of the Board shall have one vote at any membership meeting and if a quorum is not present, those present may adjourn the meeting to a later date.

Section 3. Unless otherwise waived, notice to members by letter or telephone shall be required for special meetings. Unless otherwise waived, notice in writing of each special meeting of the membership shall be given to all members by the Secretary by mailing the same to the last known post office addresses of the members at least 2 days before the date fixed for such meeting. The notice of any special meeting shall state briefly the purposes of such meeting and the nature of the business to be transacted thereat, and no business other than that stated in the notice or incidental thereto shall be transacted at any such special meeting.

Section 4. At the regular meetings of the Board, the following shall be the order of business:

1. Roll call.
2. Reading and approval of the Minutes of the previous meeting.
3. Bills and communications.
4. Reports of the Secretary and Treasurer.
5. Reports of committees.
6. Unfinished business.
7. Adjournment.

Section 5. Pursuant to Section 3, Article 9A, Chapter 6 of the West Virginia Code of 1931, as amended, notice of the time and place of all regularly scheduled meetings of the Board, and the time, place and purpose of all special meetings of the Board, shall be made available, in advance, to the public as follows:

A. A notice shall be posted by the Secretary of the Board at the front door of the place fixed for the regular meetings of the Board of the time and place fixed and entered of record by the Board for the holding of regularly scheduled meetings and may be posted at the front door of the Calhoun County Courthouse. If a particular regularly scheduled meeting is cancelled or postponed, a notice of such cancellation or

postponement shall be posted at the front doors of the meeting place and at any other posted location as soon as feasible after such cancellation or postponement has occurred.

B. A notice shall be posted by the Secretary of the Board at the front door of the place fixed for any special meetings of the Board, at least 48 hours before a special meeting is to be held, stating the time, place and purpose for which such special meeting shall be held and may be posted at the front door of the Calhoun County Courthouse. If the special meeting is cancelled, a notice of such cancellation shall be posted at the front doors of the meeting place and at any other posted location as soon as feasible after such cancellation has occurred.

C. The form of notice for posting as to a special meeting may be generally as follows:

MT. ZION PUBLIC SERVICE DISTRICT

NOTICE OF SPECIAL MEETING

The Public Service Board of Mt. Zion Public Service District will meet in special session on \_\_\_\_\_, 199\_, at \_\_\_\_\_.m., prevailing time, at \_\_\_\_\_, \_\_\_\_\_, West Virginia, for the following purposes:

1. To consider and act upon a proposed Bond Resolution providing for the issuance of a Water Revenue Bond, Series \_\_\_\_\_, of the District, in the principal amount of \$\_\_\_\_\_ to provide funds for construction of water distribution facilities of the District.

2. To authorize the Chairman and Secretary of the Board to sign such documents as may be required to accomplish the purposes set forth above.

\_\_\_\_\_  
Secretary

Date: \_\_\_\_\_, 19\_\_

D. Notice to any news media which requests such notices or regularly attends such meetings may be given by mailing or telecopying a copy of such notice to the address or fax number furnished in writing to the District by such news media.

## ARTICLE V

### OFFICERS

Section 1. The officers of the Board shall be a Chairman, Secretary and Treasurer. The Chairman shall be elected from the members of the Board. The Secretary and Treasurer need not be members of the Board and may be the same person.

Section 2. The officers of the Board shall be elected each year by the members at the first meeting held in the month of January of such year. The officers so elected shall serve until the next annual election by the membership and until their successors are duly elected and qualified. Any vacancy occurring among the officers shall be filled by the members of the Board at a regular or special meeting. Persons selected to fill vacancies shall serve until the following January meeting of the Board when their successors shall be elected as hereinabove provided.

## ARTICLE VI

### DUTIES OF OFFICERS

Section 1. When present, the Chairman shall preside as Chairman at all meetings of the Board. He shall, together with the Secretary, sign the minutes of all meetings at which he shall preside. He shall attend generally to the executive business of the Board and exercise such powers as may be conferred upon him by the Board, by these Rules of Procedure, or prescribed by law. He shall execute, and if necessary, acknowledge for record, any deeds, deeds of trust, contracts, notes, bonds, agreements or other papers necessary, requisite, proper or convenient to be executed by or on behalf of the Board when and if directed by the members of the Board.

Section 2. If the Chairman is absent from any meeting, the remaining members of the Board shall select a temporary chairman.

Section 3. The Secretary shall keep a record of all proceedings of the Board which shall be available for inspection as other public records. He shall, together with the Chairman, sign the minutes of the meetings at which he is present. The Secretary shall have charge of the minute book, be the custodian of deeds and other writings and papers of the Board. He shall also perform such other duties as he may have under law by virtue of his office or as may be conferred upon him from time to time by the members of the Board.

Section 4. All resolutions shall be in writing and shall be copied in minutes of the meetings of the Board, and the voting on all questions coming before the Board shall be by roll call, and the Ayes and Nays shall be entered upon the minutes of such meeting.

Section 5. The Treasurer shall be the lawful custodian of all funds of the District and shall pay same out on orders authorized or approved by the Board. The Treasurer shall keep or cause to be kept proper and accurate books of accounts and proper receipts and vouchers for all disbursements made by or through him and shall prepare and submit such reports and statements of the financial condition of the Board as the members may from time to time prescribe. He shall perform such other duties as may be required of him by law or as may be conferred upon him by the members of the Board.

## ARTICLE VII


### AMENDMENTS TO RULES OF PROCEDURE

These Rules of Procedure may be altered, changed, amended or added to at any regular or special meeting of the Board by a majority vote of the entire Board, or at any regular or special meeting of the members when a quorum is present in person and a majority of those present voting for the amendment; but no such change, alteration, amendment or addition shall be made at any special meeting unless notice of the intention to propose such change, alteration, amendment or addition and a clear statement of the substance thereof has been included in the written notice calling such meeting.

CERTIFICATION

I, Wilma Mace, Secretary of the Public Service Board of the Mt. Zion Public Service District, hereby certify that the foregoing is a true and correct copy of the Rules of Procedure of said Public Service Board. I further certify that such Rules of Procedure remain in full force and effect and have not been amended further or repealed.

WITNESS my signature on this 20th day of May, 1998.

  
Secretary



\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 1998

BOND RESOLUTION

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RESOLUTION OF MT. ZION PUBLIC SERVICE DISTRICT

"RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SERVICE PROPERTIES AND ISSUANCE OF WATER REVENUE BOND, SERIES 1998, OF THE MT. ZION PUBLIC SERVICE DISTRICT, IN THE AMOUNT OF \$40,000, TO FINANCE A PORTION OF THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS TO A PUBLIC WATER SYSTEM; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BOND; PROVIDING FOR INTERIM CONSTRUCTION FINANCING; PLACING LIMIT ON SALE OF SYSTEM; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITY OF THE HOLDERS OF THE BOND; PROVIDING STATUTORY LIEN ON REVENUES AND SYSTEM; PROVIDING FOR THE ADOPTION, RATIFICATION, APPROVAL AND COLLECTION OF RATES AND CHARGES FOR THE PUBLIC WATER SYSTEM; AND PROVIDING GENERAL TERMS AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT"

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE BOARD OF MT. ZION PUBLIC SERVICE DISTRICT, MILLSTONE, WEST VIRGINIA:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS  
AND DEFINITIONS

Section 1.01. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of Article 13A, Chapter 16 of the Code of West Virginia of 1931, as amended (the "Act") and other applicable provisions of law.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

A. Mt. Zion Public Service District (the "Issuer") is a public service district created pursuant to the Act by an order issued by The County Commission of Calhoun County, located in Calhoun County, West Virginia.

B. It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer and, accordingly, it is hereby ordered, that there be acquired and constructed certain improvements, expenditures and betterments to the existing public water system of the Issuer by an upgrade of the existing facilities (sometimes referred to herein as the "System") with all necessary appurtenant facilities (the "Project"), and generally described as the construction of approximately 11,000 linear feet of eight-inch (8") waterline, a one hundred thousand (100,000) gallon storage tank, and necessary appurtenances for a complete functional system, as more

particularly described in and according to the plans and specifications prepared by the Consulting Engineer (the "Plans") and heretofore filed in the office of the Secretary of the Public Service Board (the "Governing Body") of the Issuer. The construction and acquisition of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

C. It is necessary for the Issuer to issue its revenue bonds in the aggregate principal amount of \$40,000 to finance a portion of the cost of such construction in the manner hereinafter provided.

D. The estimated maximum cost of the construction of the Project is \$470,000, of which \$40,000 will be obtained from the proceeds of sale of the Series 1998 Bond herein authorized, \$260,800 from a RUS Grant and \$169,200 from a West Virginia Infrastructure and Jobs Development Council Grant.

E. The cost of such construction shall be deemed to include, without being limited to, the construction or acquisition of the Project, the acquisition of any necessary property, real or personal, or interest therein; interest on the Bond prior to, during and for six months after completion of such construction to the extent that revenues of the System are not sufficient therefor; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and such other expenses as may be necessary or incidental to the construction of the Project and the financing authorized hereby.

F. The period of usefulness of the System after completion of the Project is not less than forty (40) years.

G. There are no other outstanding bonds or obligations of the Issuer which will rank prior to or on a parity with the Bond as to lien, pledge and/or source of and security for payment except for the Issuer's Water Distribution System Revenue Bond, Series A (1966), Waterworks Revenue Bonds, Series B (1974), and Water Revenue Bond, Series 1984, which will be on a parity as to lien, pledge and source of and security for payment with the Bonds.

H. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bond, or will have so complied prior to issuance of the Bond including, among other things, the imposition of rates and charges, the consent and approval, pursuant to the Act, of the issuance of the Bond by the Public Service Commission of West Virginia by final order, in Case No. 97-0175-PWD-CN, which became a Final Order of the Public Service Commission on May 4, 1998.

I. The estimated revenues to be derived in each year from the operation of the System after completion of the Project will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the Bond (as hereinafter defined) and all debt service, reserve fund and other payments provided for herein.

J. It is in the best interests of the Issuer that the Bond be sold to the United States Department of Agriculture, Rural Utilities Service, successor in interest to the Farmers Home Administration (the "Purchaser" or "RUS"), pursuant to the terms and provisions of a Letter of Conditions dated February 4, 1997, and all amendments thereto (the "Letter of Conditions").

K. The Issuer has also made arrangements for interim financing as requested by RUS and deems it to be in the best interests of the Issuer to enter into a Credit Agreement and execute a note or notes in the initial amount of \$40,000 payable to any interim construction or financing lender which lender is initially Calhoun County Bank.

Section 1.03. Resolution to Constitute Contract. In consideration of the acceptance of the Bond by the Purchaser, this Resolution (the "Resolution") shall be deemed to be and shall constitute a contract between the Issuer and the Purchaser, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Purchaser as holder of the Bond.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the text otherwise expressly requires:

"Act" means Article 13A, Chapter 16 of the West Virginia Code.

"Bond" or "Bonds" means the \$40,000 Water Revenue Bond, Series 1998, authorized hereby to be issued.

"Chairman" means the Chairman of the Governing Body.

"Consulting Engineer" means Boyles and Hildreth Consulting Engineers, Spencer, West Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineer for the System.

"Costs" or "Costs of the Project" means those costs described in Section 1.02 hereof to be a part of the cost of acquisition and construction of the Project.

"Depository Bank" means initially the Calhoun County Bank, Grantsville, West Virginia, a state banking corporation and a member of FDIC, and its successors and assigns or such other qualified bank or trust company designated now or hereafter by

Issuer.

"Facilities" or "Water facilities" means all the tangible properties of the System and also any tangible properties which may hereafter be added to the water system by addition, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

"Fiscal Year" means each year beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Public Service Board of the Issuer.

"Government Obligations" means direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America.

"Herein" means in this Resolution.

"Holder of the Bond" or any similar term means any person who shall be the registered owner of the Bond.

"Issuer" means Mt. Zion Public Service District, Millstone, West Virginia, and, where appropriate, also means the Governing Body.

"Net Revenues" means the balance of the gross revenues, as defined below, remaining after deduction only of Operating Expenses, as defined below.

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting practices, and retention of a sum not to exceed one-sixth of the budgeted operating expenses stated above for the current year as working capital, and language herein requiring payment of operating expenses means also retention of not to exceed such sum as working capital.

"Project" shall have the meaning stated in Section 1.02 B. above.

"Purchaser" or "Government" means the United States of America, United States Department of Agriculture, acting through Rural Utilities Service, formerly known as the Farmers Home Administration, and any successor thereof.

"Qualified Investments" means and include any of the following:

(a) Government Obligations;

(b) Government Obligations which have been stripped of their unmatured interest coupons, interest coupons stripped from Government Obligations, and receipts or certificates evidencing payments from Government Obligations or interest coupons stripped from Government Obligations;

(c) Bonds, debentures, notes or other evidence of indebtedness issued by any of the following agencies: Banks for Cooperatives; Federal Intermediate Credit Banks; Federal Home Loan Bank System; Export-Import Bank of the United States; Federal Land Banks; Government National Mortgage Association; Tennessee Valley Authority; or Washington Metropolitan Area Transit Authority;

(d) Any bond, debenture, note, participation certificate or other similar obligations issued by the Federal National Mortgage Association to the extent such obligation is guaranteed by the Government National Mortgage Association or issued by any other federal agency and backed by the full faith and credit of the United States of America;

(e) Time accounts (including accounts evidenced by time certificates of deposit, time deposits or other similar banking arrangements) which, to the extent not insured by the FDIC or Federal Savings and Loan Insurance Corporation, shall be secured by a pledge of Government Obligations, provided, that said Government Obligations pledged either must mature as nearly as practicable coincident with the maturity of said time accounts or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time accounts;

(f) Money market funds or similar funds whose only assets are investments of the type described in paragraphs (a) through (e) above;

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government-bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such

repurchase agreement shall have a prior perfected security interest in the collateral therefor, must have (or its agent must have) possession of such collateral, and such collateral must be free of all claims by third parties;

(h) The West Virginia "consolidated fund" managed by the West Virginia State Board of Investments pursuant to Chapter 12, Article 6, of the West Virginia Code of 1931, as amended; and

(i) Obligations of states or political subdivisions or agencies thereof, the interest on which is excluded from gross income for federal income tax purposes, and which are rated at least "A" by Moody's Investors Service, Inc. or Standard & Poor's Corporation.

"Registrar" or "Bond Registrar" means the Issuer which usually shall act by its Secretary.

"Resolution" means this Resolution and all resolutions supplemental hereto.

"Revenues" or "gross revenues" means all rates, rents, fees, charges or other income received by the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with generally accepted accounting principles.

"Rural Utilities Service" or "RUS" shall mean United States of America, United States Department of Agriculture, Rural Utilities Service, formerly known as the Farmers Home Administration, with a state mailing address of Federal Building, Room 320, 75 High Street, Morgantown, West Virginia 26505-7500, or such other address as the Purchaser designates to Issuer.

"Secretary" means the Secretary of the Governing Body.

"State" means the State of West Virginia.

"System" means the Project initially, and includes the complete water system of the Issuer, and all water facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the Issuer's water system; and shall also include any and all additions, extensions, improvements, properties or other facilities at any time acquired or constructed for said water system after completion of the Project.

"Tap Fees" means the fees, if any, paid by prospective customers of the system in order to connect thereto.



Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations; words importing the masculine, feminine or neuter genders shall include any other gender; and any requirement for execution, sealing and/or attestation of the Bond or any certificate or other document by the Secretary shall mean that such Bond, certificate or other document may be executed, sealed and/or attested by an Acting Secretary.

## ARTICLE II

### AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT

Section 2.01. Authorization of Acquisition and Construction of the Project. There is hereby authorized the acquisition and construction of the Project, at an estimated cost of \$470,000 in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Bonds hereby authorized shall be applied as provided in Article V hereof.

## ARTICLE III

### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUANCE OF BOND

Section 3.01. Authorization of Bond. Subject and pursuant to the provisions hereof, the Bond of the Issuer to be known as "Mt. Zion Water Revenue Bond, Series 1998" in the principal amount of \$40,000 is hereby authorized to be issued for the purpose of financing a portion of the cost of the construction and acquisition of the Project.

Section 3.02. Description of Bond. The Bond shall be issued in single registered form No. R-1, and shall be dated on the date of delivery. The Bond shall bear interest from date, payable monthly at the rate of four and 50/100 percent (4.5%) per annum or such lower rate that the Purchaser will make available at closing, and shall be sold for the par value thereof.

The Bond shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer and shall be payable as provided in the Bond form hereinafter set forth.

The initial address of the Purchaser for purposes of bond registration is Federal Building, Room 320, 75 High Street, Morgantown, West Virginia 26505-7500.

Section 3.03. Execution of Bond. The Bond shall be executed in the name of the Issuer by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary, and the

Chairman and the Secretary are hereby authorized to execute the Bond and such other documents as are necessary to finalize this transaction. The Bond shall be executed in the name of the Issuer by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary, and the Chairman and the Secretary are hereby authorized to execute the Bond and such other documents as are necessary to finalize this transaction. In case any one or more of the officers who shall have signed or sealed the Bond shall cease to be such officer of the Issuer before the Bond so signed and sealed have been actually sold and delivered, such Bond may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bond had not ceased to hold such office.

Section 3.04. Negotiability, Registration, Transfer and Exchange of Bond. The Bond shall be and have all the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, but the Bond may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 3.05 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Registrar. No interest in the Bond shall be transferable except by means of transfer of registration of a Bond representing such interest and delivery of a new Bond or Bonds in exchange thereof in accordance with this Resolution.

Whenever the Bond shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new Bond in authorized denominations, for a like aggregate principal amount. The Registrar shall require the payment by the Bondholder requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Registrar with respect to such transfer.

No registration of transfer of the Bond shall be permitted to be made after the 15th day next preceding any installment payment date on the Bond.

Section 3.05. Registrar. The Issuer will keep or cause to be kept at its office sufficient books for the registration and transfer of the Bond, and upon presentation for such purpose, the Registrar shall, under such reasonable regulations as it may prescribe, register the Bond initially issued pursuant hereto and register the transfer, or cause to be registered by its agent, on such books, the transfer of the Bond as hereinbefore provided.

The Registrar shall accept the Bond for registration or transfer only if ownership thereof is to be registered in the name of an individual (including joint ownership), a corporation, a

partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or social security numbers of the settlor and beneficiaries of each trust and the name of the trustee of each trust and/or such other identifying number and information as may be required by law.

Section 3.06. Bond Mutilated, Destroyed, Stolen or Lost. In case the Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Bond so surrendered shall be canceled and held for the account of the Issuer. If the Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, and if such Bond be destroyed, stolen or lost, the Issuer may pay the same without surrender thereof.

Section 3.07. Bond Secured by Pledge of and Lien on Revenues. The payment of the debt service of the Bond shall be secured forthwith by a parity lien on the net revenues derived from the System in addition to the statutory mortgage lien on the System hereinafter provided for on a parity with the Issuer's Water Distribution System Revenue Bond, Series A(1966), Waterworks Revenue Bonds, Series B(1974), and Water Revenue Bonds, Series 1984 (collectively, the "Prior Bonds"). The net revenues derived from the System in an amount sufficient to pay the principal of and interest on the Bond and the Prior Bonds, and to make the payments as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Bond as the same become due.

Section 3.08. Form of Bond. Subject to the provisions hereof, the text of the Bond and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or any resolution adopted after the date of adoption hereof and prior to the issuance thereof:

(FORM OF BOND)

\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND,  
SERIES 1998

No. R-1

Date: May \_\_, 1998

FOR VALUE RECEIVED, MT. ZION PUBLIC SERVICE DISTRICT, a public service district created pursuant to the Act by an order issued by The County Commission of Calhoun County, in Calhoun County of said State (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at the Government's National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of Forty Thousand Dollars (\$40,000), plus interest on the unpaid principal balance at the rate of four and 50/100 percent (4.5%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day following delivery of the Bond and continuing on the corresponding day of each month, for the first twenty-four (24) months after the date hereof, and \$184.00 per month covering principal and interest thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, and except that prepayments may be made as provided herein. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto and made a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of Rural Utilities Service, successor in interest to the Farmers Home Administration, according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government, shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction of improvements to a Water system (the "System") of the Borrower, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined

Bond Legislation, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Article 13A of Chapter 16 of the Code of West Virginia, as amended (herein called the "Act"),

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of Rural Utilities Service, successor in interest to the Farmers Home Administration, and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND SHALL BE ON A PARITY AS TO LIEN ON AND SOURCE OF PAYMENT WITH THE ISSUER'S WATER DISTRIBUTION SYSTEM REVENUE BOND, SERIES A(1966), WATERWORKS REVENUE BONDS, SERIES B(1974), AND WATER REVENUE BONDS, SERIES 1984.

The address of Government for purposes of bond registration is Federal Building, Room 320, 75 High Street, Morgantown, West Virginia 26505-7500.

This Bond will be in default should any proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as set forth in Exhibit M of subpart G of Part 1940 of Title 7 of the Code of Federal Regulations, as amended.

IN WITNESS WHEREOF, the MT. ZION PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, all as of the date hereinabove written.

MT. ZION PUBLIC SERVICE DISTRICT

(SEAL)

ATTEST

By: \_\_\_\_\_  
Chairman  
P.O. Box 122  
Grantsville, WV 26147

By: \_\_\_\_\_  
Secretary

RECORD OF ADVANCES

	<u>AMOUNT</u>	<u>DATE</u>		<u>AMOUNT</u>	<u>DATE</u>
(1)	\$		(6)	\$	
(2)	\$		(7)	\$	
(3)	\$		(8)	\$	
(4)	\$		(9)	\$	
(5)	\$		(10)	\$	

TOTAL

\$ \_\_\_\_\_

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney, to transfer said Bond on the books kept for registration of the within Bond of said Borrower with full power of substitution in the premises.

DATED: \_\_\_\_\_.

\_\_\_\_\_  
In the presence of:

\_\_\_\_\_



## ARTICLE IV

### INTERIM CONSTRUCTION FINANCING

Section 4.01. Authorization and General Terms. In order to pay certain costs of the Project pending receipt of the gross proceeds of the Bond, the Issuer may issue and sell its Note or Notes (the "Notes"), in an aggregate principal amount not to exceed \$40,000. The Notes may be issued as evidence of a line of credit from a commercial bank or other lender, at the discretion of the Issuer, and as shall be set forth in a resolution supplemental hereto. The Notes shall bear interest from the date or dates, at such rate or rates, payable on such date or dates and shall mature on such date or dates and be subject to such prepayment or redemption, all as provided in the supplemental resolution.

Section 4.02. Terms of and Security for Notes. The Notes, if issued, shall be issued with such terms and secured in the manner set forth in a supplemental resolution.

Section 4.03. Notes are Special Obligations. The Notes shall be special obligations of the Issuer payable as to principal and interest solely from the proceeds of the Bond, grant proceeds, surplus revenues, letter of credit proceeds, if any, and other sources. The Notes do not and shall not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions. The general funds of the Issuer are not liable and neither the full faith and credit nor the taxing power, if any, of the Issuer is pledged for the payment of the Notes. The holders of the Notes shall never have the right to compel the forfeiture of any property of the Issuer. The Notes shall not be a debt of the Issuer, nor a legal or equitable pledge, charge, lien or encumbrance upon any property of the Issuer or upon any of its income, receipts or revenues except as set forth in the supplemental resolution.

Section 4.04. Execution of Documents. The Notes, Credit Agreement and any other documents required to be executed by the commercial bank or other lender shall be executed in the name of the Issuer by the Chairman, and the Chairman and Secretary are hereby authorized to execute any Note, Notes, Credit Agreement or any other documents necessary to secure the interim financing.

## ARTICLE V

### REVENUES AND APPLICATION THEREOF; DISPOSITION OF BOND PROCEEDS; FUNDS AND ACCOUNTS

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are created and established with and shall be held by the Depository Bank, separate, distinct and apart from all other funds or accounts

of the Depository Bank and from each other:

- (1) Revenue Fund;
- (2) Project Construction Account;
- (3) Reserve Fund; and
- (4) Sinking Fund.

Section 5.02. Bond Proceeds; Project Construction Account. All moneys received from the sale of the Bond shall be deposited upon receipt by the Issuer in the Depository Bank, a member of the Federal Deposit Insurance Corporation (the "FDIC"), in a special account hereby now established and designated as "\$40,000 Mt. Zion Public Service District Water System Construction Account" (herein called the "Project Construction Account"). The moneys in the Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by such bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under State law. Moneys in the Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Until completion of the construction of the Project, the Issuer will transfer from the Project Construction Account and pay to the Purchaser on or before the due date, such sums as shall be from time to time required to make the monthly installment payments on the Bond if there are not sufficient Net Revenues to make such monthly payment.

If the Issuer shall determine at any time that all funds on deposit in the Project Construction Account exceed the estimated disbursements on account of the Project for the ensuing ninety (90) days, the Issuer may invest such excess funds in Qualified Investments.

Pending application as provided in this Section 5.02. money and funds in the Project Construction Account shall be invested and reinvested at the direction of the Issuer, to the extent possible in accordance with applicable law, in Qualified Investments.

When construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Project Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 5.03. Covenants of the Issuer as to Revenues and Funds. So long as the Bond shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund hereinafter established a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the

Bond remaining unpaid, together with interest accrued and to accrue thereon, the Issuer further covenants with the holder of the Bond as follows:

(A) Revenue Fund. The entire Gross Revenues derived from the operation of the System, and all parts thereof, and all Tap Fees received, shall be deposited as collected by the Issuer in a special fund in a bank or trust company in the State which is a member of the FDIC, which Fund, known as the "Revenue Fund" is established with the Depository Bank. The Revenue Fund shall constitute a trust fund for the purposes provided herein and shall be kept separate and distinct from all other funds of the Issuer and used only for the purposes and in the manner provided herein.

(B) Disposition of Revenues. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

(i) The Issuer shall first each month pay from the moneys in the Revenue Fund all current Operating Expenses.

(ii) The Issuer shall next, each month, on or before the due date of payment of each installment on the Bonds, transfer moneys from the Revenue Fund and remit to the National Finance Office designated in the Bonds (or such other place as may be provided pursuant to the Bonds), the amount required to pay interest on the Bonds, and to amortize the principal of the Bonds over the respective lives of each Bond issue. All payments with respect to principal of and interest on the Bonds shall be made in accordance with the aggregate principal amount thereof outstanding. There is hereby created a sinking fund at the Depository Bank into which the Issuer shall deposit sufficient amounts from the Revenue Fund to pay the interest on the Bonds and to amortize the principal of the Bonds over the remaining life of the Bond issue. As long as the Government owns the Bonds, such deposits can be replaced by the remittances described above.

(iii) The Issuer shall next, on each date that payment is made as set forth in (ii) above, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Reserve Fund, 1/12th of 1/10th of the amount, as of the date of calculation, equal to the maximum aggregate amount of principal and interest which will become due on the Bonds in any year, until the amount in the Reserve Fund equals such maximum amount (the "Reserve Requirement"). After the Reserve Requirement has been accumulated in the Reserve Fund, the Issuer shall monthly deposit into the Reserve Fund such part of the moneys remaining in the Revenue Fund, after such provision for payment of monthly installments on the Bonds and for payment of Operating Expenses of the System, as shall be required to maintain the Reserve Requirement. Moneys in the Reserve Fund shall be used solely to make up any deficiency for monthly payments of the principal of and interest on the Bonds to said National Finance Office (or other place provided) as the same

shall become due or for prepayment of installments on the Bonds, or for mandatory prepayment of the Bonds as hereinafter provided, and for no other purpose, in accordance with the aggregate principal amount thereof outstanding.

(iv) After all the foregoing provisions for use of moneys in the Revenue Fund have been fully complied with, moneys remaining therein and not permitted to be retained therein, if any ("Surplus Revenues"), may be used to prepay installments of the Bonds, or for any lawful purpose.

(v) Any withdrawals from the Reserve Fund which result in a reduction in the balance of the Reserve Fund to below the Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full for payment of debt service on the Bonds.

(vi) After all the foregoing provisions for use of moneys in the Revenue Fund have been fully complied with, any moneys remaining therein and not required to be retained therein may be used to prepay installments of the Bonds or for any lawful purpose.

Whenever the moneys in the Reserve Fund shall be sufficient to prepay the Bonds in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to prepay the Bonds at the earliest practical date and in accordance with applicable provisions hereof.

The Depository Bank (and any successor appointed by the Issuer) is hereby designated as the Fiscal Agent for the administration of the Reserve Fund as herein provided, and all amounts required therefor will be deposited therein by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into such Fund.

All the funds provided for in this Section shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Bonds and the interest thereon, but the Depository Bank shall not be a trustee as to such funds. The moneys in excess of the sum insured by FDIC in any of such funds shall at all times be secured, to the full extent thereof in excess of such insured sum, in a manner lawful for securing deposits of State and municipal funds under State law.

If on any payment date the Revenues are insufficient to make the payments and transfers as hereinabove provided, the deficiency shall be made up in the subsequent payments and transfers in addition to those which would otherwise be required to be made on the subsequent payment dates.

The Depository Bank shall keep the moneys in the Reserve Fund invested and reinvested to the fullest extent possible in accordance with applicable law, and to the extent practicable, in Qualified Investments having maturities consonant with the required use thereof. Investments in any fund or account under this Resolution shall, unless otherwise provided herein or required by law, be valued at the lower of cost or the then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held by the "consolidated fund" managed by the West Virginia State Board of Investments. Any investment shall be held in and at all times deemed a part of the fund or account in which such moneys were originally held, and interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account.

(C) Change of Depository Bank. The Issuer may designate another bank or trust company insured by FDIC as Depository Bank if the aforesaid Depository Bank should cease for any reason to serve or if the Governing Body determines by resolution that said Depository Bank or its successor should no longer serve as Depository Bank. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser.

(D) User Contracts. The Issuer shall, prior to delivery of the Bond, provide evidence that there will be at least one (1) new bona fide user of the System, being the Calhoun County High/Middle School, and must obtain a user agreement and the user contribution, if any, from each new user and deposit in the Project Construction Account all such user contributions collected.

(E) Charges and Fees. The Issuer shall remit from the Revenue Fund to the Depository Bank such additional sums as shall be necessary to pay the charges and fees of the Depository Bank then due.

(F) Remittances. All remittances made by the Issuer to the Depository Bank shall identify clearly the fund or account into which each amount is to be deposited.

(G) Gross Revenues. The Gross Revenues of the System shall only be used for purposes of the System.

## ARTICLE VI

### GENERAL COVENANTS

Section 6.01. General Statement. So long as the Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund a sum sufficient to prepay the entire principal of the Bonds remaining unpaid, together with interest accrued and

to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Purchaser.

Section 6.02. Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year sufficient to produce Net Revenues equal to not less than one hundred ten percent (110%) of the annual debt service on the Bonds and to make the payments required herein into the Reserve Fund and all the necessary expenses of operating and maintaining the System during such fiscal year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

Section 6.03. Sale of the System. The System may not be sold without the prior written consent of the Purchaser so long as the Bond is outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 6.04. Issuance of Parity Bonds. No parity bonds payable out of the revenues of the System shall be issued after the issuance of the Bond pursuant hereto except with the prior written consent of the Purchaser or the then holder of or Trustee or agent for the holder of the Bond.

Section 6.05. Insurance and Bond. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the Bond remains outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(A) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on all above-ground structures of the System in an amount equal to the actual cost thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(B) Public Liability Insurance, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date



of delivery of the Bond.

(C) Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

(D) Workers' Compensation Coverage for all Employees of the District Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each prime contractor, and such payment bonds will be filed with the Clerk of the County Commission of Jackson County prior to commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39. Workers' Compensation coverage shall be maintained as required by the laws of the State.

(E) Fidelity Bonds will be provided as to every member of the Board and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the Issuer in an amount at least equal to the total annual debt service requirement for all outstanding loans made and bonds held by the Purchaser.

(F) Flood Insurance to be procured, to the extent available at reasonable cost to the Issuer.

(G) Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Bond is outstanding, the District will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 6.06. Statutory Mortgage. For the further protection of the holders of the Bond, a statutory mortgage lien upon the System and Revenues is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon delivery of the Bond.

Section 6.07. Events of Default. Each of the following events is hereby declared an "Event of Default":

(A) Failure to make payment of any monthly amortization installment at the date specified for payment thereof and/or;

(B) Failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained in the Bond or herein, or violation of or failure to observe any provision of any pertinent law or of this Resolution.

Section 6.08. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, the Purchaser shall have all rights under the Act and may proceed to protect and enforce its rights by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement, or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights and shall have all rights prescribed by the Act, State Code and other applicable law.

Upon application by the Purchaser, such court may, upon proof of such default, appoint a receiver for the affairs of the Issuer and the System. The Receiver so appointed shall administer the System on behalf of the Issuer, shall exercise all the rights and powers of the Issuer with respect to the System, shall proceed under the direction of the court to obtain authorization to increase rates and charges of the System, and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct.

Section 6.09. Fiscal Year; Budget. While the Bond is outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a fiscal year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than thirty (30) days prior to the beginning of each fiscal year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such fiscal year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each fiscal year.

If for any reason the Issuer shall not have adopted the Annual Budget before the first day of any fiscal year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the preceding year by more than ten percent (10%); and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget shall be for a reason



beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 6.10. Compensation of Members of Governing Body. The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Governing Body in excess of the amount permitted by the Act. Payment of any compensation to any such member for policy direction shall not be made if such payment would cause the Net Revenues to fall below the amount required to meet all payments provided for herein, nor when there is default in the performance of or compliance with any covenant or provision hereof.

Section 6.11. Covenant to Proceed and Complete. The Issuer hereby covenants to proceed as promptly as possible with the construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer and on file with the Secretary on the date of adoption hereof, subject to permitted changes.

Section 6.12. Books and Records. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall mail a copy of such audit report to the Purchaser. The Issuer further covenants to comply with the Act with respect to such books, records and accounts.

Section 6.13. Maintenance of System. The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the Bond is outstanding.

Section 6.14. No Competition. The Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

Section 6.15. Tax Covenants as to Tax Exempt Status of Bonds.

1. The Issuer covenants that (a) it shall not permit or cause to be done any act or thing which would result in the loss of

exemption from tax of interest on the Bond under Section 103(a) of the Internal Revenue Code of 1986, as amended, and all Regulations promulgated thereunder (the "Code"), or under any successor or similar provision of the Code hereinafter enacted and applicable to the Bond; (b) it shall not invest or otherwise use or permit or cause to be invested or used, any of the proceeds of the Bond, or moneys deemed to be proceeds of the Bond under the Code, directly or indirectly, in any manner which would result in such Bond being classified as an "arbitrage bond" within the meaning of Section 148 of the Code or regulations thereunder, and shall comply with the requirements of such Section; and (c) no part of the proceeds of the Bond or any funds held under the Resolution shall at any time be used directly or indirectly for any purpose which would cause the Bond to be subject to treatment as a "private activity bond" under the Code and to that end the Issuer will comply with the applicable law as long as the Bond is outstanding.

2. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of ten percent (10%) of the Net Proceeds of the Bond are used for private business use if, in addition, the payment of more than ten percent (10%) of the principal or ten percent (10%) of the interest due on the Bond during the term thereof is, under the terms of the Bond or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a private business use or in payment in respect of property used or to be used for a private business use or to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a private business use, and (ii) and that, in the event that both (A) in excess of five percent (5%) of the Net Proceeds of the Bond are used for a private business use, and (B) an amount in excess of five percent (5%) of the interest due on the Bond during the term thereof is, under the terms of the Bond or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said private business use or in payments in respect of property used or to be used for said private business use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said private business use, then said excess over said five percent (5%) of Net Proceeds of the Bonds used for a private business use shall be used for a Private Business Use related to the governmental use of the Project, or if the Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such private business use is related.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of five percent (5%) of the Net Proceeds of the Bond are used, directly or indirectly, to make or finance a loan (other

than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Bond and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including those deemed necessary by the Holder) so that the interest on the Bond will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including those determined by the Holder) which would adversely affect such exclusion.

## ARTICLE VII

### RATES, ETC.

#### Section 7.01. Initial Schedule of Rates and Charges.

A. The initial schedule of rates and charges for the services and facilities of the System shall be as set forth in the Recommended Decision of the Public Service Commission dated April 21, 1998, in Case Number 97-0175-PWD-CN and Case No. 97-1137-PWD-19A, which Recommended Decision became final on May 4, 1998 as a result of a Commission Order waiving the 15 day period to file exceptions which was entered on April 29, 1998, which Recommended Decision and Final Order are incorporated herein by reference and are made a part hereof.

B. The Issuer hereby modifies and enacts to the extent necessary the rates and charges as set out in the above-referenced order and to be included on a tariff sheet to be filed with the Public Service Commission which rates and conditions are as follows:

#### AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service.

#### RATES

First	2,000 gallons used per month	\$6.26 per 1,000 gallons
Next	8,000 gallons used per month	\$6.16 per 1,000 gallons
All over	10,000 gallons used per month	\$6.05 per 1,000 gallons

MINIMUM CHARGE

No bill shall be rendered for less than the following amounts, according to the size of meter installed:

5/8"	\$12.52/month
3/4"	18.80/month
1"	31.30/month
1 1/2"	62.60/month
2"	100.20/month
3"	187.80/month
4"	313.00/month
6"	626.00/month
8"	1,001.60/month

DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid within twenty (20) days, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

CONNECTION CHARGE

\$250.00

LEAK ADJUSTMENT INCREMENT

\$2.83 per 1,000 gallons. To be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate is used to calculate consumption above the customer's historical average usage.

Section 7.02. Further Covenants.

The Issuer hereby further covenants and agrees as follows:

A. There shall not be any discrimination or differential in rates between customers in similar circumstances.

B. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

C. All delinquent fees, rates and charges for services or facilities of the System shall be liens on the premises served of equal degree, rank and priority with the lien on such premises of state, county, school and municipal taxes, as provided in the Act. The Issuer shall have such remedies and powers as are provided under the Act and other applicable provisions of law with regard to the collection and enforcement of such fees, rates and charges.

D. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the Facilities; and in the event that the Issuer or any department, agency, officer or employee thereof should avail itself or themselves of the services or Facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other Revenues of the System.

## ARTICLE VIII

### MISCELLANEOUS

Section 8.01. Defeasance of Bond. If the Issuer shall pay or there shall otherwise be paid, to the Purchaser, the principal of and interest due or to become due thereon, at the times and in the manner stipulated therein and in this Resolution, then with respect to the Bond, the pledge of Net Revenues and other moneys and securities pledged under this Resolution, and all covenants, agreements and other obligations of the Issuer to the Purchaser, shall thereupon cease, terminate and become void and be discharged and satisfied.

Section 8.02. Filing Under Uniform Commercial Code. Contemporaneously with the delivery of the Bond, the Issuer shall execute Financing Statements meeting the requirements of the Uniform Commercial Code of West Virginia and promptly thereafter shall file such a Financing Statements in the offices of the Secretary of State of West Virginia and of the Clerk of the County Commission of Calhoun County.

Section 8.03. Delivery of Bond. The Chairman and Secretary of the Governing Body are hereby authorized and directed to cause the Series 1998 Bond, numbered R-1, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 8.04. Severability of Invalid Provision. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of State law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Bond.

Section 8.05. Conflicting Provisions Repealed. All resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this Section shall not be applicable to the

Loan Resolution (Form FmHA 442-47).

Section 8.06. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 8.07. Modification or Amendment. This Resolution may not be modified or amended in any material manner after final passage without the prior written consent of the Purchaser and/or holder of the Bond.

Section 8.08. Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Resolution do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State applicable thereto; and that the Chairman, Secretary and members of the Governing Body were at all times when any actions in connection with this Resolution occurred and are duly in office and duly qualified for such office.

Section 8.09. Supplemental Resolutions. The Issuer may pass such supplemental resolutions, if necessary, to effectuate the purposes and intent of this Resolution.

Section 8.10. Effective Time. This Resolution shall take effect immediately upon its adoption.

Section 8.11 Statutory Notice of Meeting and Bond Issue. An abstract of this Resolution determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once in a qualified newspaper having a general circulation in the Mt. Zion Public Service District, together with a notice stating that this Resolution will be considered and that the Issuer contemplates the issuance of the Bond, and that any person interested may appear before the Public Service Board upon a date certain, not less than ten (10) days subsequent to the date of publication of such abstract of this Resolution and notice, and present protests, and that a certified copy of the Resolution is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such meeting, all objections and suggestions shall be heard, and the Governing Body shall take such action as it shall deem proper in the premises.

Adopted: May 19, 1998

MT. ZION PUBLIC SERVICE DISTRICT

By:

Sharon Pastawait  
Chairman

(SEAL)

ATTEST:

By:

Kilma Mae  
Secretary

CERTIFICATION

I, Wilma Mace, Secretary of the Public Service Board of the Mt. Zion Public Service District, hereby certify that the foregoing is a true and correct copy of the Resolution approved at a special meeting of said Public Service Board held on May 19, 1998. I further hereby certify that the action of said Public Service Board set forth therein remains in full force and effect and has not been amended or repealed.

WITNESS my signature on this 20th day of May, 1998.

Wilma Mace  
Secretary



STATE OF WEST VIRGINIA,

COUNTY OF CALHOUN, to-wit:

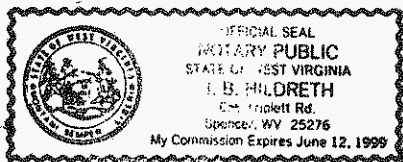
The foregoing instrument was acknowledged before me this 20th day of May, 1998, by Sharon Postalwait, the Chairman of the Mt. Zion Public Service District, a public service district created pursuant to the Act by an order issued by The County Commission of Calhoun County, West Virginia, on behalf of said public service district.

My commission expires

JUNE 12, 1999.

  
\_\_\_\_\_  
NOTARY PUBLIC

[SEAL]



NOTICE TO RESIDENTS OF  
MT. ZION PUBLIC SERVICE DISTRICT  
AND OTHER PERSONS INTERESTED IN RESOLUTION FOR PROPOSED  
ISSUANCE OF \$40,000 WATER REVENUE BONDS  
SERIES 1998

Pursuant to the provisions of West Virginia Code Chapter 6, Article 9A, Section 6, and in accordance with the provisions of West Virginia Code Chapter 16, Article 13A, as amended, you hereby notified that a meeting of the Public Service Board (the "Board") of the Mt. Zion Public Service District (the "Public Service District") will be held on the 19th day of May, 1998, to consider for adoption a Resolution entitled "Resolution Authorizing the Acquisition and Construction of Public Service Properties and Issuance of Water Revenue Bond, Series 1998, of the Mt. Zion Public Service District, in the Amount of \$40,000, to Finance the Acquisition and Construction of Improvements to a Public Water System; Defining and Prescribing the Terms and Provisions of the Bond; Providing for Interim Construction Financing; Placing Limit on Sale of System; Providing Generally for the Rights and Remedies and Security of the Holders of the Bond; Providing Statutory Lien on Revenues and System; Providing for the Adoption, Ratification, Approval and Collection of Rates and Charges for the Public Water System; and Providing General Terms and Providing When this Resolution Shall Take Effect" (the "Resolution") to authorize the issuance of Water Revenue Bonds, Series 1998 (the "Bonds"), of the Public Service District in the amount of \$40,000. The Bond will provide funds to finance a portion of the cost of the acquisition, construction and extension of betterments and improvements for the existing water system of the Public Service District including the construction of new lines and other improvements within the Public Service District.

The entire amount of the principal of and interest on the Bond will be paid solely and only from the revenues received from operation of the water system of the Public Service District to be amortized over a period of 38 years. The Resolution provides provisions with respect to the final interest rate which may be but cannot exceed 4.50% per annum which may be finally determined therein or by supplemental resolution.

A copy of the Resolution and a copy of the plans and specifications of the proposed project are available for examination by any interested person at the Public Service District's office during regular office hours of such office which are from 8:00 a.m. to 4:00 p.m., Monday through Friday.

The Board will also consider for approval and payment certain fees and expenses associated with the issuance of the Bonds and related to the Project. Such payments shall include, but not be limited to, payments for legal and engineering services.

The meeting will be held at the Arnoldsburg Community Park Picnic Shelter in Arnoldsburg, West Virginia, on the 19th day of May, 1998, at 7:00 p.m., and any person or persons interested may

appear before the Board and be heard as to whether or not the Resolution shall be put into effect. All suggestions, protests and objections to the issuance of the Bond will be heard by the Board.

Dated this 1st day of May, 1998.

MT. ZION PUBLIC SERVICE DISTRICT  
Calhoun County, West Virginia

Sharon Postalwait, Chairman

Wilma Mace, Secretary

PUBLISH AS CLASS I NOTICE ON MAY 7, 1998

AFFIDAVIT

I, Wilma Mace, Secretary of the Public Service Board of the Mt. Zion Public Service District, hereby certify that notice of a special meeting of the Public Service Board held on May 19, 1998, was given and posted as required by the Rules of Procedure of said Public Service Board.

WITNESS my signature on this 19th day of May, 1998.

Wilma L. Mace  
Secretary

STATE OF WEST VIRGINIA,

COUNTY OF CALHOUN, to-wit:

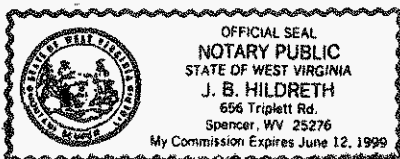
I, J. B. Hildreth, a Notary Public in and for said county and state, hereby certify that Wilma Mace, who signed the foregoing Affidavit as Secretary of the Mt. Zion Public Service District, has this day acknowledged said writing to be her free act and deed.

Dated this 19th day of May, 1998.

My commission expires JUNE 12, 1999

J. B. Hildreth  
Notary Public

(Notary Seal)



STATE OF WEST VIRGINIA  
COUNTY OF CALHOUN, to-wit:

I, Carl R. Morris, being first duly sworn upon my oath, do depose and say that I am publisher of *The Calhoun Chronicle/Grantsville News*, a Democratic newspaper published for at least 50 weeks during the calendar year in Grantsville, Calhoun County, West Virginia, that such newspaper is a newspaper of "general circulation" as that term is defined in article three, chapter fifty-nine of the Code of West Virginia, 1931, as amended, within the publication area, or areas, of said municipality and county and adjoining counties of Calhoun; that such newspaper averages in length four or more pages, exclusive of any cover, per issue; that such newspaper is circulated to the general public at a definite price or consideration; that such newspaper is a newspaper to which the general public resorts for passing events of a political nature and for current happenings, announcements, miscellaneous reading matters, advertisements, and other notices; that the annexed notice of

NOTICE TO RESIDENTS OF MT. ZION  
PUBLIC SERVICE DISTRICT

was duly published in said newspaper once a week  
for 1 successive weeks (Class I),  
commencing with the issue of the 7th day of  
May, 1998 and ending with the issue  
of the 7th day of May, 1998.

The cost of publishing said annexed notice was

\$47.50

Signed

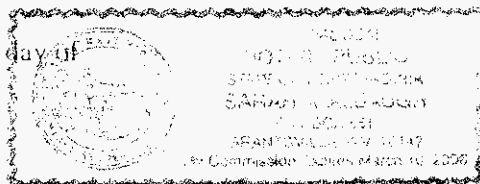
*Carl R. Morris*

Taken, subscribed, and sworn before me in my said

county on the 7th day of

May

1998



My commission expires 3-10-2006

*Sarah A. Albough*

Notary Public, State of West Virginia

**NOTICE TO  
RESIDENTS OF  
MT. ZION PUBLIC  
SERVICE DISTRICT**

**AND OTHER PERSONS  
INTERESTED IN RESOLUTION  
FOR PROPOSED ISSUANCE  
OF \$40,000 WATER**

**REVENUE BONDS SERIES 1998**

Pursuant to the provisions of West Virginia Code Chapter 8, Article 9A, Section 6, and in accordance with the provisions of West Virginia Code Chapter 16, Article 13A, as amended, you hereby notified that a meeting of the Public Service Board (the "Board") of the Mt. Zion Public Service District (the "Public Service District") will be held on the 19th day of May, 1998, to consider for adoption a Resolution entitled "Resolution Authorizing the Acquisition and Construction of Public Service Properties and Issuance of Water Revenue Bond, Series 1998, of the Mt. Zion Public Service District, in the Amount of \$40,000, to Finance the Acquisition and Construction of Improvements to a Public Water System; Defining and Prescribing the Terms and Provisions of the Bond; Providing the Interim Construction Financing; Placing Limit on Sale of System; Providing Generally for the Rights and Remedies and Security of the Holders of the Bond; Providing Statutory Lien on Revenues and System; Providing for the Adoption, Ratification, Approval and Collection of Rates and Charges for the Public Water System; and Providing General Terms and Providing When this Resolution Shall Take Effect" (the "Resolution") to authorize the issuance of Water Revenue Bonds, Series 1998 (the "Bonds"), of the Public Service District in the amount of \$40,000. The Bond will provide funds to finance a portion of the cost of the acquisition, construction and extension of betterments and improvements for the existing water system of the Public Service District including the construction of new lines and other improvements within the Public Service District.

The entire amount of the principal of and interest on the Bond will be paid solely and only from the revenues received from operation of the water system of the Public Service District to be amortized over a period of 38 years. The Resolution provides provisions with respect to the final interest rate which may be but cannot exceed 4.50% per annum which may be finally determined therein or by supplemental resolution.

A copy of the Resolution and a copy of the plans and specifications of the proposed project are available for examination by an interested person at the Public Service District's office during regular office hours of such office which are from 8:00 a.m. to 4:00 p.m., Monday through Friday.

The Board will also consider for approval and payment certain fees and expenses associated with the issuance of the Bonds and related to the Project. Such payments shall include, but not be limited to, payments for legal and engineering services.

The meeting will be held at the Arnoldsburg Community Park Picnic Shelter in Arnoldsburg, West Virginia, on the 19th day of May, 1998, at 7:00 p.m., and any person or persons interested may appear before the Board and be heard as to whether or not the Resolution shall be put into effect. All suggestions, protests and objections to the issuance of the Bond will be heard by the Board.

\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998

ABSTRACT OF  
MINUTES ON ADOPTION OF BOND  
RESOLUTION

I, Wilma Mace, Secretary of the Public Service Board of Mt. Zion Public Service District, hereby certify that the following is a true and correct excerpt of the minutes of a special meeting of the said Public Service Board:

\* \* \*

\* \* \*

\* \* \*

The Public Service Board of Mt. Zion Public Service District met in special session, pursuant to notice duly given, on the 19th day of May, 1998, at Arnoldsburg, West Virginia, at the hour of 7:00 p.m.

PRESENT: Sharon Postalwait  
Shirley C. Mace  
Della Nichols

ABSENT: None

Sharon Postalwait, Chairman, presided, and Wilma Mace acted as Secretary.

The Chairman announced that a quorum of members was present and that the meeting was open for any business properly before it. Thereupon, the Chairman presented a proposed Bond Resolution in writing entitled:

"RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF PUBLIC SERVICE PROPERTIES AND ISSUANCE OF WATER REVENUE BOND, SERIES 1998, OF THE MT. ZION PUBLIC SERVICE DISTRICT, IN THE AMOUNT OF \$40,000, TO FINANCE A PORTION OF THE ACQUISITION AND CONSTRUCTION OF IMPROVEMENTS TO A PUBLIC WATER SYSTEM; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BOND; PROVIDING FOR INTERIM CONSTRUCTION FINANCING; PLACING LIMIT ON SALE OF SYSTEM; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITY OF THE HOLDERS OF THE BOND; PROVIDING STATUTORY LIEN ON REVENUES AND SYSTEM; PROVIDING FOR THE ADOPTION, RATIFICATION, APPROVAL AND COLLECTION OF RATES AND CHARGES FOR THE PUBLIC WATER SYSTEM; AND PROVIDING GENERAL TERMS AND PROVIDING WHEN

THIS RESOLUTION SHALL TAKE EFFECT"

and caused the same to be read and there was discussion. Thereupon on motion of Mrs. Nichols and seconded by Mrs. Mace, it was unanimously ordered that said Bond Resolution be adopted and be in full force and effect on and from the date hereof.

In other business, the Board considered and approved the payment of invoices for engineering and legal services submitted by Boyles & Hildreth and Goodwin & Goodwin, LLP. Such payments shall be made from the first draw submitted by the District to the funding agencies.

There being no further business to come before the meeting, on motion duly made and seconded, it was unanimously ordered that the meeting be adjourned.

Sharon Postulat  
Chairman

Shirley C. Mace  
Member

Della E. Nichols  
Member

\* \* \*

\* \* \*

\* \* \*

I further hereby certify that the foregoing action of said Public Service Board remains in full force and effect and has not been amended or repealed.

WITNESS my signature on this 19th day of May, 1998.

Skilma L. Mace  
Secretary

\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998

GENERAL CERTIFICATE OF ISSUER  
AND COUNSEL

1. TERMS
2. AWARD OF BOND
3. NO LITIGATION
4. GOVERNMENTAL APPROVALS AND BIDDING
5. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
6. SIGNATURES
7. CERTIFICATION OF COPIES OF DOCUMENTS
8. PUBLIC SERVICE COMMISSION ORDER; RATES
9. INCUMBENCY AND OFFICIAL NAME
10. DELIVERY AND PAYMENT
11. LAND AND RIGHTS OF WAY
12. MEETINGS
13. CONTRACTORS' INSURANCE
14. CONNECTIONS
15. MANAGEMENT
16. RATES AND CHARGES
17. CONFLICT OF INTEREST

We, the undersigned CHAIRMAN and SECRETARY of the Public Service Board (the "Governing Body") of MT. ZION PUBLIC SERVICE DISTRICT, Calhoun County, West Virginia (the "Issuer"), and the undersigned ATTORNEY for the Issuer, hereby certify in connection with the Mt. Zion Public Service District, Water Revenue Bond, Series 1998, No. R-1, in the principal amount of \$40,000, bearing interest at the rate of four and 50/100 percent (4.5%) per annum, which is dated on the date hereof (the "Bond").

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined shall have the same meaning as in the Bond Resolution enacted and adopted by the Governing Body of the Issuer and effective on May 19, 1998 (the "Resolution").

2. AWARD OF BOND: The entire issue of the Bond has been duly awarded to the United States of America, United States Department of Agriculture, Rural Utilities Service, formerly known as the Farmers Home Administration (the "Purchaser"), pursuant to a Letter of Conditions from the Purchaser, and the Resolution.

3. NO LITIGATION: No controversy or litigation of any nature is now pending, or, to the knowledge of any of the undersigned threatened, restraining, enjoining or affecting the issuance and delivery of the Bond, nor questioning the proceedings and authority by which the Issuer authorized the issuance and sale



of the Bond, nor affecting the validity of the Bond or any provisions made or authorized for the payment thereof; nor questioning the existence of the Issuer, the Governing Body or the title of the members and officers thereof to their respective offices; nor questioning the additions, betterments and improvements to the Water system of the Issuer (the "System") being financed out of the proceeds of sale of the Bond.

4. GOVERNMENTAL APPROVALS: All applicable approvals and certificates required by law for construction and operation of the System have been duly and timely obtained and remain in full force and effect. This includes a Certificate of Convenience and Necessity from the West Virginia Public Service Commission ("PSC") issued in Case No. 97-0175-PWD-CN.

5. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS: There has been no adverse change in the financial condition of the Issuer since approval by the Purchaser of a loan to assist in the additions, betterments and improvement to the System.

6. SIGNATURES: The undersigned CHAIRMAN and SECRETARY did, for the Issuer on the date hereof, officially execute and seal the Bond with the official corporate seal of the Issuer, an impression of which seal is on this certificate above our signatures, said officers are duly elected, qualified and serving as officers as indicated by the official titles opposite their signatures below, and said officers are duly authorized to execute and seal the Bond for the Issuer.

7. CERTIFICATION OF COPIES OF DOCUMENTS: The copies of the below listed documents hereto attached, delivered herewith or heretofore delivered are true, correct and complete copies of the originals of the documents of which they purport to be copies, and such original documents are in full force and effect and have not been repealed, rescinded, amended or changed in any way unless modification appears from later documents also listed below:

- Order Creating the Issuer
- Orders Appointing Board Members
- Oaths of Office of Board Members
- Rules of Procedure
- Bond Resolution
- Notice of Public Hearing on Adoption of Bond Resolution
- Rate Resolution
- Public Service Commission Certificate of Convenience and Necessity

8. PUBLIC SERVICE COMMISSION ORDER; RATES: The undersigned Attorney hereby covenants that he has filed any information with the PSC and taken any other actions required to maintain the PSC Recommended Decision dated April 21, 1998, in full force and

effect. The rates were enacted by resolution adopted May 13, 1998, and the Issuer has complied with all requirements of the PSC to make the rates valid and effective, and such rates are in full force and effect.

9. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the Issuer is "Mt. Zion Public Service District", it is a public service district located in Jackson County, West Virginia, and its principal office and place of business are in Jackson County, West Virginia. The governing body of the Issuer is its Public Service Board consisting of three members whose names, terms and offices are as follows:

<u>Name</u>	<u>Expiration of Term</u>	<u>Office</u>
Sharon Postalwait	December 2, 2000	Chairman
Shirley C. Mace	June 15, 2001	Secretary
Della Nichols	November 16, 1998	Member

The names of the duly elected, qualified and acting Chairman and Secretary of the Governing Body are as follows:

Chairman	-	Sharon Postalwait
Secretary	-	Wilma Mace

The duly appointed and acting Attorney for the Issuer is Goodwin & Goodwin, LLP.

10. DELIVERY AND PAYMENT: On the date hereof, the Bond was delivered to the Purchaser at Mt. Zion, West Virginia, by the undersigned Chairman, and at the time of such delivery, the Bond had been duly and fully executed and sealed on behalf of the Issuer in accordance with the above-mentioned Bond Resolution.

At the time of delivery of the Bond, a payment was received by the undersigned Chairman, being a portion of the principal amount of said Bond (\$40,000), additional portions of said principal amount to be paid the Issuer as construction for the project progresses. Interest on advances upon the Bond at the rate of four and 50/100 percent (4.5%) per annum is payable upon each advance from the date hereof. The Bond proceeds have been deposited in accordance with the terms of the Bond Resolution.

The Series 1998 Bond is dated on the date hereof and interest thereon at the rate of four and 50/100 percent (4.5%) per annum is payable from such date.

11. LAND AND RIGHTS OF WAY: All land in fee simple and all rights of way and easements necessary for the construction, operation and maintenance of the System have been acquired or can

and will be acquired by purchase, or if necessary, by condemnation by the Issuer and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions which would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties which may have to be acquired by condemnation are, in the opinion of all the undersigned, within the ability of the Issuer to pay for the same without jeopardizing the security of or payments on the Bond.

12. MEETINGS: All actions, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the construction, acquisition, operation and financing of the System were authorized or adopted at meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes, and a quorum of duly appointed, qualified and acting members of the Governing Body was present and acting at all times during all such meetings.

13. CONTRACTORS' INSURANCE: All contractors will be required to maintain Workers' Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Letter of Conditions, from the Purchaser and the Resolution.

14. CONNECTIONS: The Issuer has received a connection agreement for at least one (1) customer, being the Calhoun County High/Middle School, and has deposited, or will deposit forthwith, any connection fees in the Project Construction Account in full compliance with the requirements of the Purchaser.

15. MANAGEMENT: The Issuer has heretofore delivered to the Purchaser a plan concerning operation and management of the System, which plan was found to be acceptable by the Purchaser.

16. RATES AND CHARGES: Based upon information submitted by the Consulting Engineers and the Issuer's Certified Public Accountant, the rates and charges for the System which were approved on May 13, 1998, to be effective upon the completion of the Project, will, so long as the Bond is outstanding, provide Net Revenues sufficient to pay (a) the interest upon the Bond, (b) the principal amount of the Bond at or before its maturity and (c) a margin of safety or reserve for the Bond and for the payment into the Reserve Account created on account of the Bond.

17. CONFLICT OF INTEREST: No officer or employee of the Issuer has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or with respect to a sale or lease of any land, materials, supplies or services to the Issuer, or to any contractor

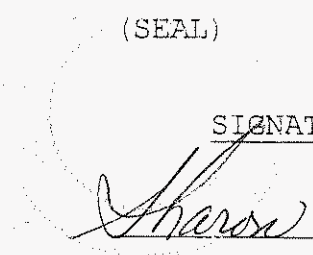
supplying the Issuer, relating to the Bond, the authorizing document and/or the Project, including without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

WITNESS our signatures and the official corporate seal of MT. ZION PUBLIC SERVICE DISTRICT on this 20th day of May, 1998.

(SEAL)

SIGNATURE

OFFICIAL TITLE

  
*Sharon Postelquist*

Chairman

*Hilma L. Mace*

Secretary

*[Signature]*

Attorney for Issuer

\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998

ENGINEER'S CERTIFICATE

I, James B. Hildreth, a Registered Professional Engineer, West Virginia License No. 7719, of Boyles and Hildreth Consulting Engineers, Spencer, West Virginia, hereby certify that my firm is engineer for the water system (the "System") of Mt. Zion Public Service District (the "District") to be constructed in Calhoun County, West Virginia, which acquisition and construction are being financed, in part, by the above-captioned revenue bond (the "Bond") of the District.

Capitalized terms used and not otherwise defined herein shall have the meaning assigned to such terms in the Resolution enacted and adopted by the Board of the District on May 19, 1998 (the "Resolution").

I further certify that the System will be constructed in accordance with the approved plans, specifications and designs prepared by my firm and has been approved by all necessary governmental bodies, including the Public Service Commission of West Virginia ("PSC") which granted a Certificate of Public Convenience and Necessity for the System on April 21, 1998, in Case No. 97-0175-PWD-CN, which became the final order of the PSC on May 4, 1998, the time for appeal of which expired prior to the date hereof without appeal, that the System is adequate for the purpose for which it was designed and has an estimated useful life of at least forty (40) years, that the District has obtained all permits required by the laws of the State and the federal government necessary for the construction of the System, that the rates and charges for the System, as adopted by the Board of the District, are sufficient to comply with the provisions of the Resolution, and that the System is situate wholly within the boundaries of the District and not in any other public service district.

WITNESS my signature on this 20<sup>th</sup> day of May, 1998.

BOYLES AND HILDRETH

By:   
Engineer

JUDY KATHLEEN WILLIAMS, ACCOUNTANT

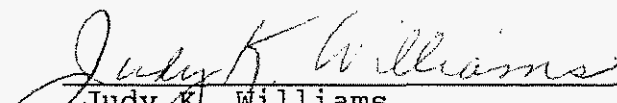
1004 South Kerens Avenue  
Elkins, WV 26241

\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998

ACCOUNTANT'S CERTIFICATE

Judy Williams, Elkins, West Virginia, has reviewed the water service rates which were adopted by the Mt. Zion Public Service District (the "District") in a Bond Resolution approved on May 18, 1998, and as evidenced by the Tariff to be filed with the Public Service Commission of West Virginia ("PSC") and effective upon adoption thereof. The rates set forth in the Bond Resolution and in the Tariff will be collected to pay operation and maintenance expenses of the system, as defined in the Bond Resolution, and to pay principal and interest on the Series 1998 Bonds, on a parity with the Series 1966 Bonds, the Series 1974 Bonds and the Series 1984 Bonds, as provided in the Bond Resolution.

In addition, the accounts and records required by the Bond Resolution and the PSC have been established and are operational.

  
Judy K. Williams  
May 8, 1998

\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND,  
SERIES 1998

NON-ARBITRAGE CERTIFICATE

I, Sharon Postalwait, Chairman of the Public Service Board of the Mt. Zion Public Service District (the "Issuer"), being one of the officials of the Issuer duly charged with the responsibility for the issuance of \$40,000 aggregate principal amount of Water Revenue Bond, Series 1998, of the Issuer, dated May 20, 1998 (the "Bond"), hereby certify as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986, as amended, and applicable regulations (the "Code"). I am one of the officers of the Issuer charged with the responsibility of issuing the Bond. I am familiar with the facts, circumstances and estimates herein certified and am duly authorized to execute and deliver this certificate on behalf of the Issuer.

2. This certificate may be relied upon as the certificate of the Issuer.

3. The Issuer has not been notified by the Internal Revenue Service of any listing or proposed listing of the Issuer as an issuer that may not certify its bonds, of any certification which may not be relied upon by holders of obligations of the Issuer or of any disqualification of the Issuer by the Internal Revenue Service because a certification made by the Issuer contains a material misrepresentation.

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on May 20, 1998, the date on which the Bond is to be physically delivered in exchange for the issue price thereof, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. In the Resolution pursuant to which the Bond is issued, the Issuer has covenanted to make no use of the proceeds of the Bond which would cause the Bond to be "arbitrage bonds" within the meaning of the Code.

6. The Bond was sold on May 20, 1998, to the United States of America, acting through the United States Department of Agriculture, Rural Utilities Service ("RUS") for an aggregate purchase price of \$40,000 (100% of par).

7. The Bond is being delivered simultaneously with the delivery of this certificate and is issued for the purposes of (i) financing a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public water system of the Issuer (the "Project"); and (ii) paying costs of issuance and other costs in connection therewith.

8. The Issuer has or shall, within six (6) months following delivery of the Bond, enter into agreements which require the Issuer to spend the lesser of two and one half percent (2 1/2%) or \$100,000 of the proceeds of the Bond on the Project, constituting a substantial binding commitment, or the Issuer has already done so. Acquisition, construction and equipping of the Project will proceed with due diligence to completion, and, with the exception of proceeds deposited in a reserve account for the Bond, all of the proceeds from the sale of the Bond, together with any investment earnings thereon, with the exception of the reserve fund deposit, will be expended for payment of costs of the Project on or before May 20, 1999. Construction of the Project is expected to be completed by May 20, 1999.

9. The total cost of the Project is estimated at \$470,000. Sources and uses of funds for the Project are as follows:

SOURCES

Bond	\$ 40,000
West Virginia Infrastructure and Jobs Development Council Grant	169,200
RDA Grant	<u>260,800</u>
Total Sources	\$470,000

USES

Design, Acquisition and Construction of Project	\$ 464,750
Costs of Issuance	<u>5,250</u>
Total Uses	\$470,000

Except for the proceeds of the Bond, no other funds of the Issuer will be available to meet costs of the project, and no balances are available to meet such costs in any account which may, without legislative or judicial action, be invaded to pay such expenditures without a legislative, judicial or contractual requirement that such account be reimbursed.

10. Pursuant to the Resolution, the following funds or accounts have been continued or created:

- (1) Project Construction Account;
- (2) Sinking Fund;
- (3) Revenue Fund;
- (4) Reserve Account.

11. Pursuant to the Resolution, the proceeds of the Bond will be deposited in the Project Construction Account and applied solely to payment of Costs of the Project including costs of issuance of the Bond and related costs.



12. Moneys held in the Sinking Fund will not be available to meet costs of construction of the Project.

13. The Issuer will comply with the provisions of the Code, for which the effective date precedes the date of delivery of its Bond to the Government.

14. All of the proceeds of the Bond will be expended on the Project within 12 months from the date of issuance thereof.

15. All the proceeds of the Bond which were used for the payment of costs of the Project will be expended for such purposes within 12 months of May 20, 1998.

16. The amount designated as costs of issuance of the Bond consists only of costs which are directly related to and necessary for the issuance of the Bond.

17. All property financed with the proceeds of the Bond will be held for Federal income tax purposes by (or on behalf of) a qualified governmental unit.

18. The Issuer shall file Form 8038-G in a timely manner with the Internal Revenue Service Center, Philadelphia, Pennsylvania 19255.

19. No more than 10% of the proceeds of the Bond will be used (directly or indirectly) in any trade or business carried on by, and less than 5% of the proceeds of the Bond have been or will be used to make or finance loans to, any person who is not a governmental unit.

20. The original proceeds of the Bond will not exceed the amount necessary for the purposes of the issue.

21. The Issuer shall use the proceeds of the Bond solely for the Project, and the Project will be operated solely for a public purpose as a local governmental activity of the Issuer.

22. The Issuer shall not permit at any time or times any of the proceeds of the Bond, or any other funds of the Issuer, to be used directly or indirectly in a manner which would result in the exclusion of the Bond from treatment afforded by Section 103(a) of the Code by reason of classification of the Bond as "private activity bonds" within the meaning of the Code. The Issuer will take all actions and refrain from taking such actions as shall be necessary to comply with the Code in order to ensure that interest on the Bond is excludable from gross income for federal income tax purposes.

23. The Bond, in whole or in part, will not be, directly or indirectly, federally guaranteed within the meaning of Section 149(b) of the Code.

24. The Issuer has retained the right to amend or supplement its authorizing documents if such amendment or supplement is necessary to preserve the exclusion from gross income for federal income tax purposes of the Bond.

25. The Issuer shall comply with the yield restrictions on the proceeds of the Bond as set forth in the Code.

26. The Issuer has either (a) funded the Reserve Account at the maximum amount of principal and interest which will mature and become due on the Bond in the then current or any succeeding year with the proceeds of the Bond, or (b) created the Reserve Account which will be funded with equal payments on a monthly basis over a 10 year period until such Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Bond in the then current or any succeeding year. Moneys in the Reserve Account and the Sinking Fund (established for the annual payment of principal and interest) will be used solely to pay principal of and interest on the Bond and will not be available to pay costs of the Project.

27. The Issuer shall submit to the RUS within 15 days following the end of the Issuer's bond year a certified copy of its rebate calculation or if the Issuer qualifies for an exception to rebate, then the Issuer shall submit to the RUS a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the bond year which would make the Bond subject to rebate.


28. The Issuer expects that no part of the Project financed by the Bond will be sold or otherwise disposed of prior to the last maturity date of the Bond.

29. The Issuer covenants and agrees to comply with the rebate requirements of the Code if not exempted therefrom, and with all other requirements of the Code necessary, proper or desirable to maintain the tax-exempt status of the Bond.

30. Goodwin & Goodwin, LLP is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Bond.

To the best of my knowledge, information and belief, the foregoing expectations are reasonable.

MT. ZION PUBLIC SERVICE DISTRICT

By   
Chairman

**MT. ZION PUBLIC SERVICE DISTRICT**  
**RESOLUTION PROVIDING FOR RATES FOR WATER**  
**SERVICES OF THE MT. ZION PUBLIC SERVICE DISTRICT,**  
**CALHOUN, COUNTY, WEST VIRGINIA,**  
**TO ALL CUSTOMERS, COMMERCIAL AND RESIDENTIAL,**  
**SERVED BY SAID DISTRICT**

**BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF THE MT. ZION PUBLIC SERVICE DISTRICT:**

Section 1. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of Chapter 16, Article 13A, Section 9, and Chapter 24, Article 2, Section 4a, of the Code of West Virginia, as amended, and General Order No. 200.4 PSD Adm. Reg. 24-1 of the Public Service Commission of West Virginia, and amendments thereto, and other applicable provisions of law.

Section 2. Findings and Determinations. It is hereby found determined and declared as follows:

a. The Mt. Zion Public Service District (the "District"), a public corporation, Calhoun County, West Virginia, is the owner of a public utility providing water service to commercial and residential customers residing inside the District's limits.

b. The present rates and charges for said water service fail to provide sufficient revenues for the maintenance and efficient operation of said utility and related debt service for providing water services to its customers residing within the District's limits as required by the laws of the State of West Virginia.

c. It is deemed necessary and essential for the health, welfare, safety, advantage and convenience of the customers of the District and to comply with West Virginia law in the operation thereof that the present rates and charges for the services provided be increased to provide sufficient revenue for the maintenance and operation thereof and to pay all debt service.

d. By order of the Public Service Commission of West Virginia in Case No. 97-0175-PWD-CN, the attached rates were approved by the Commission, and the District was directed to adopt this rate resolution with amended rates contained herein.

**NOW, THEREFORE, BE IT RESOLVED AND ENACTED** by the Public Service Board of the Mt. Zion Public Service District, Calhoun County, West Virginia:

(1) That the present water rates and charges of the Mt. Zion Public Service District, a public corporation, Calhoun County, West Virginia, for providing water services to the residential and commercial customers residing within the District's limits, be and hereby are increased by providing for monthly rates and charges under the following schedule of rates and charges:

Applicable in Entire Territory Served.

AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service.

RATES

First	2,000 gallons used per month	\$6.26 per 1,000 gallons
Next	8,000 gallons used per month	\$6.16 per 1,000 gallons
All over	10,000 gallons used per month	\$6.05 per 1,000 gallons

MINIMUM CHARGE

No bill shall be rendered for less than the following amounts, according to the size of meter installed:

5/8"	\$12.52/month
3/4"	18.80/month
1"	31.30/month
1 1/2"	62.60/month
2"	100.20/month
3"	187.80/month
4"	313.00/month
6"	626.00/month
8"	1,001.60/month

DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid within twenty (20) days, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

CONNECTION CHARGE

\$250.00

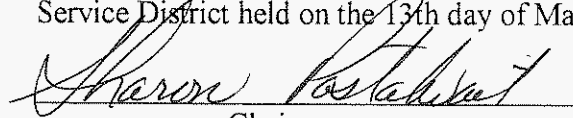
LEAK ADJUSTMENT INCREMENT

\$2.83 per 1,000 gallons. To be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate is used to calculate consumption above the customer's historical average usage.


(2) That a vote on the adoption of this Resolution was taken by the Public Service Board at a regular meeting of the Mt. Zion Public Service District held at the District's office on May 13, 1998, at 6:00 p.m.; and

(3) That this Resolution shall become effective and take effect immediately.


PASSED AND APPROVED at the regular meeting  
of the Public Service Board of the Mt. Zion Public  
Service District held on the 13th day of May, 1998.

  
Chairman


ATTEST:

  
Secretary

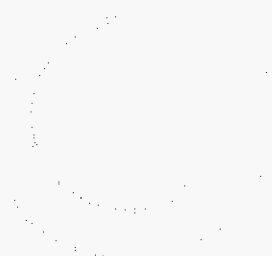
CERTIFICATE

  
I, Wilma D. Mace, Secretary of the Mt. Zion Public Service District, Calhoun County, West Virginia, hereby certify that the foregoing is an exact and true copy of the Resolution of the Mt. Zion Public Service District, adopted at a regular meeting of the Public Service Board called and held on the 13th day of May, 1998, with a quorum present and voting.

Given under my hand and official seal of the Mt. Zion Public Service District this 20th day of May, 1998.

  
Secretary

(SEAL)



PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

At a session of the Public Service Commission of West Virginia, in the City of Charleston on the 29th day of April, 1998.

CASE NO. 97-0175-PWD-CN

MT. ZION PUBLIC SERVICE DISTRICT

Application for a certificate of convenience and necessity to replace approximately 11,000 linear feet of 3-inch water main with 8-inch water main and to construct a 125,000 gallon storage tank and necessary appurtenances to provide adequate potable waer and fire service to the existing customers of the Calhoun County High/Middle School currently under construction.

CASE NO. 97-1137-PWD-19A

MT. ZION PUBLIC SERVICE DISTRICT

Rule 19-A application to increase rates and charges.

COMMISSION ORDER

On April 21, 1998, a Recommended Decision was entered in the above proceedings, approving the application for a certificate of convenience and necessity to replace approximately 11,000 linear feet of 3-inch water main with 8-inch main and to construct a 125,000-gallon water storage tank and necessary appurtenances in Calhoun County, approving financing for said construction and approving increased rates and charges for the District.

On April 28, 1998, Michael I. Spiker, counsel for the District, filed a request to waive the fifteen day exception period to the Recommended Decision.

On April 28, 1998, Cecelia Jarrell, Staff Attorney, agreed that the fifteen day exception period to the Recommended Decision could be waived.


West Virginia Code §24-1-9 provides a time period of at least twenty (20) days from the date of a recommended order until it becomes effective. According to West Virginia Code §24-1-9(c), at least fifteen (15) days must be afforded the parties within which to file exceptions. In addition, §24-1-9(e) provides that when no exceptions are filed within the specified time period, the Commission shall have an additional five (5) days within which to stay or postpone the order.

The Commission is therefore of the opinion and belief that said motion of waiver received by the Commission on April 28, 1998 from the District's counsel, should be granted.

IT IS, THEREFORE, ORDERED that the requested waiver of the fifteen day time period in which exceptions to the Recommended Decision could be filed, be, and the same hereby is, granted.

IT IS FURTHER ORDERED that the Administrative Law Judge's Recommended Decision in this matter becomes final (5) days after the date of this order.

A True Copy, Teste:



Sandra Neal  
Executive Secretary

SN/pjh

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON

Entered: April 21, 1998

CASE NO. 97-0175-PWD-CN

MT. ZION PUBLIC SERVICE DISTRICT

Application for a certificate of convenience and necessity to replace approximately 11,000 linear feet of 3-inch water main with 8-inch water main and to construct a 125,000-gallon storage tank and necessary appurtenances to provide adequate potable water and fire service to the existing customers of the Calhoun County High/Middle School currently under construction.

CASE NO. 97-1137-PWD-19A

MT. ZION PUBLIC SERVICE DISTRICT

Rule 19-A application to increase rates and charges

RECOMMENDED DECISION

Case No. 97-0175-PWD-CN

On September 12, 1997, Mt. Zion Public Service District (District) filed an application for a certificate of convenience and necessity to replace approximately 11,000 linear feet of 3-inch water main with 8-inch main and to construct a 125,000-gallon water storage tank and necessary appurtenances. The District estimated that construction costs would total approximately \$470,000. The District proposed to finance the construction of the project with a West Virginia Infrastructure Jobs Development Council grant in the amount of \$169,200; a Rural Utility Service Grant in the amount of \$260,800; and a loan from the Rural Utility Service in the amount of \$40,000. The District proposes to issue Revenue Bonds in an aggregate principal amount not to exceed \$40,000 at an interest rate not to exceed 4.5% over a 38-year period with a 10% reserve.

By Order issued September 16, 1997, the District was directed to give notice of the filing of its application, pursuant to West Virginia Code §24-2-11, by publishing a copy of the September 16, 1997 Order, once, in a newspaper, duly qualified by the Secretary of State, published and of general circulation in Calhoun County. The Order further provided that anyone desiring to make objection to the application must do so within



thirty (30)- days of the publication of the notice to P.O. Box 812, Charleston, West Virginia, 25323.

By Order entered on September 22, 1997, the application was referred to the Division of Administrative Law Judges with a decision due date of April 9, 1998.

On September 29, 1997, the District filed additional information regarding the operational and maintenance expense calculations.

On October 8, 1997, Staff filed its Initial Joint Staff Memorandum. Staff advised that the District has also filed a request for and increase in its rates and changes pursuant to Rule 19-A of the Commission's Rules and Regulations for the Government of the Construction and Filing of Tariffs of Public Utilities and Common Carriers by Motor Vehicle. Staff opined that additional review of the certificate and rate request needed to be completed. Staff recommended that the District's request for emergency rates be denied and that the case be referred to the Division of Administrative Law Judges.

On October 16, 1998, the Commission received an affidavit of publication indicating that the Notice of Filing was published in The Calhoun Chronicle/Grantsville News, a newspaper of general circulation in Grantsville, Calhoun County, on September 25, 1997. No protests were received to the filing of the application.

On November 7, 1997, Commission Staff filed its Final Joint Staff Memorandum in Case No. 97-0175-PWD-CN. Staff noted that, even though the District had already published the rates proposed in the certificate application, Staff believes those rates to be inadequate. Staff stated that it was attempting to review the District's rates in its currently pending 19-A rate proceeding, Case No. 97-1137-PWD-19A, but that it had been unable to complete its review due to the unavailability of the necessary financial records. Staff advised that it would file an additional recommendation in the certificate case as soon as sufficient information had been made available.

On January 29, 1998, the ALJ issued a Recommended Decision noting that she was also the ALJ assigned to the District's 19-A case, Case No. 97-1137-PWD-19A. The ALJ noted that the Commission had originally required Staff to submit its audit report in the 19-A case by December 15, 1997, but that Staff had filed a Memorandum on December 8, 1997, indicating that the District's rates would be directly impacted by the fact that its water supplier, the Town of Grantsville, has currently pending both a certificate application and a municipal appeal case before the Commission. Staff stated that it required a 90-day extension of its audit report due date in order to analyze the impact of the Town of Grantsville cases. By Order dated December 16, 1997, the Commission granted Staff until March 16, 1998, to file its 19-A report, and extended the ALJ due date in the 19-A proceeding until July 2, 1998. However, with day 250 for the certificate application being May 20, 1998 (the last possible day the Administrative Law Judge could enter a Recommended Decision in the certificate proceeding by statute), there wasn't sufficient time to review the certificate application. Accordingly, the Administrative Law Judge dismissed Case No. 97-0175-PWD-CN

On February 13, 1998, the District's engineers filed exceptions to the Recommended Decision stating that the certificate must be granted by mid-April because it includes facilities required to serve the Calhoun County High/Middle School which is currently under construction. The engineers stated "school construction is scheduled for completion this summer and fire protection or domestic water service cannot be afforded this facility without the proposed improvements to the district's water system."

On February 27, 1998, the District's engineers filed a second letter stating that processing of the certificate case is critical for the District to execute construction contracts for the school which is scheduled to open in August of this year.

Case No. 97-1137-PWD-19A

On September 5, 1997, the District filed an application with the Public Service Commission pursuant to Rule 19-A of the Commission's Rules and Regulations for the Government of the Construction and Filing of Tariffs of Public Utilities and Common Carriers by Motor Vehicle (Tariff Rules), requesting an increase in its water rates and charges by reopening a portion of Case No. 96-0986-PSWD-19A. The District also requested an emergency rate. The application was designated as Case No. 97-1137-PWD-19A.

By Order entered October 6, 1997, the application to increase water rates and charges was referred to the Division of Administrative Law Judges for a decision to be rendered on or before April 2, 1998. Staff was directed to submit its report on or before December 15, 1997. The Order further denied the District's request for emergency rates.

On October 8, 1997, Commission Staff filed its Initial Joint Staff Memorandum recommending that the District's request for emergency rates be denied. Staff recommended that the matter be referred to the Division of Administrative Law Judges.

On October 27, 1997, Staff filed its Final Joint Staff Memorandum indicating that it was continuing its review, but would make a final recommendation prior to December 15, 1997.

On December 8, 1997, Staff advised that the decision in two other Commission cases, Town of Grantsville, Case No. 97-0618-W-CN and 97-1410-W-MA, would affect the outcome of this review and requested that it be given a 90-day extension to file its report.

By Order entered December 16, 1997, the Commission extended the Staff report due date to March 16, 1998. The Administrative Law Judge's decision due date was extended from April 2, 1998, until July 2, 1998.

On March 6, 1998, Commission Staff filed its report, recommending an across-the-board percentage increase of 5.1% to the District's going-level rates. Staff indicated that its recommended rates would provide a remaining cash flow surplus of \$2,902 and a debt service coverage factor of 118.12%. Staff recommended an incremental leak adjustment cost of \$2.83 per M gallon.

## Consolidation

By Order entered on March 10, 1998, the Commission consolidated this case with Case No. 97-0175-PWD-CN and referred the consolidated matters to the Division of Administrative Law Judges with an amended decision due date of May 8, 1998.

On March 13, 1998, Commission Staff filed its Further Final Joint Staff Memorandum in Case No. 97-0175-PWD-CN, recommending that the certificate be granted. The project is needed to serve the new Middle/High School in Calhoun County which will house approximately 1000 students and school personnel. Staff's review of the plans and specifications did not reveal any obvious conflict with the Commission's rules and regulations. The Office of Environmental Health Services has reviewed and approved the project as evidence by Permit No. 13,291, dated May 27, 1997. Staff believes the District's lines will maintain at least the minimum pressure of 20 pounds per square inch. Staff believes the estimated project cost, not to exceed \$470,000, is reasonable. Confirmation of the West Virginia Infrastructure Jobs Development Council grant in the amount of \$169,200; a Rural Utility Service Grant in the amount of \$260,800; and a loan from the Rural Utility Service in the amount of \$40,000, has been received. The District will repay the \$40,000 loan over a forty year period, with the first twenty-four months consisting of interest payments only. The Staff-recommended rates in Case No. 97-1137-PWD-19A will support the project.

By Order issued March 20, 1998, this matter was set for hearing to hearing to be held on April 17, 1998. The District was directed to give notice of the hearing on the application for a certificate of convenience and necessity and the application for a water rate change. The notice included a comparison of the District's present rates to the Staff recommended rates and the date and location of the scheduled hearing.

On March 25, 1998, Michael I. Spiker, Esq., advised that he would be representing the District in these matters. Mr. Spiker requested copies of future pleadings and a copy of the most recent Staff Recommendation.

The hearing convened as scheduled. Michael I. Spiker, Esq., appeared upon behalf of the District. Cecelia Jarrell, Esq., appeared upon behalf of Commission Staff. No persons appeared to protest or intervene in the proceedings.

## EVIDENCE

Staff corrected the record by supplying a copy of an attachment identified as Attachment 1b, which should have been filed with the Further Final Joint Staff Memorandum in Case No. 97-0175-PWD-CN. (Tr., pp. 4-5; Staff Exhibit No. 1). Staff also requested that any reference in its reports or recommendations referring to Case No. 97-1137-PWD-19A as Case No. 97-1337-PWD-19A be corrected. (Tr., p. 9).

Counsel for the District advised that it accepted Staff's Recommendations for approval of the application for a certificate of convenience and necessity and the rates recommended in the Rule 19-A application to increase rates and charges. (Tr., pp. 7-8). The District

presented an affidavit of publication indicating that the notice of hearing and application to change rates was published in The Calhoun Chronicle/Grantsville News, a newspaper of general circulation in Grantsville, Calhoun County, on April 2 and 9, 1998. No protests to the applications were received and the parties waived their rights to file findings of fact, conclusions of law, briefs or other post-hearing documentation. (Tr., pp. 9-10; affidavit of publication).

#### FINDINGS OF FACT

1. On September 12, 1997, Mt. Zion Public Service District filed an application for a certificate of convenience and necessity to replace approximately 11,000 linear feet of 3-inch water main with 8-inch main and to construct a 125,000-gallon water storage tank and necessary appurtenances. The original filing of the application did not request an increase in the District's rates and charges for this project. (See, application and Further Final Joint Staff Memorandum received March 13, 1998, in Case No. 97-0175-PWD-CN).

2. The estimated project cost for the project is approximately \$470,000. (See, application and Further Final Joint Staff Memorandum received March 13, 1998, in Case No. 97-0175-PWD-CN).

3. Financing for the project includes a West Virginia Infrastructure Jobs Development Council grant in the amount of \$169,200; a Rural Utility Service Grant in the amount of \$260,800; and a loan from the Rural Utility Service in the amount of \$40,000. (See, Application and Further Final Joint Staff Memorandum received March 13, 1998, in Case No. 97-0175-PWD-CN).

4. Notice of the original filing of the application was published in The Calhoun Chronicle/Grantsville News, a newspaper of general circulation in Grantsville, Calhoun County, on September 25, 1997. The notice indicated that a rate increase was not being sought for the project. No protests were received to the original filing of the application for a certificate of convenience and necessity. (See, affidavit of publication received October 16, 1998, in Case No. 97-0175-PWD-CN; Case No. 97-0175-PWD-CN, generally).

5. The notice of hearing on the certificate of application and application to change rates was published in The Calhoun Chronicle/Grantsville News, a newspaper of general circulation in Grantsville, Calhoun County, on April 2 and 9, 1998. No protests were received at the hearing held April 17, 1998, in Grantsville, Calhoun County. (See, affidavit of publication received April 17, 1998; Tr., pp. 9-10).

6. The project is necessary to provide water to the new middle/high school in Calhoun County which will house approximately 1000 students and school personnel. (See, Further Final Joint Staff Memorandum received March 13, 1998, in Case No. 97-0175-PWD-CN).

7. On September 5, 1997, the District filed an application with the Public Service Commission pursuant to Rule 19-A of the Commission's Rules and Regulations for the Government of the Construction and Filing of Tariffs of Public Utilities and Common Carriers by Motor Vehicle, requesting an increase in its water rates and charges and an emergency rate. The



application was designated as Case No. 97-1137-PWD-19A. (See, application filed in Case No. 97-1137-PWD-19A).

8. On March 6, 1998, Staff filed its report in Case No. 97-1137-PWD-19A recommending a 5.1% rate increase; an incremental cost for leak adjustments of \$2.83 per M gallon; that the District retain a CPA to perform its annual audit; and that, in the future, the District file its annual reports on time. (See, report filed March 6, 1998, in Case No. 97-1137-PWD-19A).

9. The District accepted Staff's recommendations contained in the Staff's Report in Case No. 97-1137-PWD-19A and the Further Final Joint Staff Memorandum with attachments in Case No. 97-0175-PWD-CN. (See, Staff Report received March 6, 1998, in Case No. 97-1137-PWD-19A; Further Final Joint Staff Memorandum received March 13, 1998; Staff Exhibit No. 1; Tr., pp 4-5, 7-8).

#### CONCLUSIONS OF LAW

1. The public convenience and necessity require the issuance of a certificate of convenience and necessity to the Mt. Zion Public Service District, a public utility, for a certificate of convenience and necessity to replace approximately 11,000 linear feet of 3-inch water main with 8-inch main and to construct a 125,000-gallon water storage tank and necessary appurtenances in Calhoun County.

2. It is reasonable to approve the financing of the project, being a West Virginia Infrastructure Jobs Development Council grant in the amount of \$169,200; a Rural Utility Service Grant in the amount of \$260,800; and a loan from the Rural Utility Service in the amount of \$40,000.

3. The proposed project is adequately financed and economically feasible when supported by the Staff-recommended rates in Case No. 97-1137-PWD-19A.

4. The Staff recommended rates in Case No. 97-1137-PWD-19A, which are approximately a 5.1% increase in rates, are sufficient to support the project and should be approved.

5. It is reasonable to approve Staff's recommended tariff provisions and other operational recommendations as contained in Case No. 97-1137-PWD-19A.

#### ORDER

IT IS, THEREFORE, ORDERED that the application, filed by the Mt. Zion Public Service District, for a certificate of convenience and necessity to replace approximately 11,000 linear feet of 3-inch water main with 8-inch main and to construct a 125,000-gallon water storage tank and necessary appurtenances in Calhoun County, be, and hereby is, approved.

IT IS FURTHER ORDERED that the financing of the project, being a West Virginia Infrastructure Jobs Development Council grant in the amount of

\$169,200; a Rural Utility Service Grant in the amount of \$260,800; and a loan from the Rural Utility Service in the amount of \$40,000, be, and hereby is, approved.

IT IS FURTHER ORDERED that the following rates and charges, be, and hereby are, approved for use by the Mt. Zion Public Service District, to become effective for the first billing cycle after this order becomes a final order of the Commission:

#### AVAILABILITY OF SERVICE

Available for general domestic, commercial and industrial service.

#### RATES

First	2,000 gallons used per month	\$6.26 per 1,000 gallons
Next	8,000 gallons used per month	\$6.16 per 1,000 gallons
All over	10,000 gallons used per month	\$6.05 per 1,000 gallons

#### MINIMUM CHARGE

No bill will be rendered for less than the following amounts, according to the size of meter installed:

5/8"	\$12.52/month
3/4"	18.80/month
1"	31.30/month
1 1/2"	62.60/month
2"	100.20/month
3"	187.80/month
4"	313.00/month
6"	626.00/month
8"	1,001.60/month

#### DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid in full within twenty (20) days, ten percent (10%) will be added to the net current amount unpaid. This delay payment penalty is not interest and is only to be collected once for each bill where it is appropriate.

CONNECTION CHARGE - \$250.00

#### LEAK ADJUSTMENT INCREMENT

\$2.83 per M gallon. To be used when the bill reflects unusual consumption which can be attributed to eligible leakage on customer's side of the meter. This rate is used to calculate consumption above the customer's historical average usage.

IT IS FURTHER ORDERED that, if there is a change in the cost, scope, terms and conditions or financing of this project, the District notify the Commission immediately and obtain Commission approval of said change, prior to commencing construction.

IT IS FURTHER ORDERED that the District file a revised tariff with the Commission within ten (10) days of the date this order becomes a final order of the Commission.

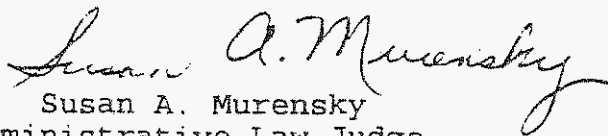
IT IS FURTHER ORDERED that the District notify the Commission within thirty days of the substantial completion of this project.

The Executive Secretary is hereby ordered to serve a copy of this order upon the Commission by hand delivery, and upon all parties of record by United States Certified Mail, return receipt requested.

Leave is hereby granted to the parties to file written exceptions supported by a brief with the Executive Secretary of the Commission within fifteen (15) days of the date this order is mailed. If exceptions are filed, the parties filing exceptions shall certify to the Executive Secretary that all parties of record have been served said exceptions.

If no exceptions are so filed this order shall become the order of the Commission, without further action or order, five (5) days following the expiration of the aforesaid fifteen (15) day time period, unless it is ordered stayed or postponed by the Commission.

Any party may request waiver of the right to file exceptions to an Administrative Law Judge's order by filing an appropriate petition in writing with the Secretary. No such waiver will be effective until approved by order of the Commission, nor shall any such waiver operate to make any Administrative Law Judge's Order or Decision the order of the Commission sooner than five (5) days after approval of such wavier by the Commission.

  
Susan A. Murensky  
Administrative Law Judge

SAM:s

3. Maturity date (if any): **5/20/2038**

For Filing Officer (Date, Time, Number, and Filing Office)  
**5/20/98 2:00PM**  
**16404 Bk.3**  
**Calhoun Co.Clerks Office**

This FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code:

1. Debtor(s) (Last Name First) and address(es)  
**Mt. Zion Public Service District**  
**P.O. Box 122**  
**Grantsville, WV 26147**

2. Secured Party(ies) and address(es)  
**United States Department of Agriculture**  
**Rural Utilities Service**  
**P.O. Box 303]**  
**Parkersburg, WV 26102**

4. This financing statement covers the following types (or items) of property:  
**Lien on revenues as provided by Bond Resolution authorizing the issuance by Mt. Zion Public Service District of its \$40,000 Water Revenue Bonds, Series 1998, and as provided by Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended.**

**This Financing Statement is filed in connection with a public bond issue of the Mt. Zion Public Service District, Calhoun County, West Virginia. Pursuant to the provisions of Section 46-9-403(8) of the Code of West Virginia of 1931, as amended, no continuation statements need to be filed to continue this financing statement in effect throughout the term of the underlying bond issue.**

This statement is filed without the debtor's signature to perfect a security interest in collateral. (check ☒ if so)  
☐ already subject to a security interest in another jurisdiction when it was brought into this state.  
☐ which is proceeds of the original collateral described above in which a security interest was perfected.

Check ☒ if covered: ☐ Proceeds of Collateral are also covered ☐ Products of Collateral are also covered. No. of additional sheets presented:

TERMINATION STATEMENT: This Statement of Termination of Financing is presented to a Filing Officer for filing pursuant to the Uniform Commercial Code. The Secured Party certifies that the Secured Party no longer claims a security interest under the financing statement bearing the file number shown above.

5. Assignee(s) of Secured Party and Address(es)  
**Clerk of County Commission**  
**of Calhoun County, WV**

Date 19  
By: (Signature of Secured Party or Assignee of record. Not Valid Until Signed)  
Filing Officer is requested to note file number, date and hour of filing on this copy and return to the person filing, as an acknowledgement.

(3) Filing Officer Copy-Acknowledgement  
(For Use In Most States)



This FINANCING STATEMENT is presented to a filing officer for filing pursuant to the Uniform Commercial Code:

1. Debtor(s) (Last Name First) and address(es)

Mt. Zion Public Service District  
P.O. Box 122  
Grantsville, WV 26147

2. Secured Party(ies) and address(es)

United States Department of  
Agriculture  
Rural Utilities Service  
P.O. Box 303  
Parkersburg, WV 26107

3. Maturity date (if any) 5/20/2038

For Filing Officer (Date, Time,  
Number, and Filing Office)

0494865

98 MAY 22 PM 2:14

4. This financing statement covers the following types (or items) of property:  
Lien on revenues as provided by Bond Resolution authorizing the  
issuance by Mt. Zion Public Service District of its \$40,000 Water  
Revenue Bonds, Series 1998, and as provided by Chapter 16, Article  
13A of the Code of West Virginia of 1931, as amended.

5. Assignee(s) of Secured Party and  
Address(es)

RECEIVED  
MAY 22 2008  
FILING OFFICE

This Financing Statement is filed in connection with a public  
bond issue of the Mt. Zion Public Service District, Calhoun  
County, West Virginia. Pursuant to the provisions of Section  
46-9-403(8) of the Code of West Virginia of 1931, as amended,  
no continuation statements need to be filed to continue this  
financing statement in effect throughout the term of the underlying  
bond issue.

This statement is filed without the debtor's signature to perfect a security interest in collateral. (check ☒ if so)

☐ already subject to a security interest in another jurisdiction when it was brought into this state.

☐ which is proceeds of the original collateral described above in which a security interest was perfected.

Check ☒ if covered. ☐ Proceeds of Collateral are also covered. ☐ Products of Collateral are also covered. No. of additional sheets presented:

Filed with:

Secretary of State of WV

Mt. Zion Public Service District

USA, USDA, Rural Utilities Service

By: *Sharon Holcomb* Chairman

Signature(s) of Debtor(s)

Title

By: *[Signature]* Rural Dev. Specialist

Signature(s) of Secured Party(ies)

Title

(2) Filing Officer Copy-Numerical

(For Use In Most States)

LAW OFFICES  
**GOODWIN & GOODWIN, LLP**  
P. O. BOX 2107  
1500 ONE VALLEY SQUARE  
CHARLESTON, WEST VIRGINIA 25328-2107  
304/346-7000  
TELECOPIER 304/344-9692

201 THIRD STREET  
PARKERSBURG, WEST VIRGINIA 26101  
304/485-2345

P. O. BOX 349  
500 CHURCH STREET  
RIPLEY, WEST VIRGINIA 25271  
304/372-2651

REPLY TO:

Charleston

May 20, 1998

United States of America  
United States Department of  
Agriculture, Rural Utilities Service  
P.O. Box 303  
Parkersburg, WV 26102

Mt. Zion Public Service District  
P.O. Box 122  
Grantsville, WV 26147

Re: \$40,000 Mt. Zion Public Service District  
Water Revenue Bonds, Series 1998

Gentlemen:

As attorney for the Mt. Zion Public Service District, Grantsville, West Virginia (the "District"), we have examined the record of proceedings relating to the issuance of the Mt. Zion Public Service District, Water Revenue Bonds, Series 1998, in the amount of \$40,000 (the "Bond") and have considered the validity of the bond issue and in this connection, we have examined and are familiar with the constitution and statutes of the State of West Virginia, including Chapter 16, Article 13A of the Code of West Virginia of 1931, as amended, the Orders of Calhoun County Commission creating and expanding the District, related minutes and a certified copy of the Resolution passed by the District (the "Resolution"), a copy of the notices and affidavit of publication filing the notices of rates, a copy of the certificate of convenience and public necessity issued by the West Virginia Public Service Commission, the water rates necessary to pay for the Bond as described in the Resolution, copies of all contracts and other documents relating to the funding and approval for the project by the District, including but not limited to the construction contract, plans and specifications, and other documents relating to the project, the letter of commitment forwarded by the United States Department of Agriculture, Rural Utilities Service, to the District, and other documents incidental and material to the issuance by the

## GOODWIN & GOODWIN, LLP

District of the Bond. From such familiarity and examination, we are of the opinion as follows:

1. The District is a duly created and presently existing public service district of the State of West Virginia with full power and authority to construct and acquire and to operate and maintain a water system and to issue and sell the Bond, all under the provisions of Chapter 16, Article 13A (the "Act"), of the Code of West Virginia Code of 1931, as amended, and other applicable provisions of law.

2. The District, through its Board, has legally and effectively enacted the Resolution and has duly authorized the issuance and delivery of the Bond to the United States of America, acting through Rural Utilities Service, and the Chairman of the Board is duly and lawfully entitled to and authorized to execute the Bond.

3. The Bond constitutes a valid and legally enforceable special obligation of the District, payable from the net revenues of the System and secured by a statutory lien on and pledge of the net revenue of the System, all in accordance with the terms of the Bond and the Resolution.

4. The District, through its Board, has legally and effectively enacted the water rates necessary to make the payments on the Bond, on a parity with the District's Water Distribution System Revenue Bond, Series A (1966), Waterworks Revenue Bonds, Series B (1974), and Water Revenue Bond, Series 1984, from the rates described in the Resolution, and it has lawfully enacted and has filed a tariff which has been approved by the West Virginia Public Service Commission for the water rates that are described within the Resolution.

5. The District has obtained from the West Virginia Public Service Commission a valid, final and non-appealable certificate of convenience and necessity under Case No. 97-0175-PWD-CN which lawfully authorizes the District to proceed with the extension and maintenance of the District's water system, approval of issuance of the Bond and approval of rates.

6. The District, through its Board, has legally and effectively enacted all other resolutions, contracts and agreements that are necessary to comply with the Letter of Conditions previously forwarded and has complied with all necessary provisions of the Resolution necessary before the Bond may be issued and delivered and that the Bond can in fact be lawfully issued and delivered.

7. The execution and delivery of the Bond and the enactment of the Resolution and compliance with the provisions of them will not conflict with nor constitute a breach or default under any agreement or other instrument known to us to which the District is a party, any court order or consent decree known to us to which the District is subject, or any law or administrative regulation to which the District is subject.

8. All authorizations, consents, approvals and reviews by governmental bodies or regulatory authorities then required for the District's adoption, execution or performance of the Bond, and the Resolution have been obtained or affected, and we have no reason to believe that the District will be unable to obtain or affect any additional such authorizations, consents or approvals that may be required in the future or the performance of any of them by the District.

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9. To our knowledge, there is no action, suit, proceeding or investigation at law or in equity by any court, public board or body, pending or threatened against or affecting the District or any member of the Board, and no facts exist relating to the composition of the board or the exercise of their duties wherein an unfavorable decision, ruling or finding would have a material adverse effect upon the validity of the Bond or the Resolution.

The foregoing opinion is qualified to the extent that the enforceability of the liens, pledges and terms set forth in the Bond and in the Resolution may be limited by bankruptcy, insolvency and other laws affecting the rights of creditors generally.

Very truly yours,

A handwritten signature in cursive script that reads "Goodwin & Goodwin, LLP". The signature is written in dark ink and is positioned above the printed name of the firm.

Goodwin & Goodwin, LLP

LAW OFFICES  
**GOODWIN & GOODWIN, LLP**  
P. O. BOX 2107  
1500 ONE VALLEY SQUARE  
CHARLESTON, WEST VIRGINIA 25328-2107  
304/346-7000  
TELECOPIER 304/344-9692

201 THIRD STREET  
PARKERSBURG, WEST VIRGINIA 26101  
304/485-2345

P. O. BOX 349  
500 CHURCH STREET  
RIPLEY, WEST VIRGINIA 25271  
304/372-2651

REPLY TO

Charleston

May 20, 1998

Mt. Zion Public Service District  
P.O. Box 122  
Grantsville, WV 26147

United States of America  
United States Department of  
Agriculture, Rural Utilities Service  
P.O. Box 303  
Parkersburg, WV 26102

Re: \$40,000 Mt. Zion Public Service District,  
Water Revenue Bonds, Series 1998

Gentlemen:

We have examined a record of proceedings relating to the issuance by Mt. Zion Public Service District (the "Issuer") of its Water Revenue Bonds, Series 1998, in the principal amount of \$40,000, bearing interest at the rate of four and 50/100 percent (4.5%) per annum, dated on the date hereof (the "Bond").

The Bond has been authorized by a resolution (the "Bond Resolution") duly adopted by the Public Service Board, which is the governing body of the Issuer (the "Governing Body").

Interest only on the Series 1998 Bond is payable in monthly installments for twenty-four (24) months after delivery of the Bond and thereafter the principal of and interest on the Bond are payable in monthly installments of \$184.00 for the next thirty-eight (38) years, the final installment to be in the sum of the unpaid principal and interest due on the date thereof.

## GOODWIN & GOODWIN, LLP

Principal installments upon the Bond are subject to payment in advance as provided therein and in the Bond Resolution.

The Bond Resolution and the Bond provide that the proceeds shall be used to pay a portion of the costs of construction of improvements to an existing water system (the "System") of the Issuer.

It is our opinion that:

1. The Issuer is a duly organized and presently existing public service district and is a public corporation and a political subdivision of the State of West Virginia with full power and authority to construct, acquire, operate and maintain the System and issue and sell the Bond, all under the provisions of Chapter 16, Article 13A (the "Act"), of the Code of West Virginia of 1931, as amended, and other applicable provisions of law.

2. The Issuer has legally and effectively adopted the Bond Resolution and other resolutions in connection with the Bond issue and issued, sold and delivered the Bond to United States of America, acting through Rural Utilities Service.

3. The Bond is in due and proper form, has been duly executed and delivered and constitutes a valid and legally enforceable special obligation of the Issuer, payable from the net revenues of the System and secured by a statutory lien on and pledge of the net revenues of the System, all in accordance with the terms of the Bond and the Bond Resolution, and on a parity with the District's Water Distribution System Revenue Bond, Series A (1966), Waterworks Revenue Bonds, Series B (1974), and Water Revenue Bond, Series 1984, and the 1966, 1974 and 1984 Bond Resolutions.

4. The interest on the Bond is excluded from gross income for federal income tax purposes and is not an item of tax preference for purposes of the federal alternative minimum tax imposed on individuals and corporations; it should be noted, however, that for the purpose of computing the alternative minimum tax imposed on corporations (as defined for federal income tax purposes), such interest is taken into account in determining adjusted current earnings. The opinions set forth in the preceding sentence are subject to the condition that the Issuer comply with all requirements of the Internal Revenue Code of 1986, as amended, that must be satisfied subsequent to the issuance of the Bond in order that interest thereon be, or continue to be, excluded from gross income for federal income tax purposes. The Issuer has covenanted to comply with each such requirement. Failure to comply with certain of such requirements may cause the inclusion of interest on the Bond in gross income for federal income tax purposes to be retroactive to the date of issuance of the Bond. We express no opinion regarding other federal tax consequences arising with respect to the Bond.

5. The Bond and the interest thereon is, under the Act, exempt from taxation by the State of West Virginia or any county municipality, political subdivision or agency thereof. --

GOODWIN & GOODWIN, LLP

6.- It is to be understood that the rights of the holder of the Bond and the enforceability of liens, pledges, rights or remedies with respect to the Bond and the Resolution are subject to any applicable bankruptcy, reorganization, insolvency, moratorium or other similar laws heretofore or hereafter enacted affecting creditors' rights or remedies generally, and their enforcement may also be subject to the exercise of judicial discretion in appropriate cases.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Goodwin & Goodwin", written in dark ink.

GOODWIN & GOODWIN, LLP

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P. O. BOX 2107  
1500 ONE VALLEY SQUARE  
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304/485-2345

P. O. BOX 349  
500 CHURCH STREET  
RIPLEY, WEST VIRGINIA 25271  
304/372-2651

REPLY TO:

Charleston

May 20, 1998

Mt. Zion Public Service District  
P.O. Box 122  
Grantsville, WV 26147

Re: \$40,000 Mt. Zion Public Service District  
Water Revenue Bonds, Series 1998

Gentlemen:

We have examined a transcript of proceedings relating to the issuance of \$40,000 aggregate principal amount of Water Revenue Bonds, Series 1998 (the "Bond"), of the Mt. Zion Public Service District, Grantsville, Calhoun County, West Virginia (the "Issuer"), and a "Non-Arbitrage Certificate" executed by the Chairman of the Issuer on this date.

Based upon such Certificate, we are of the opinion that the facts, estimates and circumstances set forth therein are sufficient to satisfy the requirements of Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), to support the conclusion that the Bond is not an "arbitrage bond" as therein defined. While we have undertaken no independent investigation or verification of the statements, expectations or representations set forth in such Certificate, no matters have come to our attention which make unreasonable or incorrect such statements, expectations or representations.

Accordingly, it is our opinion that, under existing statutes, regulations, rulings and court decisions, the Bond is not an "arbitrage bond" as so defined.

The opinions set forth above are subject to the condition that the Issuer comply with all requirements of the Code relating to arbitrage that must be satisfied subsequent to the issuance of the



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May 20, 1998  
Page Two

Bond in order that interest thereon be (or continue to be) excludable from gross income for federal income tax purposes. Failure to do so may cause the Bond to be so included in gross income retroactive to the date of the issuance of the Bond. The Issuer has covenanted to comply with all such requirements.

Respectfully submitted,

A handwritten signature in cursive script that reads "Goodwin & Goodwin LLP". The signature is written in dark ink and is positioned above the printed name of the firm.

GOODWIN & GOODWIN, LLP

\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND,  
SERIES 1998

No. R-1

Date: May 20, 1998

FOR VALUE RECEIVED, MT. ZION PUBLIC SERVICE DISTRICT, a public service district created pursuant to the Act by an ordinance issued by The County Commission of Calhoun County, in Calhoun County of said State (herein called "Borrower") promises to pay to the order of the United States of America (the "Government"), or its registered assigns, at the Government's National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of Forty Thousand Dollars (\$40,000), plus interest on the unpaid principal balance at the rate of four and 50/100 percent (4.5%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day following delivery of the Bond and continuing on the corresponding day of each month, for the first twenty-four (24) months after the date hereof, and \$184.00 per month covering principal and interest thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto and made a part hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of Rural Utilities Service, successor in interest to the Farmers Home Administration, according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government, shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction of improvements to a Water system (the "System") of the Borrower, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Borrower, as Bond Registrar, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in the herein defined Bond Legislation, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Bond Registrar

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Article 13A of Chapter 16 of the Code of West Virginia, as amended (herein called the "Act"),

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of Rural Utilities Service, successor in interest to the Farmers Home Administration, and to its future regulations not inconsistent with the express provisions hereof.

THIS BOND SHALL BE ON A PARITY AS TO LIEN ON AND SOURCE OF PAYMENT WITH THE ISSUER'S WATER DISTRIBUTION SYSTEM REVENUE BOND, SERIES A (1966), WATERWORKS REVENUE BONDS, SERIES B (1974), AND WATER REVENUE BONDS, SERIES 1984.

The address of Government for purposes of bond registration is Federal Building, Room 320, 75 High Street, Morgantown, West Virginia 26505-7500.

This Bond will be in default should any proceeds be used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as set forth in Exhibit M of subpart G of Part 1940 of Title 7 of the Code of Federal Regulations, as amended.

-IN WITNESS WHEREOF, the MT. ZION PUBLIC SERVICE DISTRICT has caused this Bond to be executed by its Chairman and its corporate seal to be hereunto affixed or imprinted hereon and attested by its Secretary, all as of the date hereinabove written.

MT. ZION PUBLIC SERVICE DISTRICT

**SPECIMEN**

(SEAL)

ATTEST

By: \_\_\_\_\_  
Chairman  
P.O. Box 122  
Grantsville, WV 26147

By: \_\_\_\_\_  
Secretary

RECORD OF ADVANCES

	<u>AMOUNT</u>	<u>DATE</u>		<u>AMOUNT</u>	<u>DATE</u>
(1)	\$		(6)	\$	
(2)	\$		(7)	\$	
(3)	\$		(8)	\$	
(4)	\$		(9)	\$	
(5)	\$		(10)	\$	

**SPECIMEN**  
TOTAL

\$ \_\_\_\_\_

(Form of Assignment)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto \_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney, to transfer said Bond on the books kept for registration of the within Bond of said Borrower with full power of substitution in the premises.

DATED: \_\_\_\_\_

**SPECIMEN**

In the presence of:

\_\_\_\_\_

REGISTRY

\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS, SERIES 1998

<u>BOND NO.</u>	<u>AMOUNT</u>	<u>HOLDER</u>	<u>DATE ACQUIRED</u>
R-1	\$40,000	United States of America, United States Department of Agriculture, Rural Utilities Service Federal Building, Room 320 75 High Street Morgantown, WV 26505-7500	May 20, 1998

ALL ASSIGNMENTS OR CHANGES OF OWNERSHIP OF THIS BOND MUST BE REPORTED ON  
THIS REGISTRY PURSUANT TO SECTION 3.05 OF THE BOND RESOLUTION.

\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BONDS,  
SERIES 1998

RECEIPT FOR BOND NO. R-1 AND TRANSCRIPT

The undersigned, for United States of America, United States Department of Agriculture, Rural Utilities Service (the "Purchaser"), hereby certifies as follows:

1. On the 20th day of May, 1998, at Arnoldsburg, West Virginia, the undersigned received from the Mt. Zion Public Service District (the "Issuer") the single Mt. Zion Public Service District, Water Revenue Bond, Series 1998, No. R-1 (the "Series 1998 Bond"), in the principal amount of \$40,000, dated as of the date hereof, bearing interest at the rate of four and 50/100 percent (4.5%) per annum, payable in monthly installments as stated in the Bond. The Bond represents the entire above-captioned Bond issue.

2. At the time of such receipt, the Series 1998 Bond has been executed and sealed by the designated officials of the Public Service Board of the Issuer.

3. At the time of such receipt, there was paid to the Issuer a payment representing the aggregate principal amount of the Series 1998 Bond.

4. At the time of such receipt, there was also received by the undersigned a set of Bond Transcript documents.

WITNESS my signature on this 20th day of May, 1998.

UNITED STATES OF AMERICA,  
UNITED STATES DEPARTMENT OF  
AGRICULTURE, Rural Utilities  
Service

By:   
- Rural Development Specialist



\$40,000  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER REVENUE BOND,  
SERIES 1998

CONSENT TO ISSUANCE OF PARITY BOND AND  
WAIVER OF DEBT SERVICE COVERAGE REQUIREMENT

United States of America, United States Department of Agriculture, Rural Utilities Service (the "Government"), as the registered owner of all the \$85,600 Water Distribution System Revenue Bond, Series A (1966), \$40,000 Waterworks Revenue Bonds, Series B (1974), and \$161,000 Water Revenue Bond, Series 1984, issued pursuant to resolutions adopted July 14, 1966, January 10, 1974, and February 2, 1984, respectively (collectively, the "Prior Bonds"), hereby consents to the issuance by the Mt. Zion Public Service District, Millstone, West Virginia (the "District"), of not more than \$40,000 in aggregate principal amount of parity water revenue bonds (the "1998 Bond") to be sold to the United States of America. The Government hereby further consents that the 1998 Bond may be payable from the revenues of the water system of the District and otherwise secured on a parity with the Prior Bonds. This consent is given pursuant to the bond resolutions authorizing the Prior Bonds.

In addition, the Government hereby waives the one hundred fifty percent (150%) debt service coverage requirement set forth in Section 14 B of the bond resolution authorizing the 1966 Bond and the one hundred twenty percent (120%) debt service coverage requirement set forth in Section 4.05 (B) of the bond resolution authorizing the 1974 Bonds. Upon the issuance of the 1998 Bond, the debt service coverage requirement for the Prior Bonds shall be one hundred ten percent (110%) of the maximum amount of annual debt service on the Prior Bonds and the 1998 Bond, as provided in the bond resolution authorizing the issuance of the 1998 Bond.

By the execution of this consent and waiver, the undersigned hereby certifies that he is fully empowered and authorized to execute this consent and waiver on behalf of the Government.

WITNESS my signature this 6th day of May, 1998.

UNITED STATES OF AMERICA,  
UNITED STATES DEPARTMENT OF  
AGRICULTURE, Rural Development

By: \_\_\_\_\_

State Director



STATE OF WEST VIRGINIA  
WATER DEVELOPMENT AUTHORITY

1201 DUNBAR AVENUE  
DUNBAR, WV 25064

Telephone (304) 558-3612  
Telecopier (304) 558-0299

July 22, 1996

Sharon Postlewait, Chairperson  
Mt. Zion Public Service District  
P.O. Box 622  
Millstone, WV 25261

PRELIMINARY APPLICATION - MT. ZION PSD - CALHOUN COUNTY SCHOOL WATER  
PROJECT

The West Virginia Infrastructure and Jobs Development Council (Council) has reviewed the preliminary application for the above-referenced project and has determined that the project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. (See attached Water Assessment Committee comments.)

The Council recommends that the Mt. Zion Public Service District (District) pursue funding of approximately \$300,000 from Rural Utilities Service, U. S. Department of Agriculture. The District may be eligible for Infrastructure Fund assistance of approximately \$169,200, and the Council's decision is being deferred pending final determination of the project's eligibility and readiness to proceed. Please note that this letter does not constitute funding approval by these agencies.

Please immediately notify the Council upon the District's receipt of either a commitment or denial of funding from Rural Utilities Service. Upon such notification, the Council will review the District's need for funding from the Infrastructure Fund and determine whether a notice of eligibility letter should be issued. Such determination will be based in part upon the District's readiness to proceed with the project.

If you have any questions, please contact Susan J. Riggs, Executive Secretary of the Council, at (304) 558-3612.

A handwritten signature in cursive script, appearing to read "Daniel B. Yarbosky".

for RUSSELL L. ISAACS, CHAIRMAN  
WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL

cc: Jim Anderson

201 THIRD STREET  
PARKERSBURG, WEST VIRGINIA 26101  
304/465-2345

Is your RETURN ADDRESS completed on the reverse side?

**SENDER:**

- Complete items 1 and/or 2 for additional services.
- Complete items 3, 4a, and 4b.
- Print your name and address on the reverse of this form so that we can return this card to you.
- Attach this form to the front of the mailpiece, or on the back if space does not permit.
- Write "Return Receipt Requested" on the mailpiece below the article number.
- The Return Receipt will show to whom the article was delivered and the date delivered.

I also wish to receive the following services (for an extra fee):

1. ☐ Addressee's Address
2. ☐ Restricted Delivery

Consult postmaster for fee.

3. Article Addressed to:

Director IRS  
Philadelphia, PA  
19255

4a. Article Number

P-170-070-975

4b. Service Type

- |                                                         |                                               |
|---------------------------------------------------------|-----------------------------------------------|
| <input type="checkbox"/> Registered                     | <input checked="" type="checkbox"/> Certified |
| <input type="checkbox"/> Express Mail                   | <input type="checkbox"/> Insured              |
| <input type="checkbox"/> Return Receipt for Merchandise | <input type="checkbox"/> COD                  |

7. Date of Delivery

8. Addressee's Address (Only if requested and fee is paid)

5. Received By: (Print Name)

6. Signature: (Addressee or Agent)

X

PS Form 3811, December 1994

Mt. Zion PSD

Domestic Return Receipt

Thank you for using Return Receipt Service.

Via Certified Mail-Return Receipt  
Requested No. P-170-070-975

Director  
Internal Revenue Service  
Philadelphia, PA 19255

Re: \$40,000 Mt. Zion Public Service District,  
Water Revenue Bonds, Series 1998

Gentlemen:

Enclosed is a Form 8038-GC filed on behalf of the Mt. Zion Public Service District, Grantsville, West Virginia which provides the information required by Section 149(e) of the Internal Revenue Code of 1986, as amended. We have also enclosed a file copy to be returned to our office (after acknowledging receipt of the same) in the enclosed self-addressed, stamped envelope.

Sincerely yours,

W. K. Bragg, Jr.

William K. Bragg, Jr.

WKB/bas  
Enclosure

**Information Return for Small Tax-Exempt  
Governmental Bond Issues, Leases, and Installment Sales**

► Under Internal Revenue Code section 149(e) ► For calendar year ending 19 \_\_\_\_\_

OMB No. 1545-0720

(Use Form 8038-G if the issue price of the issue is \$100,000 or more.)

**Part I Reporting Authority** Check box if Amended Return ► ☐

1 Issuer's name  
**Mt. Zion Public Service District**

2 Issuer's employer identification number  
**55 0489358**

3 Number and street (or P.O. box if mail is not delivered to street address)  
**P.O. Box 122**

Room/suite

4 City, town, or post office, state, and ZIP code  
**Grantsville, WV 26147**

**Part II Description of Obligations**

5 Issue price of small tax-exempt governmental obligations reported on this form. . . . .

**5 40,000**

6 Check the box that most nearly approximates the weighted average maturity of the obligation(s):

- a ☐ Less than 5 years
- b ☐ From 5 to 10 years
- c ☒ More than 10 years

7 Check the box that most nearly approximates the weighted average interest rate on the obligation(s):

- a ☒ Less than 5%
- b ☐ From 5% to 10%
- c ☐ More than 10%

8 Total issue price of the obligation(s) reported on line 5 that is/are:

- a Obligation(s) issued in the form of a lease or installment sale . . . . .
- b Obligation(s) designated by the issuer under section 265(b)(3)(B)(i)(III) . . . . .
- c Obligation(s) issued to refund prior issues . . . . .
- d Loans made from the proceeds of another tax-exempt obligation . . . . .

**8a****8b****8c****8d**9 Check box if issuer has elected to pay a penalty in lieu of arbitrage rebate . . . . . ☐**Please  
Sign  
Here**

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete.



Issuer's authorized representative

**5/20/98**

Date

**Sharon Postalwait, Chairman**

Type or print name and title

**Paperwork Reduction Act Notice**

We ask for the information on this form to carry out the Internal Revenue laws of the United States. You are required to give us the information. We need it to ensure that you are complying with these laws.

The time needed to complete and file this form varies depending on individual circumstances. The estimated average time is:

**Learning about the law or the form** . . . . . 1 hr., 46 min.

**Preparing the form** . . . . . 2 hr., 50 min.

**Copying, assembling, and sending the form to the IRS** . . . . . 16 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can write to the **Internal Revenue Service**, Attention: Tax Forms Committee, PC:FP, Washington, DC 20224. **DO NOT** send the form to this address. Instead, see **Where To File** on page 2.**General Instructions**

Section references are to the Internal Revenue Code unless otherwise noted.

**Purpose of Form**

Form 8038-GC is used by issuers of tax-exempt governmental obligations to provide the IRS with the information required by section 149(e) and to monitor the requirements of sections 141 through 150.

**Who Must File**

Issuers of tax-exempt governmental obligations with issue prices of less than \$100,000 must file Form 8038-GC.

Issuers of a tax-exempt governmental obligation with an issue price of \$100,000 or more must file **Form 8038-G**, Information Return for Tax-Exempt Governmental Obligations.**Filing a separate return.**—Issuers have the option to file a separate Form 8038-GC for any tax-exempt governmental obligation with

an issue price of less than \$100,000. Each such separate return should specify the calendar year in which the issue was issued.

An issuer of a tax-exempt bond used to finance construction expenditures must file a separate Form 8038-GC for each issue to give notice to the IRS that an election was made to pay a penalty in lieu of arbitrage rebate (see line 9 instructions).

**Filing a consolidated return.**—For all tax-exempt governmental obligations with issue prices of less than \$100,000 that are not reported on a separate Form 8038-GC, an issuer must file a consolidated information return including all such issues issued within the calendar year.

Thus, an issuer may file a separate Form 8038-GC for each of a number of small issues and report the remainder of small issues issued during the calendar year on one consolidated Form 8038-GC. However, a separate Form 8038-GC must be filed to give the IRS notice of the election to pay a penalty in lieu of arbitrage rebate.

MT. ZION PUBLIC SERVICE DISTRICT  
CALHOUN COUNTY, WEST VIRGINIA

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE MT. ZION PUBLIC SERVICE DISTRICT AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF FACILITIES FOR THE DISTRIBUTION OF WATER WITHIN THE SAID DISTRICT, AND, TO THAT END, AUTHORIZING THE ISSUANCE OF A REVENUE BOND IN THE PRINCIPAL AMOUNT OF \$85,600.00; SETTING FORTH THE TERMS AND CONDITIONS OF SAID BOND; PROVIDING FOR THE PAYMENT OF SAID BOND AS TO PRINCIPAL AND INTEREST AND ESTABLISHING THE SECURITY THEREFOR; PROVIDING FOR THE RIGHTS OF THE HOLDER OF SAID BOND; AUTHORIZING THE ISSUANCE OF ADDITIONAL BONDS UNDER SPECIFIED CONDITIONS; AND FOR OTHER PURPOSES.

WHEREAS, Mt. Zion Public Service District (hereinafter sometimes called the "District") in Calhoun County, West Virginia, has heretofore been duly created and is now organized and operating under the provisions of West Virginia Code, Chapter 16, Article 13A, and the Public Service Board of said District has heretofore been organized and is now functioning as the governing body of said District, having the duties, powers, and authority as provided by said law; and

WHEREAS, the Public Service Board of said District (hereinafter sometimes called the "Board") has heretofore determined the necessity and advisability of constructing a water distribution system (herein sometimes called "Water-works System") within said District in order to supply adequate water facilities for said District and its inhabitants for agricultural, industrial, public and private uses; and

WHEREAS, under the provisions of said West Virginia Code, Chapter Article 13A, said District is authorized and empowered to construct and operate such Water-works System, and to issue revenue bonds payable as hereinafter provided from the revenues derived from such operation for the purpose of providing funds for such construction; and,

WHEREAS, the District has been approved for a development grant from the Farmers Home Administration in the amount of \$82,400.00, and desires and intends that provisions be made in and by this resolution for the issuance of revenue bond in the amount of \$85,600.00 which will be used with the grant to pay the costs of the Water-Works System, and to provide for the payment of said bond and interest thereon and to set forth the conditions and restrictions upon which such bond and any additional bonds ranking on a parity therewith to be and may be issued and outstanding; and

WHEREAS, the Board has determined to secure insurance for the payment of the principal and interest of said bond by the United States of America, acting through the Farmers Home Administration, U. S. Department of Agriculture (hereinafter called the "Government") pursuant to the provisions of the Consolidated Farmers Home Administration Act of 1961, and accordingly to provide herein those covenants and provisions required therefor by the Government; the Board having further determined that, in the absence of such insurance by the Government, the District is unable to obtain sufficient credit elsewhere to finance the Water-Works System taking into consideration prevailing private and cooperative rates and terms currently available;

NOW, THEREFORE, IT IS HEREBY RESOLVED by the Public Service Board of the Mt. Zion Public Service District of Calhoun County, West Virginia, as follows:

Section 1. Necessity. It is hereby found to be necessary that Mt. Zion Public Service District provide a portion of the financing for construction of the Water-Works System which will be comprised of one (1) 100,000 gallon steel reservoir, a chlorine contact treatment tank, turbine pump, high lift valves and other equipment, together with distribution lines and appurtenances incident and necessary thereto, as set forth with particularity in the plans prepared by J. H. Milan, Inc., Consulting Engineers, Dunbar, West Virginia, a copy of which is on file in the office of the District.

Section 2. Ratification. That all action heretofore taken by the Board (not inconsistent with the provisions of this resolution) directed toward construction of the Water-Works System and toward the issuance of the District revenue bonds for that purpose, be, and the same hereby is ratified, approved and confirmed.

Section 3. Authorization of Water-Works System. That the construction of the Water-Works System to serve the District shall be, and the same hereby ordered to be undertaken at a total cost of not exceeding \$168,000.00 be defrayed in part with the proceeds of the District's single revenue bond issued pursuant to this resolution.

Section 4. Authorization of Revenue Bond. For the purpose of defraying a portion of the cost of constructing the Water-Works System, it is hereby declared necessary that the Board make and issue, and there is hereby authorized to be issued, pursuant to the applicable provisions of Article 13 Chapter 16, West Virginia Code of 1961, one fully registered Series A. bond, bearing interest at the rate of three and seventy-five one-

hundredths (3-75/100) per centum per annum payable annually, to be sold in such manner and at such time found by the Board to be most advantageous, in the principal amount of \$85,600.00, and in substantially the form hereinafter set forth in Section 9 of this Resolution, payable both as to principal and interest solely out of the net income derived from the operation of the Water Works System, and the Board pledges irrevocably, but not necessarily exclusively, such net income to the payment of this bond and the interest thereon, the proceeds thereof to be used solely for the purpose of constructing the Water Works System.

(b) Enforcement Rights of Holder. The holder of the bond shall have the right by suit, action, mandamus or other appropriate proceeding to compel performance of the duties undertaken by the District in connection with the issuance of the bond and the duties of the District imposed by Article 13A (Section 17), Chapter 16, West Virginia Code of 1961.

(c) Tax Exemption. The bond and interest thereon shall be exempt from taxation by the State of West Virginia and any other taxing bodies of the State (Article 13A, Section 21, Chapter 16, West Virginia Code of 1961).

(d) Prepayments. Prepayments may not be made during the first five (5) years from the date of the issuance of the bond. Thereafter, prepayments scheduled installments, or any portion thereof, may be made at any time at the option of the District.

Section 5. Revenue Bond Registration. The bond is fully negotiable but shall be registered in the name of the holder in a book maintained for that purpose in the office of the Secretary of the Public Service Board of the District, such registration being noted thereon by the Secretary as Bond Registered, after which no transfer shall be valid unless made on said books and similarly noted on the bond. No charge shall be made for registration.

Section 6. Covenants Pertaining to Government Insurance. In order to secure and maintain, for the benefit of the holder of the revenue bond, insurance by the Government of the payment of the principal and interest thereof, and so long as the bond is outstanding and is so insured, the Board covenants that

(a) It will pay to the Government the insurance charge in accordance with the provisions of the Consolidated Farmers Home Administration Act of 1933 and the applicable regulations of the Farmers Home Administration;

(b) It will cause to be printed on the bond insured by the Government such form of notice of insurance endorsement as shall be specified by the Government.

(c) In the event the Government shall make any advances required meet payments on the bond insured by it, or the payment of insurance premiums other advances which may be required to protect the Government's security interest, the Board will pay in addition to the interest of the unpaid bond, interest on all such advances or expenditures in connection therewith made by the Government, at the same per annum rate specified in the bond. All such advances, expenditures and interest thereon shall be deemed payable upon demand immediately after any such expenditure by the Government. Any such amounts of the Government by the Board shall take priority over any other payments from Bond Fund Payments set forth in Section 13B hereof;

(d) It will take any and all such action as may be requested by Government and it will execute such other agreements and instruments as the Government may from time to time prescribe to enable the Government to discharge its responsibilities as insurer and collection agent for the holder of the bond insured by the Government; and

(e) If at any time it shall appear to the Government that the Board is able to call for redemption or refund the bond by obtaining a loan for such purpose from responsible co-operative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, or by other means, the Board will, upon request of the Government, redeem, refund, or accept for and accept such loan in sufficient amount to repay the Government or the holder of the bond, or both, and will take all actions as may be required in connection with such redemption or refund.

Section 7. Execution. The revenue bond shall be signed by the Chairman of the Board, sealed with the corporate seal of the District, and attested by the Secretary of the Board.

Section 8. Security. The revenue bond shall be secured by a statutory mortgage lien on the Water-Works System as provided by Chapter 16, Article 13A, West Virginia Code. The revenues of the Water-Works System, including all additions, extensions, improvements, and replacements thereof and thereto, are pledged to the Bond Fund hereinafter established after there have been first paid from such revenues the current expenses of the District.

Section 9. Revenue Bond Form. The bond issued and sold pursuant to this resolution shall be in substantially the following form:



UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF CALHOUN  
MT. ZION PUBLIC SERVICE DISTRICT  
WATER DISTRIBUTION SYSTEM REVENUE BOND  
SERIES A  
\$85,600.00

Mt. Zion Public Service District Herein referred to as the District) in the County of Calhoun, State of West Virginia, a lawfully created and existing public corporation and political subdivision of the State of West Virginia, for value received, hereby promises to pay to the UNITED STATES OF AMERICA, acting through the Farmers Home Administration, United States Department of Agriculture, (herein sometimes called the Payee), or registered assigns, the principal sum of EIGHTY FIVE THOUSAND SIX HUNDRED DOLLARS (\$85,600.00), plus interest on the unpaid principal balance at the rate of Three and Three-Fourths per centum ( $3\frac{3}{4}\%$ ) per annum. Principal and interest shall be payable in the following installments on or before the following dates:  
\$ \_\_\_\_\_ on the first day of January 196 \_\_, \$ \_\_\_\_\_  
on the first day of January 196 \_\_ and \$ \_\_\_\_\_ annually thereafter on the first day of January until the principal and said interest are fully paid, except that the final installment of the entire indebtedness evidenced hereby, if not sooner paid, shall be due and payable forty (40) years from the date of this bond.

For so long as payment of this bond is insured by the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (herein called the Government), for the benefit of the registered holder, payment of the principal and

interest shall be made through the Government as collection agent for the registered holder at the Office of the County Supervisor, Farmers Home Administration, U. S. Department of Agriculture, serving Calhoun County, West Virginia, or at such other place as may be designated by the Government by written notice addressed and mailed to the District by certified mail at least 40 days prior to an installment due date.

This bond does not in any manner constitute an indebtedness of the District within the meaning of any constitutional or statutory limitation and is payable and collectible solely out of the net income derived from the operation of the District's Water Distribution System. Payment of this bond and the interest thereon shall be made solely from, and as security for such payment therein pledged, pursuant to a resolution adopted and approved, a special fund identified as the "Mt. Zion Public Service District Revenue Bond and Interest Sinking Fund", into which the District covenants to pay from the revenue derived from the operation of its System, after provision only for all necessary and reasonable expenses of the operation and maintenance of the System, sums sufficient to pay when due the principal of and the interest on this bond, and to create and maintain a reasonable and specified reserve for such purpose. For a description of said funds and the nature and extent of the security afforded thereby for the payment of the principal of and the interest on this bond, and to create and maintain a reasonable and specified reserve for such purpose, reference is made to said resolution. A statutory mortgage lien upon the System of the District is created by the West Virginia Code, Chapter 16, Article 13A in favor of the registered owner of this bond, which lien is hereby recognized as valid and binding and shall remain in effect until the payment in full of the principal of and interest on this bond.

Bonds in addition to this bond, subject to designated conditions, may be issued and made payable from said net revenues of the System and having a lien thereon on a parity with the lien of this bond in accordance with the provisions of said resolution.

The District covenants and agrees with the registered holder of this bond and each and every person who may become the owner hereof that it will keep and perform all of the covenants of said resolution, including, without limiting the generality of the foregoing, its covenant against the sale or mortgage of said water distribution system or any part thereof and including its covenant that it will fix, maintain and collect rates for services rendered by said System to produce revenues or earnings sufficient to pay the annual operation and maintenance expenses, the cost of a repair and replacement fund, and the principal of and interest on the bond and any other obligations payable from the revenues of said System, including the reserves provided by said resolution.

On or after five years from the date of this bond the District shall have the right to make prepayments of scheduled installments, or and portion thereof, at any time. So long as the bond is insured by the Government prepayments made by the District may, at the option of the Government, be remitted by the Government to the holder promptly, or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by the District, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date

of the prepayment by the District, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

If and for so long as payment of principal and interest of this bond is insured by the Government, each successive holder of this bond shall be conclusively presumed to have appointed and accepted the Government as the collection agent to receive, and receipt in the Government's name for, payments of interest on and principal of this bond. As between the holder and the District, for the purposes of the provisions of this bond and the authorizing resolution, such insurance by the Government shall be conclusively presumed to be and remain in effect so long as a notice of insurance endorsement, executed by the Government, appears on the back of this bond, or until a designated effective date of cancellation of such insurance specified in a cancellation endorsement executed by the Government.

This bond is exempt from taxation by the State of West Virginia and other taxing bodies of the State.

This bond is transferrable as provided in the resolution by the registered holder hereof only upon books kept by the Bond Registrar.

It is hereby certified, recited, and declared that all acts, conditions, and things required to exist, happen and be performed precedent to and in the issuance of this bond have existed, have happened, and have been performed in due time, form and manner as required by law, that the amount of this bond, together with all obligations of the District, does not exceed any limits prescribed by the Constitution and statutes of the State of West Virginia, and that a sufficient portion of the net operating income of the water distribution system of the District has been pledged to and will be set aside into the Bond Fund for the prompt payment of the installments of this principal of and interest on this bond.

IN WITNESS WHEREOF, Mt. Zion Public Service District has caused this bond to be signed by the Chairman of its Governing Public Service Board and its corporation seal to be hereunto affixed and attested by the Secretary of said Board, all as of the \_\_\_\_ day of \_\_\_\_\_, 1966.

MT. ZION PUBLIC SERVICE DISTRICT

by: \_\_\_\_\_  
Chairman of its Public Service Board

(CORPORATE SEAL)

\_\_\_\_\_  
Secretary of its Public Service Board

REGISTRATION

(No writing below except by the Bond Registrar)

Date of Registration	Name of Registered Owner	Signature of Bond Registrar
_____	_____	_____
_____	_____	_____
_____	_____	_____

Section 10. Disposition of Revenue Bond Proceeds.

A. Construction Account. The proceeds derived from the sale of the bond herein authorized, any grants received from the United States of America, and any other funds received for acquiring and constructing the Water Works System, shall be deposited promptly upon receipt thereof in a separate account in a bank or banks which are members of the Federal Deposit Insurance Corporation designated by the Board, and approved by the Government, which account shall be known as the "Mt. Zion Public Service District Revenue Bond Construction and Acquisition Account". At the time for the deposit of the funds in the bank, the Board, the Bank, and the County Supervisor of the Farmers Home Administration at Grantsville, West Virginia, shall execute a deposit agreement on Form FHA 402- "Deposit Agreement"; the construction account shall be joint account and any withdrawal of funds therefrom shall be subject to the countersignature of the County Supervisor of the Farmers Home Administration pursuant to the terms of that agreement. The proceeds of the bonds in excess of \$10,000.00 shall be secured by such bank in accordance with U. S. Treasury Circular No. 176 before such proceeds are deposited. The moneys in the construction account, except as herein otherwise specifically provided, shall be used and paid out solely for the purpose of acquiring and constructing the Water Works System only upon warrants or checks drawn and signed by the Chairman of said District and its Treasurer, and the counter-signature of the FHA County Supervisor. No such warrant for any sum for any actual construction work or purchase of construction materials pursuant to terms and provisions of construction contracts shall be issued until the Board has received engineering approval certifying that such sum is due and owing for work under such contracts, nor until the Board has adopted a resolution accepting such certificate and directing the drawing of such warrant or check. The designated approval shall be by the consulting engineer whose approval must be in the form of a written certificate stating that the payment therein approved is being made to pay for materials supplied and work satisfactorily completed in substantial accordance with the plans and specifications for the work involved. Such certificates of approval shall be in appropriate form, shall be signed by the engineer or his duly accredited representative, and shall be filed with the Secretary of the Board prior to the time such payment or payments are authorized by resolution.

With respect to non-construction costs and expenses, such as purchase of land, easements, rights of way, legal fees, and other acquisition expenses,

B. Disposition of Construction Account Residue. When all work of constructing and purchasing the Water Works System shall have been completed in accordance with such plans and specifications, and all amounts due therefor shall have been paid, the consulting engineer shall file with the depository bank a certificate so stating. Thereupon, any balance remaining in the Construction Account other than grant funds shall be deposited in the Reserve Account set out in Section 13 C hereof. Any funds representing grant funds shall be disbursed in accordance with the grant agreement between the District and the Farmers Home Administration.

Section 11. Fiscal Year. The fiscal year of the District shall begin on the first day of January in each year and shall end on the thirty-first day of December thereof.

Section 12. Revenue Fund. So long as any of the bond herein authorized remains unpaid, either as to principal or interest, or both, the entire gross income and revenues of the Water Works System shall be set aside and deposited in an insured bank into the special fund which is hereby created and which shall be known as the "Mt. Zion Public Service District Revenue Fund".

Section 13. Administration of Revenue Fund. So long as any of the bond hereby authorized and issued remains unpaid, either as to principal or interest, or both, the following payments shall be made from the Revenue Fund:

A. Operation and Maintenance Fund. As a first charge on the Revenue Fund, there shall be set aside each month as an operation and maintenance fund for the Water Works System, such sums as the Board shall determine in accordance with an approved budget to be necessary for operation and maintenance expenses. Any surplus remaining at the end of the fiscal year and not needed for operation and maintenance purposes shall remain in the operation and maintenance fund and be used for the purposes of such fund.

B. Bond Fund. Subject to the provisions of Paragraph A of this Section 13, and as a second charge on said Revenue Fund, there shall be deposited into a bank account hereby created and to be known as the "Mt. Zion Public Service District Revenue Bond and Interest Sinking Fund", the following

(1) Monthly, commencing as soon as revenues are available from the Water Works System, an amount which, together with equal subsequent monthly deposits, will provide a sum equal to the amount necessary to pay the next maturing installment of principal and interest on the bond hereby authorized.

C. Reserve Fund. Subject to the provisions of Paragraphs A and B of this Section 13, and as a third charge on the said Revenue Fund, there shall be transferred monthly a sum at least equal to not less than twenty percent (20%) of the total amount deposited monthly into the Bond Fund as provided by Paragraph B (1) of this Section 13, into a separate fund hereby created to be known as the "Mt. Zion Public Service District Water Works System Revenue Bond Reserve Fund" until a reserve has been accumulated in an amount equal to not less than Four Thousand Five Hundred Dollars (\$4,500.00), herein designated as the "minimum reserve", and thereafter such amount or amounts, if any, shall be deposited monthly from any moneys remaining in the Revenue Fund into the Reserve Fund necessary to maintain the Reserve Fund as a continuing reserve in an amount not less than the specified minimum reserve to meet possible deficiencies in the Bond Fund. No payment need be made into the Reserve Fund so long as the moneys therein shall equal not less than the minimum reserve. The moneys in the Reserve Fund shall be accumulated and maintained as a continuing reserve and shall be used only to prevent deficiencies in the payment of the principal of, or interest on, the bond hereby authorized, resulting from the failure to deposit into the Bond Fund sufficient funds to pay said principal and interest as the same shall accrue.

D. Defraying Delinquencies in Bond Fund. If, in any month, the Board shall, for any reason, find it necessary to use money from the Reserve Fund to pay any installment of principal of or interest on said bond, the money so used shall be replaced in the Reserve Fund from the first revenues thereafter received from the operation of the system not required to be otherwise applied. If, in any month, the Board shall, for any reason, fail to pay into the Bond Fund, the full amount above stipulated from the Revenue Fund, the difference between the amount paid and amount so stipulated shall, in a like manner, be paid therein from the first revenues thereafter received from the operation of the system not required to be otherwise applied. The moneys in the Bond Fund shall be used solely and only for the purpose of paying the principal of and the interest on the bond issued hereunder; PROVIDED, however, that any moneys at any time in excess of the minimum reserve provided in the Reserve Fund may be withdrawn therefrom and used as herein provided for the prepayment of installments on the bond hereby authorized.



E. Repair and Replacement Fund. After satisfying the requirement of Paragraphs A, B, C and D of this Section 13, from any money then remaining in the Revenue Fund, there shall be deposited into an account to be known as the "Mt. Zion Public Service District Water Works System Repair and Replacement Fund" not less than Fifty Dollars (\$50.00) monthly, until such Repair and Replacement Fund equals Four Thousand Five Hundred Dollars (\$4,500.00). Withdrawals may be made from said Repair and Replacement Fund only for the purpose of repairs, replacements of equipment, and any expenditure necessary to the efficient operation of the system. In the event funds in the Bond Fund (Section 13 B hereof) and Reserve Fund (Section 13 C hereof) should be reduced below the amount required to meet the current debt service plus the said reserve of \$4,500.00, the funds on deposit in the Repair and Replacement Fund may be transferred to the Bond Fund to the extent required to eliminate the deficiency in said Bond Fund.

F. Payment for Additional Obligations. Any balance remaining in the Reserve Fund, after making the payments hereinabove provided, may be used at the Board for the payment of interest on and the principal of, additional bond or other obligations hereafter authorized to be issued and payable from the revenues of the Water Works System, including reasonable reserves therefor, as the same accrues; PROVIDED that the lien of such additional bonds or other obligations on the net income and revenues of the Water Works System and the pledge thereof for the payment of such additional obligations shall be on a parity with, or subordinate to, the lien and pledge of the bond herein authorized as hereinafter provided.

G. Places and Times of Deposits. Each of the funds and accounts hereinabove designated in Sections 12 and 13 hereof, shall be maintained and kept separate from all other funds and accounts in an insured Bank. Each monthly payment shall be made into the proper fund and account not later than the fifteenth day of each month, except that when the fifteenth day of any month shall be a Sunday or a legal holiday, then such payment may be made on the next succeeding secular day.

H. Fiscal Year Budget. Prior to December 1st of each year beginning December 1st, 1966, the Board will prepare a budget for the ensuing fiscal year of the Water Works System, covering prospective revenues and receipts, operations

and maintenance expenses, and deposits to be made during such fiscal year in the Bond Fund (Section 13E), the Reserve Fund (Section 13C), and the Repair and Replacement Fund (Section 13E). A copy of such budget will be forwarded promptly to the State Director of the Farmers Home Administration or other official designated by the Government and a copy will be made available to any holder of the bond who shall request the same.

#### Section 14. Additional Bonds.

A. Approval by Government. That the District shall not incur any additional indebtedness to be paid from a pledge of the revenues of the Water-Works System, without the prior written approval of the State Director of the Farmers Home Administration for the State of West Virginia, so long as any part of the bond issued under this resolution remains unpaid.

#### B. Limitations upon Issuance of Parity Obligations.

That nothing in this resolution contained shall be construed in such a manner as to prevent the issuance, but so long as the bond hereby authorized is insured by the Government, with prior approval of the State Director of the Farmers Home Administration, by the District of additional bonds or other obligations payable from the income or any revenues derived from the operation of the Water-Works System and constituting a lien upon said revenues on a parity with, but not prior nor superior to, the lien of the bonds herein authorized, nor to prevent the issuance of bonds or other obligations refunding all or a part of the bond herein authorized, provided, however, that the Board is not, and has not been, in default as to any payments required to be made in Section 13 hereof for a period of not less than twenty-four months immediately preceding the issuance of such additional bonds or other obligations, or if the bond herein authorized has not been issued and outstanding for a period of at least twenty-four months for the longest period any of the bonds herein authorized have been issued and outstanding; and provided, that before any such additional parity bonds or other parity obligations are authorized or actually issued, other than refunding bonds or other refunding obligations (unless any lien on any revenues of the Water-Works System of the obligations refunded is subordinate to the lien of the bond herein authorized and the lien on revenues of the Water-Works System of the refunding obligations is on a parity with the lien thereon of the bond herein authorized), the annual earnings derived from the operation of the Water-Works System for the fiscal year immediately preceding the date of the issuance of such additional bonds or other obligations shall have been sufficient to pay the cost

of operation and maintenance of the Water-Works System for said fiscal year, and, in addition, sufficient to pay an amount representing one hundred fifty per cent (150%) of the average annual principal and interest requirements (herein referred to as the "debt service" requirements) on the then outstanding revenue bonds and other obligations of the District payable from the revenues of the Water-Works System; and provided further, that the estimated average annual earnings of said Water-Works System for the life of the then outstanding revenue bonds and the proposed revenue bonds, all payable from the revenues of the Water-Works System, shall have been sufficient to pay the estimated average annual costs of operation and maintenance of the Water-Works System for the life of both the then outstanding and the proposed revenue bonds, and, in addition, sufficient to pay an amount representing one hundred fifty per cent (150%) of the debt service requirements of the then outstanding revenue bonds combined with the debt service requirements of the proposed additional revenue bonds; provided, further, that the annual earnings derived from the operation of the Water-Works System need not equal 150% of the debt service requirements of the outstanding and the proposed additional revenue bonds or other obligations in the event the Government is the purchaser or the insurer of any such additional bonds or obligations.

C. Certification and Estimation of Earnings. A written certification by a Certified Public Accountant that said earnings for the said fiscal year immediately preceding the new obligation, when adjusted as hereinafter provided, are sufficient to pay said amounts, shall be conclusively presumed to be accurate in determining the right of the District to authorize, issue, sell and deliver said additional bonds or other obligations on a parity with the bond herein authorized. Any necessary estimate of future earnings of the Water-Works System shall be prepared by a consulting engineer.

D. Consideration of Additional Expenses. In determining whether or not additional parity bonds or other parity obligations may be issued as aforesaid, consideration shall be given to any probable increase (but not reduction) in operation and maintenance expenses that will result from the expenditure of the funds proposed to be derived from the issuance and sale of the said bond or other obligation.

E. Junior Obligations Permitted. Nothing herein contained shall be construed so as to prevent the District from issuing bonds or other obligations payable from the revenues of the Water-Works System and having a lien thereon

subordinate, inferior and junior to the lien of the bonds authorized to be issued by this resolution; provided, however, that so long as the bond authorized hereby is insured by the Government prior written approval is obtained from the state Director of the Farmers Home Administration.

F. Superior Obligations Prohibited. Nothing herein contained shall be construed so as to permit the District to issue bonds or other obligations payable from the revenues of the Water-Works System and having a lien thereon prior and superior to the bonds herein authorized to be issued.

Section 15. Refunding Bonds. That the provisions of Section 11 hereof are subject to the exception that if at any time after the bonds or other obligations herein or hereafter authorized, or any part thereof shall have been issued, the Board shall find it desirable to refund such bonds or other obligations, said bonds or other obligations or any part thereof, may be refunded (but only with the consent of the holder or holders thereof, unless the bonds or other obligations have matured, or are then callable for prior redemption, and have been properly called), without changing the priority of the lien for the payment of the refunding obligations on the revenues of the Water-Works System, except as provided in Paragraph B of Section 11 hereof; and the refunding bonds or other obligations so issued shall enjoy complete equality of lien with the portion of said bonds or other obligations which is not refunded, if any there be; and the holder or holders of the refunding bonds or other obligations shall be subrogated to all of the rights and privileges enjoyed by the holder or holders of the bonds or other obligations refunded thereby; provided, however that if only a part of the outstanding bonds or other obligations is refunded, and if such bond or other obligations are refunded in such manner that the interest rate thereof is increased or if any refunding obligation matures at an earlier date than the maturity date of the corresponding obligations refunded thereby, then such obligations may not be refunded without the consent of the holder or holders of the unrefunded portion of said obligation; and that the refunding bonds or other obligations shall either be sold for cash at not less than the parvalue and accrued interest, and the proceeds there shall be used to pay the obligations refunded, or if so permitted by law, and then only with the consent of the holder or holders of the obligations refunded the refunding obligations shall be delivered dollar for dollar in exchange for the bonds or other obligations refunded.

Section 16. Protective Covenants. That the District hereby covenants and agrees with each and every holder of the bonds issued hereunder

A. Use of Bond Proceeds. That the District will proceed, without delay, to acquire and construct the Water-Works System, as hereinabove provided

B. Use Charges. That while the bond authorized herein remains outstanding and unpaid, the rates for all services rendered by the Water-Works System to all consumers within or without the boundaries of the District shall be reasonable and just, taking into account and consideration the cost and value of the Water-Works System and the proper and necessary allowance for the depreciation thereof and the amounts necessary for the retirement of the bond and other securities or obligations payable from the revenues of the system, the accruing interest thereon, and reserves therefor; and there shall be charged against all purchasers of service, such rates and amounts as shall be adequate to meet the requirements of this and the preceding sections hereof and which shall be sufficient to produce revenues or earnings annually to pay the annual operation and maintenance expenses, the costs of all essential replacements and repair, the principal of and interest on the revenue bond, and any other obligations payable from the revenues thereof, plus reserves thereof, all of which revenues derived from the operation of the Water-Works System shall be subject to distribution in accordance with provisions of Section 13 and that no free service or facilities shall be furnished by the Water-Works System to anyone.

C. Levy of Charges. That the District will, prior to the delivery of the Revenue Bond herein authorized, fix, establish and levy the rates and charges which are required by Section 16B hereof. No reduction in the initial rate schedule for the Water-Works System may be made unless:

(1) The District has fully complied with all of the provisions of Sections 12 and 13 of this resolution for at least the full calendar year immediately preceding such proposed reduction of the initial rate schedule;

(2) The Reserve Fund provided in Section 13 has been built up to the required minimum reserve of \$4,500.00, and the Repair and Replacement Fund provided in Section 13B has been built up the required minimum of \$4,500 and

(3) The audit required to be made by the Certified Public Accountant by Section 16C of this resolution for the full fiscal year immediately preceding such proposed rate reduction discloses that the estimated revenues which will

result from the proposed rate schedule will be sufficient to produce adequate revenues or earnings annually to pay the annual operation and maintenance expenses, the costs of all essential replacements and repairs to the Water-Works System, the principal of and interest on the Revenue bonds, and any other obligations payable annually from the revenues of the Water-Works System, and provide payments for the reserve fund required by this resolution; and

(4) The prior written approval of the State Director of the Farmers Home Administration has been obtained, so long as the revenue bond issued hereunder is insured by the Government.

D. Efficient Operation. That the District will operate the Water-Works System, so long as the bond herein authorized is outstanding, will maintain said Water-Works System in efficient operating condition and will make such improvements, extensions, enlargements, repairs and betterments thereto as may be necessary or advisable to insure its economical and efficient operation at all times.

E. Records. That so long as the Bond remains outstanding proper books of record and account will be kept by the District, separate and apart from all other records and accounts, showing complete and correct entries of all transactions relating to the system. Such books shall include (but not necessarily be limited to) monthly records showing:

- (1) The number of customers
- (2) The total revenues received from charges to customers
- (3) A detailed statement of the expenses of the system.

F. Right to Inspect. That any holder of the bond, or any duly authorized agent or agents of such holder, or representative of Farmers Home Administration, shall have the right at all reasonable times to inspect all records, accounts and data relating thereto, and to inspect the system and all properties comprising the system.

G. Audits. That the District further agrees that it will, within sixty days following the close of each fiscal year, cause an audit of such books and accounts to be made by a Certified Public Accountant, showing the receipts and disbursements for the account of the water-works system, and that such audit will be available for inspection by any holder of said bond. Each audit, in addition to whatever matters may be thought reasonable, shall detail the financial condition and records of the District and the Water-Works System, including the rates, number and type of connections, and the status of the several funds hereinbefore created, and a list of the insurance policies in force at the end of the fiscal year, setting out as to each policy the amount of the policy, the

All expenses incurred in the making of the audits and reports required by this section shall be regarded and paid as a maintenance and operation expense. The District agrees to furnish forthwith a copy of each of such audits and reports to the State Director of the Farmers Home Administration, and to any bond held upon request after each such audit and report has been prepared, and that any such holder shall have the right to discuss with the accountant or person taking the audit and report, the contents thereof, and to ask for such additional information as he may reasonably require.

H. Billing Procedure. That all bills for water service or facilities furnished by or through the Water-Works System shall be rendered to customers monthly and shall be due on the date rendered. Ten per cent (10%) shall be added to the net amount of each bill not paid in full within ten (10) days after the date of the bill; and in the event said bills are not paid within thirty (30) days after the date rendered, water and water service shall be discontinued, and the rates and charges due shall be collected in a lawful manner. The District shall have a lien on each lot or parcel of land served by said Water-Works System for charges imposed for all service rendered by said System. Notices of such liens shall be filed and liens shall be enforced as provided by the laws of West Virginia.

I. Charges and Liens, Revenues, and Water-Works. That from the revenues of the Water-Works System, the District will pay all taxes and assessments or other municipal or governmental charges, if any, lawfully levied, assessed upon or in respect to said Water-Works System, or any part thereof, when the same shall become due, and it will duly observe and comply with all valid requirements of any municipal or governmental authority relative to any part of the Water-Works System; and the District will not create or suffer to be created any lien or charge upon the Water-Works System or upon the revenues therefrom, except as permitted by this Resolution, and it will make adequate provision to satisfy and discharge within sixty days after the same shall accrue all lawful claims and demands for labor, materials, supplies or other objects, which, if unpaid, might by law become a lien upon the Water-Works System or upon the revenues therefrom: PROVIDED, HOWEVER, that nothing herein shall require the District to pay or cause to be discharged, or make provision for, any such tax assessment, lien or charge before the time when payment thereof shall be due or so long as the validity thereof shall be contested in good faith by appropriate legal proceedings.

J. Insurance. That the District, in its operation of the Water-Works System, will carry fire and extended coverage insurance, workmens' compensation insurance, if required by State law, and public liability insurance and other types of insurance, in such amounts and to such extent as is normally carried by private corporations operating public utilities of the same type. The cost of such insurance shall be considered one of the operational costs of the system. In the event of property loss or damage, insurance proceeds shall be used first for the purpose of restoring or replacing the property lost or damaged; any remainder shall be treated as net income, and shall be subject to distribution in the manner provided hereinabove in Section 13 hereof, for net income and revenues derived from the operation of the system.

K. Competing System. That as long as the bond hereby authorized outstanding, the District shall not permit (except as it may legally be required to do so) any person, association, firm or corporation to distribute and sell domestic water, water service or facilities, to any consumer, public or private within the area served by the Water-Works System.

L. Alienation System. That the District will not sell, lease, mortgage, pledge, or otherwise encumber, or in any manner dispose of, or otherwise alienate, the Water-Works System, or any part thereof, including any and all extensions and additions that may be made thereto, until the bond herein authorized to be issued shall have been paid in full, both principal and interest, except that so long as the bond is insured by the Government, the District, with the prior written approval of the State Director of the Farmer Home Administration, may sell any portion of said property which shall have been replaced by other property of at least equal value, or which shall cease to be necessary for the efficient operation of the system, but in no manner nor to such extent as might prejudice the security for the payment of the bond herein authorized, PROVIDED, HOWEVER, that in the event of any sale as aforesaid, the proceeds of such sale shall be distributed as net income of the system in accordance with the provisions of Section 13 hereof. --

M. Surety Bonds. That each official or other person having custody of any funds derived from operation of the Water-Works System or responsible for their handling, shall be bonded for the full faithful performance of his duty in an amount at least equal to the total funds in his custody at any one time. The cost of each such bond shall be considered one of the operating costs of



N. Competent Management. That the District shall employ experienced and competent management personnel for the Water-Works System. In the event of default on the part of the District in paying principal of or interest on said bond promptly as each falls due, or in the keeping of any covenants herein contained, and if such default shall continue for a period of sixty days, or if the net revenues of the system in any fiscal year should fail to equal at least the amount of the principal of and interest on the revenue bond and other obligations (including all reserves therefor specified in this resolution) payable from said net revenues in that fiscal year, the District shall retain a firm of competent management engineers skilled in the operation of water systems to assist the management of the Water-Works System so long as such default continues or the net revenues are less than the amount hereinabove designated.

O. Performing Duties. That the District will faithfully and punctually perform all duties with respect to the Water-Works System required by the Constitution and laws of the State of West Virginia and the resolution of the District, including but not limited to the making and collecting of reasonable and sufficient rates and charges for services rendered or furnished by the system as hereinbefore provided, and the proper segregation of the revenues of the Water-Works System and their application to the respective funds.

P. Other Liens. That other than as provided by this resolution, there are no liens or encumbrances of any nature whatsoever, on or against the Water-Works System or the revenues derived or to be derived from the operation thereof.

Q. District's Existence. That the District will maintain its corporate identity and existence so long as any of the bonds herein authorized remain outstanding.

R. Completion Bonds. That in order to insure the completion of the Water-Works System, and to protect the holder of the bond, the District will require that the contractor, to whom is given any contract for construction appertaining to the Water-Works System, furnish to the District a completion bond or bonds satisfactory to the District and the Government, and that any sum or sums derived from such completion bond or bonds shall be used within six months after such receipt for the completion of said construction, and if not so used within such period, shall be placed in and be subject to the provisions of the Revenue Fund provided for herein.

Section 17. Events of Default. That each of the following events is hereby defined as an "event of default":

A. Nonpayment of Principal and or Interest. If payment of any installment of principal and or interest of the bond herein authorized to be issued shall not be made when the same shall become due and payable, or within 30 days thereafter.

B. Incapability to Perform. If the District shall for any reason be rendered incapable of fulfilling its obligations hereunder.

C. Default of any Provision. If the District shall make default in the due and punctual performance of its covenants or conditions, agreements or provisions contained in the bond and in this resolution on its part to be performed, and if such default shall continue for sixty (60) days after written notice specifying such default, and requiring the same to be remedied shall have been given to the District by the holder of the bond.

Section 18. Remedies for Defaults. That upon the happening and continuance of any of the events of default as provided in Section 17 of this resolution, then and in every case the Government as insurer of the bond may proceed against the District, its governing body, and its agents, officers and employees to protect and enforce the rights of the holder of the bond under this resolution by mandamus or other suit, action or special proceedings in equity at law, in any court of competent jurisdiction, either for the appointment of a receiver or for the specific performance of any covenant or agreement contained herein or in an award of execution of any power herein granted for the enforcement of any power, legal or equitable remedy as may be deemed most effectual to protect and enforce the rights aforesaid, or thereby to enjoin any act or thing which may be unlawful or in violation of any such right or to require the governing body of the District to act as if it were the trustee of an express trust, or any combination of such remedies. Any receiver appointed in any proceedings to protect said rights, the consent to any such appointment being hereby expressly granted, may enter and take possession of the Water-Works System, operate and maintain the same, prescribe rates, fees or charges and collect, receive and apply all revenues arising after the appointment of such receiver in the same manner as the District itself might do. The failure so to proceed shall not relieve the District or any of its officers, agents or employees of any liability for failure to perform any duty. Each such right or privilege of the bondholder (or trustee thereof) is in addition and cumulative to any other right or privilege, and the exercise of any such right or privilege

Section 19. Compensation of Board Members. The District hereby covenants and agrees that the total annual salaries to be paid to the members of its Board shall not exceed Five Hundred Dollars (\$500.00), the said amount of \$500.00 to be allocated to the Board members by resolution enacted by the Board. The District further covenants and agrees that the aggregate salaries paid to all employees shall not exceed the amount paid for similar work to employees of comparable water systems.

Section 20. Amendment of Resolution. This resolution may be amended or supplemented by resolution adopted by the Board in accordance with the laws of the State of West Virginia, but no such amendment or supplement by way of resolution or otherwise shall be adopted so long as the bond is insured by the Government, without the prior written consent of the State Director of the Farmers Home Administration.

Section 21. "Equal Opportunity for Employment". In the letting of construction contracts and otherwise as may be applicable, the District covenants that it will comply with all provisions of Executive Order No. 11246 of the 24 day of September, 1965, and the rules, regulations and relevant orders of the Secretary of Labor, and, for that purpose, the Chairman and Secretary are hereby authorized and directed to require compliance therewith, and, to that end, to execute such documents as may be required by representatives of the Government.

Section 22. Severability Clause. If any section, paragraph, clause or provision of this Resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution.

Section 23. Repealer Clause. All resolutions and orders, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflict, hereby repealed.

Section 24. Resolution a Contract Subject to Enabling Acts and Regulations. The provisions of this Resolution are subject to the West Virginia Code, Chapter 16, Article 13A, and the applicable regulations of the Farmers Home Administration, and shall constitute a contract between the District and the Government so long as the bond is insured by the Government.

Section 25. Effective Date. This Resolution shall be effective immediately upon its adoption.

Passed, ratified, and adopted, in meeting duly assembled, this 14<sup>th</sup> day of July, nineteen hundred and sixty-six.

MT. ZION PUBLIC SERVICE DISTRICT

By Sam F. Shook  
Chairman of its Public Service Board

CERTIFICATION

I, Mildred Kerley, Secretary of the Public Service District Board of the Mt. Zion Public Service District, Calhoun County, West Virginia, do hereby certify that at a meeting of said Board duly called and held on the 14<sup>th</sup> day of July, 1966, the foregoing Resolution was approved and adopted by the unanimous vote of all of the members of said Board.

Dated this 14<sup>th</sup> day of July, 1966.

Mildred Kerley  
Secretary of the Board

MT. ZION PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ISSUANCE OF \$40,000 WATERWORKS REVENUE BONDS, SERIES B, OF MT. ZION PUBLIC SERVICE DISTRICT TO FINANCE CONSTRUCTION OF ADDITIONS TO ITS EXISTING WATERWORKS; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BONDS; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITIES OF THE HOLDERS OF THE BONDS AND FOR A STATUTORY MORTGAGE LIEN UPON THE SYSTEM IN FAVOR OF THE HOLDERS OF THE BONDS; AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE BOARD OF MT.  
ZION PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of Article 13A, Chapter 16 of the West Virginia Code and other applicable provisions of law. Mt. Zion Public Service District (herein called the "District") is a public service district created pursuant to said Article 13A by the County Court of Calhoun County.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

(A) The District now has a public waterworks system.

(B) It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the District, and, accordingly, it is hereby ordered, that there be constructed additions, extensions and improvements to the waterworks system of the District consisting of transmission lines to a new well with all necessary appurtenant facilities (herein called the "Project"), particularly described in and according to the plans and specifications prepared by J. H. Milam, Inc., Consulting Engineers, of Dunbar, West

Virginia (herein called the "Consulting Engineer"), and heretofore filed in the office of the Secretary of the Public Service Board of the District (herein called the "Board").

(C) It is necessary for the District to issue its revenue bonds in the principal amount of \$40,000 to finance the cost of such construction in the manner hereinafter provided.

(D) The estimated maximum cost of the construction of the Project is \$40,000, all which will be obtained from the proceeds of sale of the Series B Bonds herein authorized.

(E) The cost of such construction shall be deemed to include, without being limited to, the construction or acquisition of the Project, the acquisition of any necessary property, real or personal, or interest therein; interest on the Series B Bonds prior to, during and for six months after completion of such construction to the extent that revenues of the System are not sufficient therefor; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and such other expenses as may be necessary or incidental to the construction of the Project and the financing authorized by this resolution.

(F) The period of usefulness of the System after completion of the Project is not less than forty years.

(G) There are outstanding obligations of the District which will rank on a parity with the Series B Bonds as to lien and source of and security for payment, as follows:

The outstanding Water Distribution System Revenue Bond, Series A, of the District, dated on the 14th day of July, 1966, in the principal amount of \$85,600 (herein called the "Series A Bonds"), authorized by a resolution of the Board adopted on the 14th day of July, 1966 (herein called the "1966 Resolution").

(II) The entire principal amount outstanding of the Series A Bonds is held or insured by Farmers Home Administration. Farmers Home Administration has heretofore consented to the issuance of the Series B Bonds as herein authorized and has seen and approved a copy of this Resolution prior to the adoption hereof. Said Farmers Home Administration is expected by the Board to purchase the entire principal amount of the Series B Bonds.

(I) The District has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Series B Bonds, or will have so complied prior to issuance of any of the Series B Bonds including, among other things, the consent and approval, pursuant to the Act, of the issuance of the Series B Bonds by the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired.

Section 1.03. Resolution to Constitute Contract. In consideration of the acceptance of the Series B Bonds by those who shall hold the same from time to time, this resolution shall be deemed to be and shall constitute a contract between the District and such Bondholders, and the covenants and agreements herein set forth to be performed by the District shall be for the equal benefit, protection and security of the legal holders of any and all such Series B Bonds, and the coupons appertaining thereto, all which shall be of equal rank without preference; priority or distinction of any of the Series B Bonds or coupons over any other thereof, except as expressly provided therein and herein.

Section 1.04. Definitions. The following terms shall have the following meanings in this resolution unless the text otherwise expressly requires:

"Act" means Article 13A, Chapter 16 of the West Virginia Code.

"Board" means the Public Service Board of the District, the governing body of the District under the Act.

"Bond Fund" means the Mt. Zion Public Service District Revenue Bond and Interest Sinking Fund established by the 1966 Resolution and continued hereby.

"Bonds" means the \$40,000 Waterworks Revenue Bonds, Series B, originally authorized to be issued pursuant to this Resolution and shall also be deemed to include, where appropriate, the interest coupons appertaining to the Series B Bonds, and also includes where appropriate the Series A Bonds and the interest coupons appertaining thereto.

"Series A Bonds" means the Series A Bonds defined above.

"Series B Bonds" means the Bonds hereby authorized to be issued.

"Chairman" means the Chairman of the Board.

"Consulting Engineer" means J. H. Milam, Inc., Consulting Engineers, Dunbar, West Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the District as Consulting Engineer for the System.

"District" means Mt. Zion Public Service District, of Calhoun County, West Virginia, and, where appropriate, also means the Public Service Board thereof.

"Established by the 1966 Resolution" means also "and continued by this Resolution."

"Facilities" or "waterworks facilities" means all the facilities of the System and also any facilities which may hereafter be added to the System by any additions, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

"Fiscal Year" means each year beginning on July 1 and ending on the succeeding June 30.



"Government" means United States Department of Agriculture, Farmers Home Administration and any successor thereof.

"Herein" means in this Resolution.

"Holder of the Bonds" or "Bondholder" or any similar term means any person who shall be the bearer or owner of any outstanding Bond or Bonds registered to bearer or not registered, or the registered owner of any outstanding Bond or Bonds which shall at the time be registered other than to the bearer, or of any coupons representing interest accrued or to accrue on said Bonds.

"Net Revenues" means the balance of the gross revenues, as defined below, remaining after deduction only of operating expenses, as defined below.

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the District relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting practices, and retention of a sum not to exceed one-sixth of the budgeted operating expenses stated above for the current year as working capital, and language herein requiring payment of operating expenses means also retention of not to exceed such sum as working capital.

"Original Purchaser" means the purchaser, directly from the District, of the Series B Bonds or of any part of such series.

"Project" shall have the meaning stated in Section 1.02(B) above.

"Revenues" or "gross revenues" means all rates, rents, fees, charges or other income received by the District, or accrued

to the District, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with sound accounting practices.

"Secretary" means the Secretary of the Board.

"System" means the complete waterworks system of the District as extended and improved by the Project, including all water facilities owned by the District and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the System; and shall also include any and all additions, extensions, improvements, properties or other facilities at any time acquired or constructed for the System after completion of the Project.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.

## ARTICLE II

### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF SERIES B BONDS

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Section 2.01. Authorization of Series B Bonds. Subject and pursuant to the provisions of this Resolution, Bonds of the District, to be known as "Waterworks Revenue Bonds, Series B", are hereby authorized to be issued in the aggregate principal amount of not exceeding Forty Thousand Dollars (\$40,000) for the purpose of financing the cost of the construction and acquisition of the Project.

Section 2.02. Description of Series B Bonds. The Series B Bonds may be issued in coupon or single, fully registered form, and shall be dated on the date of delivery. The Series B coupon Bonds shall be in the denomination of \$500 each, shall be numbered in order of maturity, lowest number first (numbers to bear the prefix "B"), and shall bear interest from date, payable annually on January 1 of each year, at the rate of five per centum (5%) per annum, and shall be sold for the par value thereof. Coupon and single, fully registered Series B Bonds shall be exchangeable and interchangeable at the expense of the holder on 90 days' notice in writing to the District, provided that the single, fully registered Series B Bond issued upon initial delivery of the Series B Bonds by the District shall be exchanged for coupon Bonds at the expense of the District.

The Series B Bonds shall mature serially in numerical order, lowest numbers first, and the fully registered Series B Bond shall be payable in principal installments, on January 1 in years and amounts as follows:

<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>	<u>Year</u>	<u>Amount</u>
1976	\$ 500	1989	\$ 500	2002	\$ 1,500
1977	500	1990	500	2003	1,500
1978	500	1991	500	2004	1,500
1979	500	1992	1,000	2005	1,500
1980	500	1993	1,000	2006	1,500
1981	500	1994	1,000	2007	1,500
1982	500	1995	1,000	2008	2,000
1983	500	1996	1,000	2009	2,000
1984	500	1997	1,000	2010	2,000
1985	500	1998	1,000	2011	2,000
1986	500	1999	1,000	2012	2,000
1987	500	2000	1,000	2013	2,500
1988	500	2001	1,500		

The Series B Bonds shall be redeemable prior to their respective stated dates of maturity at the option of the District, in whole or in part, in inverse numerical order on January 1, 1985, and on any January 1 thereafter at the price of the par value thereof and accrued interest to the date of redemption, subject to earlier redemption as provided in Section 3.01 hereof upon completion of the Project. If all the Bonds are held by the United States of America, or any agency thereof, all or any number of the bonds may be redeemed at any time in inverse numerical order.

Notice of the redemption of any of the Series B Bonds shall be published at least once not less than thirty nor more than sixty days prior to the date of redemption in a financial newspaper published in the City of New York, New York, and notice of any such redemption shall be sent by registered or certified mail to the holders of registered Series B Bonds. If all Series B Bonds to be redeemed are registered other than to bearer, no publication of such redemption need be made. Interest shall cease upon any of the Series B Bonds so called for prior redemption on the date fixed for redemption, provided payment thereof has been duly made or provided for.

The Series B Bonds shall be payable with respect to both principal and interest in lawful money of the United States of America at Calhoun County Bank, Grantsville, West Virginia, or at First National

City Bank, New York, New York, at the option of the holder unless otherwise provided in and for the fully registered Series B Bonds, and shall bear interest from their date, payable in accordance with and, as to Series B Bonds in coupon form and not registered as to interest, upon the surrender of the appurtenant interest coupons as they severally mature.

Section 2.03. Execution of Series B Bonds and Coupons.

The Series B Bonds shall be executed in the name of the District by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary. In case any one or more of the officers who shall have signed or sealed any of the Series B Bonds shall cease to be such officer before the Series B Bonds so signed and sealed shall have been actually sold and delivered, such Series B Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Series B Bonds had not ceased to hold such office. Any Series B Bond may be signed and sealed on behalf of the District by such person as at the actual time of the execution of such Series B Bonds shall hold the proper office on the Board, although at the date of such Series B Bond such person may not have held such office or may not have been so authorized.

The Series B Bonds may be sold at one time in their entirety or from time to time in installments as the Board may determine, without preference or priority as to any of the Series B Bonds on account of any such sale in installments.

The coupons to be attached to the Series B Bonds shall be authenticated with the facsimile signatures of the present or any future Chairman and Secretary, and the District may adopt and use for that purpose the facsimile signature of any person who shall have been such Chairman or Secretary at the time when the Series B Bonds shall be actually sold and delivered.

Section 2.04. Negotiability and Registration. The Series B coupon Bonds shall be and have all the qualities and incidents of negotiable instruments under the laws of the State of West Virginia and shall pass by delivery except when registered. The Series B coupon Bonds may be registered as to principal only or converted into bonds registered as to both principal and interest in accordance with the provisions of the forms hereinafter provided.

Section 2.05. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series B Bond shall become mutilated or be destroyed, stolen or lost, the District may in its discretion issue and deliver a new Series B Bond with all unmatured coupons attached of like tenor as the Series B Bond and attached coupons, if any, so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Series B Bond and attached coupons, if any, or in lieu of and substitution for the Series B Bond and attached coupons, if any, destroyed, stolen or lost, and upon the holder's furnishing the District proof of his ownership thereof and satisfactory indemnity and complying with such other reasonable regulations and conditions as the District may require. All Series B Bonds and coupons so surrendered shall be canceled and held for the account of the District. If any such Series B Bond or coupon shall have matured or be about to mature, instead of issuing a substitute Series B Bond or coupon, the District may pay the same, upon being indemnified as aforesaid, and, if such Series B Bond or coupon be destroyed, stolen or lost, without surrender thereof.

Any duplicate Series B Bonds and coupons issued pursuant to this Section shall constitute original, additional contractual obligations on the part of the District, whether or not the destroyed, stolen or lost Series B Bonds or coupons be at any time found by anyone, and such duplicate Series B Bonds and coupons shall be entitled

to equal and proportionate benefits with all other Series B Bonds and coupons issued hereunder.

Section 2.06. Bonds Secured by Pledge of Revenues. The payment of the debt service of all the Series B Bonds shall be secured forthwith equally and ratably, and on a parity in all respects with the Series A Bonds, by a first lien on the net revenues derived from the System in addition to the statutory mortgage lien on the System hereinafter provided for. The net revenues derived from the System in an amount sufficient to pay the principal of and interest on the Series A and Series B Bonds, and to make the payments into the Bond Fund and otherwise as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Series B Bonds as the same become due and on a parity with payments of principal of and interest on the Series A Bonds.

Section 2.07. Form of Series B Bonds and Coupons. Subject to the provisions of this Resolution, the text of the Series B Bonds, the provisions for registration to be endorsed thereon, the coupons, the single Series B Bond and the other details thereof shall be of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted by this Resolution or any subsequent resolution adopted prior to the issuance thereof:

(Form of Coupon Bonds)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
COUNTY OF CALHOUN  
MT. ZION PUBLIC SERVICE DISTRICT  
WATERWORKS REVENUE BOND  
SERIES B

No. B

\$500

MT. ZION PUBLIC SERVICE DISTRICT, in the County of Calhoun, State of West Virginia, a public corporation and political subdivision of the State of West Virginia (herein called the "District"), for value received, hereby promises to pay to the bearer, or, if this Bond be registered, to the registered holder as herein provided, on the first day of January, , from the revenues hereinafter mentioned, the principal sum of

FIVE HUNDRED DOLLARS

with interest thereon at the rate of \_\_\_\_\_ per centum ( %) per annum, payable on the first day of January of each year and unless this Bond be converted into a Bond registered as to both principal and interest, upon the presentation and surrender of the annexed coupons as they severally fall due. Both principal of and interest on this Bond are payable in lawful money of the United States of America at Calhoun County Bank, Grantsville, West Virginia, or, at the option of the holder at First National City Bank, New York, New York.

The Bonds of the issue of which this Bond is one may be redeemed prior to their stated maturities, without premium, at the option of the District as a whole, or in part in inverse numerical order, on any January 1 beginning January 1, 1985, as provided in the resolution hereinafter mentioned, subject to earlier redemption from moneys in the Project Construction Account or if held by the



Federal Government, all as provided in said resolution. Notice of any such redemption shall be published at least once not less than thirty nor more than sixty days prior to the redemption date in a financial newspaper published in the City of New York, New York. Interest shall cease upon this Bond after the date fixed for redemption if it shall be duly called for prior redemption and payment thereof duly provided for.

This Bond is one of an authorized issue of Bonds in the aggregate principal amount of Forty Thousand Dollars (\$40,000) of like date, tenor and effect, except as to number\* and date of maturity issued to finance the cost of the construction of extensions and improvements for the existing water system of the District under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Article 13A, Chapter 16 of the West Virginia Code (herein called the "Act") and other applicable statutes, and a resolution duly adopted by the Public Service Board of the District.

This Bond and the coupons appertaining hereto are payable solely from, and secured equally and ratably and in all respects on a parity with the Series A Bonds hereinafter mentioned, by a first lien on and pledge of the net revenues derived from the operation of said water system, with monthly payments from such revenues to be made into the Bond Fund for payment of the principal hereof and interest hereon, in the manner provided in said resolution, and do not and shall not in any event constitute an indebtedness of the District within the meaning of any constitutional or statutory provisions or limitations, and the District shall never be obligated to pay this Bond or the interest hereon except from the revenues of said water system, as provided in said resolution. The District covenants

\* add, "interest rate" if more than one rate

\* add, "date of issuance" if more than one date and delete  
"date" on preceding line

with the holders of the Bonds of the issue of which this Bond is one to establish and at all times maintain such rates and collect such charges for the services and facilities of said water system, and to revise the same from time to time, whenever necessary, as will always provide revenues in each fiscal year sufficient to make the required payments into the Bond Fund and the reserves and accounts as provided in said resolution and to pay all necessary expenses of operating and maintaining the said water system during such fiscal year, and the District has entered into certain other covenants with the holders of the Bonds of the issue of which this Bond is one, for the terms of which reference is made to said resolution.

The Bonds of the issue and series of which this Bond is one are on a parity with the Water Distribution System Revenue Bonds, Series A, of the District issued in the aggregate principal amount of \$85,000 on the 14th day of July, 1966 (herein called the "Series A Bonds") pursuant to a resolution of the District adopted on said 14th day of July, 1966 (herein called the "1966 Resolution"). Consent of the holders of all the Series A Bonds outstanding has been given for the issuance of the Series B Bonds, of which this Bond is one, on a parity with the Series A Bonds.

Additional Bonds on a parity with this Bond and the Bonds of the issue of which this Bond is one, as to lien and source of and security for payment, may be issued under the provisions and restrictions contained in the 1966 Resolution.

It is hereby certified and recited that all acts, conditions and things required to exist, to happen and to be performed precedent to and in the issuance of this Bond, do exist, have happened and have been performed in regular and due form, time and manner as required by the laws and Constitution of the State of West Virginia applicable thereto, and that the issuance of this Bond and of the issue of Bonds

of which this Bond is one is not in violation of any constitutional or statutory limitation of indebtedness.

This Bond, under the provisions of the Act, is, and has all the qualities and incidents of, a negotiable instrument.

This Bond and the interest hereon are exempt from taxation by the State of West Virginia and the other taxing bodies of said State.

IN WITNESS WHEREOF, Mt. Zion Public Service District has caused this Bond to be signed by the Chairman of its Public Service Board and its corporate seal to be affixed hereto and attested by the Secretary of said Board, and the annexed coupons to be executed with the facsimile signatures of said Chairman and said Secretary, all as of the \_\_\_\_ day of \_\_\_\_\_, 1973.

MT. ZION PUBLIC SERVICE DISTRICT

By \_\_\_\_\_  
Chairman of its Public  
Service Board

ATTEST:

(SEAL)

\_\_\_\_\_  
Secretary of its Public Service Board

(Form of Coupon)

\$

On the first day of January, 19     , unless the Bond to which this coupon was originally attached shall have been callable and duly called for prior redemption and payment of the redemption price duly made or provided for, Mt. Zion Public Service District, in Calhoun County, West Virginia, will pay to the bearer at Calhoun County Bank, Grantsville, West Virginia, or, at the option of the holder, at First National City Bank, New York, New York, solely from the revenues described in the Bond to which this coupon is attached, the sum shown hereon in lawful money of the United States of America, upon presentation and surrender of this coupon, being the interest then due on its Waterworks Revenue Bond, Series B, dated \_\_\_\_\_, 1973, No. B.

MT. ZION PUBLIC SERVICE DISTRICT

By \_\_\_\_\_ (facsimile signature)  
Chairman, Public Service Board

ATTEST:

\_\_\_\_\_  
(facsimile signature)  
Secretary, Public Service Board

(CERTIFICATE OF CONVERSION)

It is hereby certified over my signature and the official seal of the issuing Public Service District that upon the presentation of the within bond with a written request by the holder thereof for its conversion into a bond registered as to both principal and interest, there have been this day cut off and destroyed \_\_\_\_\_ interest coupons attached thereto, of the amount and value of \_\_\_\_\_ each, being all the coupons for interest on the within Bond payable after the date of this certificate, and that the interest at the rate and on the dates stated in the within bond and as was provided by the coupons, as well as the principal, is to be paid to the registered holder hereof, his legal representatives, successors or transferees, at the place stated in the within bond and as was stated in the coupons. The principal of and interest on this Bond shall be payable only to the registered holder hereof named in the registration blank below, or his legal representative, and this Bond shall be transferable only on the books of the registrar kept in the office of the undersigned, and by an appropriate notation in such registration blank. When registered, the registrar shall treat the registered owner as the person exclusively entitled to payment of interest and the exercise of all other rights and powers of the owner prior to due presentment for registration of transfer.

Dated: \_\_\_\_\_, 19\_\_.

\_\_\_\_\_, Registrar  
[SEAL OF PUBLIC  
SERVICE DISTRICT]

<u>Date of Registration</u>	<u>In Whose Name Registered</u>	<u>Signature of Treasurer of Public Service District as Registrar</u>
_____	_____	_____
_____	_____	_____
_____	_____	_____

(Form of Single, Fully Registered Bond)

REVENUE BOND

MT. ZION PUBLIC SERVICE DISTRICT

Date: \_\_\_\_\_, 19\_\_

No. BR-1

FOR VALUE RECEIVED, MT. ZION PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture, (herein called the "Government") at its office in Grantsville, West Virginia, or at such other place as the Government may hereafter designate in writing, the principal sum of Forty Thousand Dollars (\$40,000), plus interest on the unpaid principal balance at the rate of five percent (5%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Interest only on January 1, 1975, and January 1, 1976, and \$2,371 annually thereafter on January 1, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the reverse hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Farmers Home Administration according to the source of funds involved, shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower, and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower

agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction and acquisition of additions, extensions and improvements to the waterworks of the Borrower, is payable solely from the revenues to be derived from the operation of such waterworks after there have been first paid from such revenues the reasonable current costs of operation and maintenance of the waterworks. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

The Bonds of the issue and series of which this Bond is one are on a parity with the Water Distribution System Revenue Bond, Series A, of the Borrower issued in the aggregate principal amount of \$85,000 on the 14th day of July, 1966 (herein called the "Series A Bonds") pursuant to a resolution of the Borrower adopted on said 14th day of July, 1966. Consent of the holders of all the Series A Bonds outstanding has been given for the issuance of the Series B Bonds, of which this Bond is one, on a parity with the Series A Bonds.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Article 13A of Chapter 16 of the West Virginia Code (herein called the "Act").



If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Administration Act of 1961. This Bond shall be subject to the present regulations of the Farmers Home Administration and to its future regulations not inconsistent with the express provisions hereof.

[CORPORATE SEAL]

MT. ZION PUBLIC SERVICE DISTRICT  
(Name of Borrower)

ATTEST:

(Signature of Executive Official)

Chairman, Public Service Board  
(Title of Executive Official)

(Signature of Attesting Official)

(Post Office Box No. or Street  
Address)

Secretary, Public Service  
Board  
(Title of Attesting  
Official)

Grantsville, West Virginia 26147  
(City, State and Zip Code)

# RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$		(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	

TOTAL

Pay to the Order of \_\_\_\_\_

UNITED STATES OF AMERICA  
FARMERS HOME ADMINISTRATION

By \_\_\_\_\_

\_\_\_\_\_  
(Title)

ARTICLE III

SERIES B BOND PROCEEDS; REVENUES  
AND APPLICATION THEREOF

Section 3.01. Series B Bond Proceeds; Project Construction Account. All moneys received from the sale of any or all the Series B Bonds shall be deposited on receipt by the District in Calhoun County Bank, Grantsville, West Virginia, a member of Federal Deposit Insurance Corporation (herein called "FDIC"), in a special account heretofore created and designated as "Mt. Zion Public Service District Construction Account" (herein called the "Project Construction Account"). The moneys in the Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by such bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Moneys in the Project Construction Account shall be expended by the District solely for the purposes provided in this Resolution.

Moneys received upon delivery of the Series B Bonds representing accrued interest will be immediately transferred to and deposited in the Bond Fund.

Until completion of construction of the Project, the District will transfer from the Project Construction Account and deposit in the Bond Fund, not later than fifteen days prior to the next interest payment date, such sums as shall be from time to time required to pay the interest becoming due on the Series B Bonds on such interest payment date if moneys in the Bond Fund are insufficient for such purpose.

If the District shall determine at any time that all funds on deposit in the Project Construction Account exceed the estimated disbursements on account of the Project for the ensuing 90 days, the District may invest such excess funds in direct obligations

of, or obligations the principal of and interest on which are guaranteed by, the United States of America, which shall mature not later than eighteen months after the date of such investment. All such investments and the income therefrom shall be carried to the credit of the Project Construction Account.

When construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Project Construction Account shall first be used to refund promptly any overpayment made with respect to the aforesaid Federal grant, and any moneys then remaining in the Project Construction Account shall be promptly used to redeem or prepay the latest maturing Series B Bonds and any residue shall be deposited in the Bond Fund.

Section 3.02. Covenants of the District as to Revenues and Funds. So long as any of the Series B Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Sinking Fund and Reserve Account therein, hereinafter established, a sum sufficient to pay, when due or at the earliest practical redemption date, the entire principal of the Series B Bonds remaining unpaid together with interest accrued and to accrue thereon, the District further covenants with the holders of any and all Series B Bonds as follows:

(A) Revenue Fund. The entire gross revenues derived from the operation of the System, and all parts thereof, and all tap fees received, shall be deposited as collected by the District in a special fund in a bank or trust company in the State of West Virginia which is a member of FDIC, which Fund, known as the "Mt. Zion Public Service District Revenue Fund" (herein called the "Revenue Fund") was established by the 1966 Resolution. The Revenue Fund is with said Calhoun County Bank. The Revenue Fund shall constitute a trust fund for the purposes provided in this Resolution and shall be kept separate and distinct

from all other funds of the District and used only for the purposes and in the manner provided in this Resolution.

(B) Disposition of Revenues. All revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

(1) The District shall first each month set aside in the Operation and Maintenance Fund established by the 1966 Resolution and the bank named in subsection (A) above, such sum as the Board shall determine, in accordance with its budget, to be necessary for operating expenses.

(2) The District shall next, by the fifteenth day of each month, transfer from the Revenue Fund and deposit into the "Bond Fund", established by the 1966 Resolution and now with said bank, one-twelfth of the amount required to pay the interest becoming due on the Series A and B Bonds on the next interest payment date and one-twelfth of the amount of principal maturing on the next principal maturity date for the Series A and B Bonds.

The District shall also pay to the said bank, from time to time, such amounts as shall be required to pay the fiscal charges due to paying agents for paying the Bonds and the interest thereon.

(3) The District shall next, by the fifteenth day of each month, transfer from the Revenue Fund and deposit with the said bank in the Reserve Fund established by the 1966 Resolution, 20% of the amount deposited into the Bond Fund in such month until the amount in the Reserve Fund equals the sum of \$6,600. The term "minimum reserve" defined in the 1966 Resolution to mean the sum of \$4,500 is hereby redefined to mean the sum of \$6,600. The District may reduce each such monthly deposit by 1/60th of the amount on deposit in the Reserve Fund on the date of delivery of the Series B Bonds. After the minimum reserve, as above redefined, has been accumulated in

the Reserve Fund, the District shall monthly deposit in the Reserve Fund such part of the moneys remaining in the Revenue Fund, after such provision for payment of maturing principal of and interest on the Series A and B Bonds and other payments or deposits required by the 1966 Resolution and this resolution, as shall be required to maintain the minimum reserve. Moneys in the Reserve Fund shall be used solely to make up any deficiency in the Bond Fund for payment of the principal of and interest on the Series A and B Bonds as the same shall mature on an equal pro rata basis and on a parity with each other or for prepayment of installments on fully registered Bonds, or for mandatory redemption of Bonds of all series as hereinafter provided, and for no other purpose.

(4) The District shall next, by the fifteenth day of each month, transfer from the Revenue Fund and deposit in the Repair and Replacement Fund established by the 1966 Resolution and now with said bank, including the amount required to be deposited into the Repair and Replacement Fund pursuant to the 1966 Resolution, not less than the sum of \$75 until there has been accumulated therein the aggregate sum of \$6,600 and thereafter, such sums as shall be required to maintain such amount therein. Moneys in the Repair and Replacement Fund shall be used first to make up any deficiencies in the Bond Fund for payment of principal of and interest on the Series A and B Bonds as the same mature, and next to restore to the Reserve Fund any sum or sums transferred therefrom to the Bond Fund. Thereafter, and provided that payments into the Bond Fund and the Reserve Fund are current and in accordance with the foregoing provisions, moneys in the Repair and Replacement Fund may be withdrawn by the District and used for repairs, replacements of equipment and improvements of the System, or any part thereof.

(5) After all the foregoing provisions for use of moneys in the Revenue Fund have been fully complied with, any moneys remaining

therein and not permitted to be retained therein may be used to prepay installments of or to redeem Series A and B Bonds outstanding or for any lawful purpose.

Whenever the moneys in the Bond Fund and in the Reserve Fund therein shall be sufficient to purchase or redeem all Series A and B Bonds outstanding, it shall be the mandatory duty of the District, anything to the contrary in this Resolution notwithstanding, to direct the said bank to purchase or redeem all outstanding Series A and B Bonds at the earliest practical date and in accordance with applicable provisions hereof, any such purchase to be at a price or prices not exceeding the then market price of Bonds so purchased, but in no event exceeding the then redemption price of the respective series of Bonds.

The aforesaid bank (and any successor appointed by the District) is hereby designated as the Fiscal Agent for the administration of the Bond Fund and the Reserve Fund as herein provided, and all amounts required therefor will be deposited by the District upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into each such Fund.

All the funds provided for in this Section shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Bondholders shall have a lien thereon for further securing payment of the Series A and B Bonds and the interest thereon. The moneys in excess of the sum insured by FDIC in any of such funds, shall at all times be secured, to the full extent thereof in excess of such insured sum, in a manner lawful for securing deposits of State and municipal funds under the laws of the State of West Virginia.

If on any payment date the revenues are insufficient to place the required amount in any of the funds or accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to those which would otherwise be required to be made into the funds or accounts on the subsequent payment dates.

The Fiscal Agent shall keep the moneys in the Bond Fund, the Reserve Fund and the Repair and Replacement Fund invested and reinvested to the fullest extent practicable in direct obligations of, or obligations the payment of the principal of and interest on which are guaranteed by, the United States of America and having maturities not exceeding two years. Earnings upon moneys in the Reserve Fund, so long as the Minimum Reserve has been accumulated and is maintained, shall be paid annually into the Revenue Fund by the Fiscal Agent.

(C) Change of Fiscal Agent. The District may designate another bank insured by FDIC as Fiscal Agent if the aforesaid bank should cease for any reason to serve or if the Board determines by resolution that said bank or its successor should no longer serve as Fiscal Agent. Upon any such change, the Board will cause notice of the change to be sent by registered or certified mail to the Government and to the original purchaser of any of the Series A or B Bonds, and shall cause such notice to be published one time in The Daily Bond Buyer or other financial journal published in the English language in the City of New York.



## ARTICLE IV

### GENERAL COVENANTS

Section 4.01. General Statement. So long as any of the Bonds shall be outstanding and unpaid, or until there shall have been set apart in the Bond Fund and the Reserve Fund therein a sum sufficient to pay when due, or redeem or purchase prior to maturity, the entire principal of the Bonds of Series A and B remaining unpaid, together with interest accrued and to accrue thereon and any applicable redemption premiums, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the District and the Bondholders.

Section 4.02. Rates. The District will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide revenues in each fiscal year sufficient to produce net revenues equal to not less than 110% of the average annual debt service on all Series A and B Bonds outstanding and to make the payments required herein into the Bond Fund, the Reserve Fund and the Repair and Replacement Fund and all the necessary expenses of operating and maintaining the System during such fiscal year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate revenues for such purposes.

Section 4.03. Sale of the System. The System may be sold, mortgaged, leased, or otherwise disposed of only as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient fully to pay all the Bonds and the interest thereon as herein provided. The proceeds from such sale, mortgage, lease or

other disposition of the System shall immediately be deposited in the Bond Fund and the District shall direct the Fiscal Agent to apply such proceeds to the payment of principal of and interest on the Series A and B Bonds at the redemption prices of the respective series or upon purchase at the then current market price not exceeding the par value thereof plus accrued interest to the date of purchase. Any balance remaining after the redemption or payment of all the Bonds and interest thereon shall be paid to the District by the Fiscal Agent unless necessary for the payment of other obligations issued by the District and payable out of the revenues of the System.

The foregoing provision notwithstanding, the District shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof, provided that the net book value thereof does not exceed \$5,000. Prior to any such sale, lease or other disposition of said property, the general manager or other duly authorized officer in charge of the System shall make a finding in writing, concurred in by resolution of the Board, determining that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and such proceeds shall be deposited in the Repair and Replacement Fund.

Payments of such proceeds into the Repair and Replacement Fund shall not reduce the amounts required to be paid into the same by other provisions of this Resolution.

Section 4.04. Covenant Against Encumbrances. The District shall not issue any obligations whatsoever, except additional parity Bonds hereinafter provided for, payable from the revenues of the System which rank prior to or equally as to lien on and source of and security for payment from such revenues with the Series A and

B Bonds; and all obligations hereafter issued by the District payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues, and in all other respects, to the Series A and B Bonds.

The District shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge, having priority over or being on a parity with the lien of the Series A and B Bonds, and the interest thereon, upon any of the income and revenues of the System pledged as security therefor in this Resolution, or upon the System, or any part thereof.

Section 4.05. Issuance of Additional Parity Bonds. No additional parity Bonds, as in this Section defined, payable out of the revenues of the System, shall be issued except under the conditions and in the manner herein provided.

(A) No such additional parity Bonds shall be issued except for the purposes of financing the costs of the construction or acquisition of extensions, additions and improvements to the System or refunding Bonds of Series A or B on an equal pro rata basis, except as provided in subsection (G) of this Section.

(B) No such additional parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Secretary a written certification by a certified public accountant not in the regular employ of the District, based upon the necessary investigation, reciting the conclusion that the net revenues, as defined herein and adjusted as provided below, actually derived from the System during the fiscal year immediately preceding the date of the issuance of such additional parity Bonds, shall have been not less than one hundred twenty per centum (120%) of the average

aggregate amount which will mature or become due in any succeeding fiscal year for principal of and interest on the Series A and B Bonds then outstanding, and on any additional parity Bonds theretofore issued pursuant to the provisions contained in this Resolution then outstanding, and on the additional parity Bonds then proposed to be issued. This limitation may be waived or modified by the written consent of Bondholders representing 75% of the principal amount of each of the Series A and B Bonds then outstanding and of additional parity Bonds issued pursuant hereto.

(C) Prior to the issuance of any such additional parity Bonds, the District shall have entered into written contracts for the immediate acquisition or construction of such additions, extensions or improvements to the System which are to be financed by such additional parity Bonds.

(D) The term "additional parity Bonds", as used in this Section, shall be deemed to mean additional Bonds issued under the provisions and within the limitations of this Section, payable from the revenues of the System on a parity with the Series A and B Bonds, and all the covenants and other provisions of this Resolution (except as to details of such additional parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the holders of the Series A and B Bonds and of any additional parity Bonds subsequently issued within the limitations of and in compliance with this Section. All such Bonds, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System, and their source of and security for payment from said revenues, without preference of any Bond or coupon over any other. The District shall comply fully with all the increased payments into the various funds created in this Resolution required for such additional parity Bonds, in addition to the payments required for the Series A and B Bonds as herein provided. Redemption of Bonds prior to

maturity shall as nearly as practical be on an equal pro rata basis reflecting the original amounts of each issue.

(E) All additional parity Bonds issued pursuant to this Section shall mature on January 1 of each year of maturity, and the interest thereon shall be payable January 1 of each year.

(F) No additional parity Bonds shall be issued at any time unless all the payments into the respective Funds provided for in this Resolution on Bonds then outstanding and all other payments provided for in this Resolution shall have been made or paid up as required to the date of issuance of the additional parity Bonds and the District shall have fully complied with all the covenants, agreements and terms of this Resolution or shall have remedied any deficiency in such compliance.

(G) With the written consent in advance of the original purchaser of the Bonds originally authorized by this Resolution and anything to the contrary in subsections (A), (B) and (C) of this Section notwithstanding, additional parity Bonds may be authorized and issued by the District pursuant to supplemental resolution in the event that the Bonds hereby originally authorized and issued should be insufficient, together with other funds lawfully available therefor, to pay all costs of construction of the Project. Any such additional parity Bonds authorized and issued under the provisions of this subsection shall be limited to the aggregate principal amount required to make up any deficiency in funds for payment of such construction costs, and the maturities of any such additional parity Bonds shall be in years and amounts suggested by said original purchaser.

Section 4.06. Insurance and Bonds. The District hereby covenants and agrees that so long as any of the Bonds remain outstanding, it will, as an expense of operation and maintenance of the System, procure, carry and maintain insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(a) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured before issuance of any of the Series B Bonds, on all insurable portions of the System in an amount equal to the actual cost thereof. In the event of any damage to or destruction of any portion of the System, the District will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The District will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the District during construction of the Project in the full insurable value thereof.

(b) Public Liability Insurance, with limits of not less than \$100,000 for one person and \$300,000 for more than one person injured or killed in one accident to protect the District from claims for bodily injury and/or death, and not less than \$100,000 from claims for damage to property of others which may arise from the operation of the System, such insurance to be in effect prior to issuance of any of the Series B Bonds.

(c) Vehicular Public Liability Insurance, in the event the District owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the District is operated for the benefit of the District, with limits of not less than \$100,000 for one person and \$300,000 for more than one person injured or killed in one accident to protect the District from claims for bodily injury and/or death, and not less than \$100,000 from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle.

(d) Workmen's Compensation Coverage for all Employees of the District Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract,

will be required of each contractor or subcontractor, and such payment bonds will be filed with the Clerk of the County Court of said County prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

(e) Fidelity Bonds will be provided as to every member of the Board and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the District in an amount at least equal to the total funds in the custody of any such person at any one time.

(f) Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Government holds any of the Bonds, the District will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the District and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Government may specify, with insurance carriers or bonding companies acceptable to the Government.

Section 4.07. Statutory Mortgage. For the further protection of the holders of the Bonds and the coupons appertaining thereto, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding.

Section 4.08. Events of Default. Each of the following events is hereby declared an "Event of Default":

(A) Failure to make payment of the principal, and, if any premium be due, of such premium, of any of the Bonds either at the date therein specified for their payment or by proceedings for redemption or otherwise;

(B) Failure to make payment of any installment of interest due on any of the Bonds on the date specified for the payment of such interest;

(C) Failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the District in the Bonds or in this Resolution, or violation of or failure to observe any provision of any pertinent law, provided any such failure or violation, excluding those covered in (A) and (B) above in this Section, shall continue for a period of thirty days after written notice shall have been given to the District by the holder of any Series A or B Bond, specifying such failure or violation and requiring the same to be remedied.

Section 4.09. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, any Bondholder may proceed to protect and enforce the rights of the Bondholders by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights.

Upon application by such Bondholder, such court may, upon proof of such default, appoint a receiver for the affairs of the District and the System. The receiver so appointed shall administer the System on behalf of the District, shall exercise all the rights and powers of the District with respect to its System and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct.

Section 4.10. No Priority Between Bonds. The Series A and B Bonds shall not be entitled to priority one over the other in the application of the revenues of the System or with respect to the security for their payment, regardless of the time or times



of their issuance, it being the intention that there shall be no priority among the Bonds of Series A or B or within any such series, regardless of the fact that they may be actually issued and delivered at different times.

Section 4.11. Fiscal Year; Budget. While any Bonds are outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a fiscal year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than forty-five days prior to the beginning of each fiscal year, the District agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such fiscal year unless unanimously authorized and directed by the Board. Copies of each Annual Budget shall be mailed to the Government, to the original purchaser of the Bonds and to those Bondholders who shall have filed their names and addresses with the Secretary of the Board for such purpose.

If for any reason the District shall not have adopted the Annual Budget before the first day of any fiscal year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the year next preceding by more than ten per centum; and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason beyond the control of the District. Each such Budget of Current Expenses shall be mailed immediately as in the case of the Annual Budget.

Section 4.12. Compensation of Board Members. The District hereby covenants and agrees that no compensation for policy direction

shall be paid to the members of its Board in excess of the amount permitted by the Act. Payment of any compensation to any member of the Board for policy direction shall not be made if such payment would cause the Net Operating Income to fall below the amount required to meet all payments provided for herein, nor when there is default in the performance of or compliance with any covenant or provision of this Resolution.

Section 4.13. Covenant to Proceed. The District hereby covenants to proceed as promptly as possible with the construction of the Project in accordance with the plans and specifications prepared by the Consulting Engineer and on file with the Secretary of the Board on the date of adoption of this Resolution.

Section 4.14. Books and Records. The District will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the District, in which complete and correct entries shall be made of all transactions relating to the System, and any holder of a Bond or Bonds, his agents and representatives, shall have the right at all reasonable times to inspect the System and all records, accounts and data of the District relating thereto.

The District shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants, shall mail a copy of such audit report to the Government and the original purchaser of the Bonds, and shall make available the report of said accountants at all reasonable times to any holder or holders of the Bonds, or any customer receiving services from the System, or anyone acting for and in behalf of such Bondholder, Bondholders or customer.

Section 4.15. Maintenance of System. The District covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as any of the Bonds are outstanding.

Section 4.16. Concerning Arbitrage. It is not reasonably expected that the proceeds of sale of the Series B Bonds will be invested in such a way as to violate the operating rules in the regulations of the Internal Revenue Service or of the Treasury Department of the United States of America in connection with the arbitrage provisions of Section 103(d) of the Internal Revenue Code of 1954, as amended. The Fiscal Agent is hereby expressly instructed not to violate such rules in investing such proceeds.

ARTICLE V

RATES, ETC.

Section 5.01. Initial Schedule of Rates and Charges: Rules.

A. The schedule of rates and charges for the services and facilities of the System, heretofore approved by the Public Service Commission of West Virginia, shall be as follows:

AVAILABILITY OF SERVICE

Available for all domestic, commercial and industrial consumers within the District's service area.

RATE

First	3,000 gallons used per month - \$2.666 per thousand gallons
Next	7,000 gallons used per month - 2.00 per thousand gallons
All over	10,000 gallons used per month - 1.50 per thousand gallons

No bill will be rendered for less than the following amounts, according to the size of the meter installed, to-wit:

5/8 inch meter - \$ 7.00 per month

DELAYED PAYMENT PENALTY

The above schedule is net. On all accounts not paid in full within 10 days after date of bill, five per cent (5%) will be added to the net amount shown.

RECONNECTION CHARGE

A reconnection charge of Five Dollars (\$5.00) shall be made for restoring service.

NEW SERVICE

The charge for new service will be One Hundred Dollars (\$100.00).

B. There shall not be any discrimination or differential in rates between customers in similar circumstances:

C. All delinquent fees, rates and charges for services or facilities of the System shall be liens on the premises served of equal degree, rank and priority with the lien on such premises

of state, county, school and municipal taxes, as provided in the Act. When such fees, rates and charges have been delinquent for thirty days, the District shall have power forthwith to foreclose the lien on the premises served in the same manner provided by the laws of the State of West Virginia for the foreclosure of mortgages on real property, as provided in the Act.

D. The District will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the District or any department, agency, officer or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other revenues of the System.

E. The District may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

F. No allowance or adjustment in any bill for use of the service and facilities of the System shall be made for any leakage occurring on the customer's side of any water meter.

G. The District shall not be liable to any customer for any damage resulting from bursting or breakage of any line, main, pipe, valve, equipment or part or from discontinuance of the operation of any part of the System or from failure of any part thereof for any cause whatsoever.

H. In case of emergency, the District shall have the right to restrict the use of any part of the System in any reasonable manner for the protection of the System and the inhabitants of the District.

I. The fees, rates and charges above provided will be increased whenever such increase is necessary in order to comply fully with all provisions of this Resolution and the District shall always be obligated to and shall fix, establish and collect fees, rates and charges for the services and facilities of the System which shall at all times be sufficient to provide net revenues to meet its obligations hereunder, but not less than 110% of the average annual debt service on all Bonds outstanding.

## ARTICLE VI

### MISCELLANEOUS

Section 6.01. Filing Under Uniform Commercial Code. Contemporaneously with the delivery of the Bonds, the District shall execute Financing Statements meeting the requirements of the Uniform Commercial Code of West Virginia and promptly thereafter, shall file such a Financing Statement in the offices of the Secretary of State of the State of West Virginia and of the Clerk of the County Court of said County.

Section 6.02. Modification or Amendment. No material modification or amendment of this Resolution, or of any resolution amendatory hereof or supplemental hereto, may be made without the consent in writing of the holders of two-thirds or more in principal amount of the Bonds then outstanding; provided, however, that no modification or amendment shall permit a change in the maturity of any of the Bonds or a reduction in the rate of interest thereon, or in the amount of the principal obligation, or affecting the unconditional promise of the District to pay the principal of and interest on the Bonds as the same shall become due from the revenues of the System, without the consent of the holders of such Bonds. Notwithstanding the above, no amendment or modification shall be made which would reduce the percentage of the principal amount of Bonds required for consent to the above-permitted amendments or modifications and for consent of 75% of the holders of each series of Bonds outstanding to waiver or modification of the limitation upon issuance of additional parity Bonds contained in Section 4.05B.

Section 6.03. Delivery of Bond No. BR-1. The Chairman, Secretary and Treasurer of the Board are hereby authorized and directed to cause Bond No. BR-1, hereby awarded to the Government pursuant to agreement, to be delivered to the Government as soon as the Government will accept such delivery and pay for Bond No. BR-1.

Section 6.04. Refunding of Bonds Permitted. The District reserves the right, subject to applicable provisions of law, to refund the Bonds when in its judgment it would be to the best interests of the District and of its inhabitants so to do. Upon payment of all the Bonds outstanding, prior to or simultaneously with the issuance of any refunding bonds or of an issue of bonds for the purposes of refunding the Bonds then outstanding and providing funds for additions, extensions and improvements to the System, or upon provision for such payment by deposit irrevocably in trust, with the Fiscal Agent, of a sum equal to the principal amount of all the Bonds outstanding, plus an amount equal to all interest accrued and to accrue to the date of payment or redemption of such Bonds, and plus an amount sufficient to pay all applicable redemption premiums on the earliest practicable redemption date, the security, pledge and any lien applicable to the Bonds then outstanding shall immediately cease and determine. The sum so deposited in trust shall be used solely to pay at the earliest practical redemption date the principal amount of the Bonds and all interest thereon to the date of redemption and any applicable redemption premiums, or to purchase Bonds at not to exceed the par value of the Bonds plus interest accrued to date of purchase. The moneys so deposited shall be invested by the Fiscal Agent in direct obligations of the United States of America or obligations the payment of the principal of and interest on which is guaranteed by the United States of America, having maturities not later than the dates on which the moneys shall be required to be used for such redemption.

Section 6.05. Severability of Invalid Provision. If any one or more of the covenants, agreements or provisions of this Resolution should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants,



agreements or provisions, and shall in no way affect the validity of all the other provisions of this Resolution or the Bonds or coupons appertaining thereto.

Section 6.06. Conflicting Provisions Repealed. All resolutions and orders, or parts thereof, in conflict with the provisions of this Resolution, are, to the extent of such conflicts, hereby repealed, including expressly the 1966 Resolution to the extent of any such conflicts, but expressly excluding the Series A Bond as issued.

Section 6.07. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 6.08. Effective Time. This Resolution shall take effect immediately upon its adoption.

Adopted January 10, 1974.

Glendon M. Lee  
Chairman of Public Service Board

Mildred Kirby  
Member

Dean Perkins  
Member

MT. ZION PUBLIC SERVICE DISTRICT

Water Revenue Bond, Series 1984

BOND RESOLUTION

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02/01/84  
ZION1-B

MT. ZION PUBLIC SERVICE DISTRICT

RESOLUTION AUTHORIZING THE ISSUANCE OF \$161,000 WATER REVENUE BOND, SERIES 1984, OF MT. ZION PUBLIC SERVICE DISTRICT ON A PARITY WITH THE 1966 AND 1974 BONDS TO FINANCE THE ACQUISITION AND CONSTRUCTION OF AN EXTENSION TO THE WATERWORKS SYSTEM OF THE DISTRICT; DEFINING AND PRESCRIBING THE TERMS AND PROVISIONS OF THE BOND; PROVIDING GENERALLY FOR THE RIGHTS AND REMEDIES AND SECURITIES OF THE HOLDER OF THE BOND; AND PROVIDING WHEN THIS RESOLUTION SHALL TAKE EFFECT

BE IT RESOLVED AND ORDERED BY THE PUBLIC SERVICE BOARD OF MT. ZION PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS  
AND DEFINITIONS

Section 1.01. Authority for This Resolution. This Resolution is adopted pursuant to the provisions of Article 13A, Chapter 16 of the West Virginia Code (the "Act") and other applicable provisions of law. Mt. Zion Public Service District (the "Issuer") is a public service district created pursuant to the Act by The County Commission of Calhoun County.

Section 1.02. Findings and Determinations. It is hereby found, determined and declared as follows:

A. The Issuer now has a public waterworks system and desires to acquire and construct an extension to said system, within the boundaries of the Issuer to be owned and operated by the Issuer. The acquisition and construction of such an extension to the existing waterworks facilities is herein called the "Project."

B. It is deemed essential, convenient and desirable for the health, welfare, safety, advantage and convenience of the inhabitants of the Issuer, and, accordingly, it is hereby ordered, that there be constructed and acquired the Project consisting of water mains and transmission lines with all necessary appurtenant facilities (the "Project"), particularly described in and according to the plans and specifications prepared by the Consulting Engineer

and heretofore filed in the office of the Secretary of the Public Service Board (the "Governing Body") of the Issuer. Water will be purchased from the Town of Grantsville pursuant to a Water Purchase Agreement between the Issuer and said Town of Grantsville. The construction and acquisition of the Project and the financing hereby authorized and provided for are public purposes of the Issuer and are ordered for the purpose of meeting and serving public convenience and necessity.

C. It is necessary for the Issuer to issue its revenue bond in the principal amount of \$161,000 to finance a portion of the cost of such acquisition and construction in the manner hereinafter provided.

D. The estimated maximum cost of the acquisition and construction of the Project is \$1,101,500 of which \$161,000 will be obtained from the proceeds of sale of the Bond herein authorized, and \$161,000 from a grant by the Purchaser and \$779,500 in grants from the Department of Housing and Urban Development and the State of West Virginia.

E. The cost of such construction shall be deemed to include, without being limited to, the construction and acquisition of the Project, the acquisition of any necessary property, real or personal, or interest therein; interest on the Bond prior to, during and for six months after completion of such construction to the extent that revenues of the System (hereinafter defined) are not sufficient therefor; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; and such other expenses as may be necessary or incidental to the acquisition and construction of the Project and the financing authorized hereby.

F. The period of usefulness of the System after completion of the Project is not less than forty years.

G. There are outstanding the obligations of the Issuer which will rank on a parity with the Bond as to lien and source of and security for payment as follows:

Water Distribution System Revenue Bond, Series A, of the Issuer dated July 16, 1966 (the "1966 Bond"), issued in the original principal amount of \$85,600, held or insured by the Purchaser.

Waterworks Revenue Bonds, Series B, of the Issuer, dated January 10, 1974 (the "1974 Bond"), issued in the original aggregate

principal amount of \$40,000, held by the Purchaser.

H. The Issuer has complied with all requirements of West Virginia law relating to authorization of the construction, acquisition and operation of the Project and issuance of the Bond, or will have so complied prior to issuance of the Bond including, among other things, the consent and approval, pursuant to the Act, of the issuance of the Bond by the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which have expired.

Section 1.03. Resolution to Constitute Contract. In consideration of the acceptance of the Bond by the Purchaser, this Resolution (the "Bond Legislation") shall be deemed to be and shall constitute a contract between the Issuer and such Purchaser, and the covenants and agreements set forth herein to be performed by the Issuer shall be for the benefit, protection and security of the Purchaser as holder of the Bond.

Section 1.04. Definitions. The following terms shall have the following meanings herein unless the text otherwise expressly requires:

"Act" means Article 13A, Chapter 16 of the West Virginia Code.

"Bond" means the Water Revenue Bond, Series 1984, authorized hereby.

"Bonds" means the Bond, the 1966 Bond and the 1974 Bond.

"Bond Legislation" means this Resolution and all resolutions supplemental hereto and amendatory hereof.

"1966 Bond" means the outstanding Water Distribution System Revenue Bond, Series A, of the Issuer described in Section 1.02 G hereof.

"1974 Bond" means the outstanding Waterworks Revenue Bonds, Series B, of the Issuer described in Section 1.02 G hereof.

"Chairman" means the Chairman of the Governing Body.

"Consulting Engineer" means Milam/BCM Engineering, Inc., Dunbar, West Virginia, or any qualified engineer or firm of engineers which shall at any time hereafter be retained by the Issuer as Consulting Engineer for the System.

"Facilities" or "waterworks facilities" means all the tangible properties of the System and also any tangible properties which may hereafter be added to the System by additions, betterments, extensions and improvements thereto and properties, furniture, fixtures or equipment therefor, hereafter at any time constructed or acquired.

"Fiscal Year" means each year beginning on July 1 and ending on the succeeding June 30.

"Governing Body" means the Public Service Board of the Issuer.

"Herein" means in this Bond Legislation.

"Holder of the Bond," "Bondholder" or any similar term means any person who shall be the registered owner of the Bond.

"Issuer" means Mt. Zion Public Service District, in Calhoun County, West Virginia, and includes the Governing Body.

"Net Revenues" means the balance of the gross revenues, as defined below, remaining after deduction only of operating expenses, as defined below.

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting principles and retention of a sum not to exceed one-sixth of the budgeted operating expenses stated above for the current year as working capital, and language herein requiring payment of operating expenses means also retention of not to exceed such sum as working capital, provided that all monthly amortization payments upon the Bonds and into the Bond Fund, the Reserve Fund and the Repair and Replacement Fund have been made to the last monthly payment date prior to such retention.

"Project" shall have the meaning stated in Section 1.02 B above.

"Purchaser" means United States Department of Agriculture, Farmers Home Administration, and any successor thereof.

"Registrar" means the Issuer, which shall usually so act by its Secretary.

"Resolutions" means collectively the 1966 Resolution, the 1974 Resolution and the Bond Legislation.

"1966 Resolution" means the resolution of the Issuer adopted July 14, 1966, authorizing the 1966 Bond.

"1974 Resolution" means the resolution for the Issuer adopted January 10, 1974, authorizing the 1974 Bond.

"Revenues" or "Gross Revenues" means all rates, rents, fees, charges or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System, from the operation of the System, and all parts thereof, all as calculated in accordance with sound accounting practices.

"Secretary" means the Secretary of the Governing Body.

"System" means the existing waterworks of the Issuer as enlarged and expanded by the Project, and includes the complete waterworks system of the Issuer and all waterworks facilities owned by the Issuer and all facilities and other property of every nature, real or personal, now or hereafter owned, held or used in connection with the waterworks system; and shall also include any and all additions, extensions, improvements, properties or other facilities at any time acquired or constructed for the waterworks system of the Issuer.

Words importing singular number shall include the plural number in each case and vice versa, and words importing persons shall include firms and corporations.



## ARTICLE II

### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND ISSUE OF BOND

Section 2.01. Authorization of Bond. Subject and pursuant to the provisions of this Resolution, the Bond of the Issuer, to be known as "Water Revenue Bond, Series 1984," is hereby authorized to be issued in the aggregate principal amount of not exceeding One Hundred Sixty-one Thousand Dollars (\$161,000) for the purpose of financing a portion of the cost of the construction and acquisition of the Project.

Section 2.02. Description of Bond. The Bond shall be issued in single form, No. R-1, only as a fully registered Bond, and shall be dated on the date of delivery. The Bond shall bear interest from date, payable monthly at the rate of five per centum (5%) per annum, and shall be sold for the par value thereof.

The Bond shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, and shall be payable as provided in the Bond form hereinafter set forth.

Section 2.03. Negotiability, Registration, Transfer and Exchange of Bonds. The Bond shall be and have all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but the Bond may only be transferred by transfer of the registration thereof upon the books required to be kept pursuant to Section 2.04 hereof, by the party in whose name it is registered, in person or by attorney duly authorized in writing, upon surrender of the Bond for cancellation, accompanied by delivery of a written instrument of transfer, duly executed in a form acceptable to the Registrar.

Whenever the Bond shall be surrendered for registration of transfer, the Issuer shall execute and deliver a new Bond in authorized denominations, for a like aggregate principal amount. The Registrar shall require the payment by the new owner requesting such transfer of any tax or other governmental charge required to be paid with respect to such transfer, but the Issuer shall pay any other expenses incurred by the Registrar with respect to such transfer.

No registration of transfer of the Bond shall be permitted to be made after the 15th day next preceding any installment payment date on the Bond.

Section 2.04. Registrar. The Registrar will keep or cause to be kept at its office, sufficient books for the registration and transfer of the Bond, and, upon presentation for such purpose, the Registrar shall, under such reasonable regulations as it may prescribe, register the Bond initially issued pursuant hereto and register the transfer, or cause to be registered, on such books, the transfer of the Bond as hereinbefore provided.

The Registrar shall accept the Bond for registration or transfer only if ownership thereof is to be registered in the name of an individual (including joint ownership), a corporation, a partnership or a trust, and only upon receipt of the social security number of each individual, the federal employer identification number of each corporation or partnership or the social security numbers of the settlor and beneficiaries of each trust, and the federal employer identification number and date of each trust and the name of the trustee of each trust.

Section 2.05. Execution of Bond. The Bond shall be executed in the name of the Issuer by the Chairman and its corporate seal shall be affixed thereto and attested by the Secretary.

Section 2.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case the Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may in its discretion issue and deliver a new Bond of like tenor as the Bond so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the holder's furnishing the Issuer proof of his ownership thereof and complying with such other reasonable regulations and conditions as the Issuer may require. The Bond so surrendered shall be canceled and held for the account of the Issuer. If the Bond shall have matured or be about to mature, instead of issuing a substitute Bond the Issuer may pay the same, and, if such Bond be destroyed, stolen or lost, without surrender thereof.

Section 2.07. Bond Secured by Pledge of Revenues. The payment of the debt service of the Bond shall be secured forthwith by a first lien on the Net Revenues derived from the System on a parity with the 1966 and 1974 Bonds in addition to the statutory mortgage lien on the System hereinafter provided for as to the Bonds. The Net Revenues derived from the System in an amount sufficient to pay the principal of and interest on the Bonds, and to make the payments as hereinafter provided, are hereby irrevocably pledged to the payment of the principal of and interest on the Bonds as the same become due.

Section 2.08. Form of Bond. Subject to the provisions hereof, the text of the Bond and the other details thereof shall be

of substantially the following tenor, with such omissions, insertions and variations as may be authorized or permitted hereby or any resolution adopted after the date of adoption hereof and prior to the issuance thereof:

(Form of Bond)

WATER REVENUE BOND, SERIES 1984

MT. ZION PUBLIC SERVICE DISTRICT

\$161,000

No. R-1

Date: \_\_\_\_\_

FOR VALUE RECEIVED, MT. ZION PUBLIC SERVICE DISTRICT (herein called "Borrower") promises to pay to the order of the United States of America, acting through the Farmers Home Administration, United States Department of Agriculture (the "Government"), or its registered assigns, at its National Finance Office, St. Louis, Missouri 63103, or at such other place as the Government may hereafter designate in writing, the principal sum of ONE HUNDRED SIXTY-ONE THOUSAND DOLLARS (\$161,000) plus interest on the unpaid principal balance at the rate of five percent (5%) per annum. The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only, commencing on the 30th day of each month following delivery of the Bond and continuing on the corresponding day of each month for the first twenty-four months after the date hereof and \$791, covering principal and interest, thereafter on said corresponding day of each month, except that the final installment shall be paid at the end of forty (40) years from the date of this Bond, in the sum of the unpaid principal and interest due on the date thereof, and except that prepayments may be made as provided hereinbelow. The consideration herefor shall support any agreement modifying the foregoing schedule of payments.

If the total amount of the loan is not advanced at the time of loan closing, the loan shall be advanced to Borrower as requested by Borrower and approved by the Government and interest shall accrue on the amount of each advance from its actual date as shown on the reverse hereof.

Every payment made on any indebtedness evidenced by this Bond shall be applied first to interest computed to the effective date of the payment and then to principal.

Prepayments of scheduled installments, or any portion thereof, may be made at any time at the option of Borrower. Refunds and extra payments, as defined in the regulations of the Farmers Home Administration according to the source of funds involved,

shall, after payment of interest, be applied to the installments last to become due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

If the Government at any time assigns this Bond and insures the payment thereof, Borrower shall continue to make payments to the Government as collection agent for the holder.

While this Bond is held by an insured lender, prepayments as above authorized made by Borrower may, at the option of the Government, be remitted by the Government to the holder promptly or, except for final payment, be retained by the Government and remitted to the holder on either a calendar quarter basis or an annual installment due date basis. The effective date of every payment made by Borrower, except payments retained and remitted by the Government on an annual installment due date basis, shall be the date of the United States Treasury check by which the Government remits the payment to the holder. The effective date of any prepayment retained and remitted by the Government to the holder on an annual installment due date basis shall be the date of the prepayment by Borrower and the Government will pay the interest to which the holder is entitled accruing between the effective date of any such prepayment and the date of the Treasury check to the holder.

Any amount advanced or expended by the Government for the collection hereof or to preserve or protect any security herefor, or otherwise under the terms of any security or other instrument executed in connection with the loan evidenced hereby, at the option of the Government shall become a part of and bear interest at the same rate as the principal of the debt evidenced hereby and be immediately due and payable by Borrower to the Government without demand. Borrower agrees to use the loan evidenced hereby solely for purposes authorized by the Government.

Borrower hereby certifies that it is unable to obtain sufficient credit elsewhere to finance its actual needs at reasonable rates and terms, taking into consideration prevailing private and cooperative rates and terms in or near its community for loans for similar purposes and periods of time.

This Bond, together with any additional bonds ranking on a parity herewith which may be issued and outstanding for the purpose of providing funds for financing costs of construction and acquisition of improvements for the waterworks system (the "System") of the Borrower, is payable solely from the revenues to be derived from the operation of the System after there have been first paid from such revenues the reasonable current costs of operation and

maintenance of the System. This Bond does not in any manner constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provision or limitation.

Registration of this Bond is transferable by the registered owner hereof in person or by his, her or its attorney duly authorized in writing, at the office of the Registrar as defined in the Resolution hereinafter described, but only in the manner, subject to the limitations and upon payment of the charges, if any, provided in said Resolution, and upon surrender and cancellation of this Bond. Upon such transfer a new Bond or Bonds, of authorized denomination or denominations, for the like principal amount, will be issued to the transferee in exchange herefor.

This Bond, under the provisions of the Act, is and has all the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State of West Virginia, but may only be transferred by transfer of registration hereof with the Registrar.

This Bond has been issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including, among others, Article 13A of Chapter 16 of the West Virginia Code and a Resolution of the Borrower.

If at any time it shall appear to the Government that Borrower may be able to obtain a loan from a responsible cooperative or private credit source at reasonable rates and terms for loans for similar purposes and periods of time, Borrower will, at the Government's request, apply for and accept such loan in sufficient amount to repay the Government.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Consolidated Farmers Home Rural Development Act. This Bond shall be subject to the present regulations of the Farmers Home Administration and to its future regulations not inconsistent with the express provisions hereof.

This Bond is on a parity in all respects with the 1966 Bond and the 1974 Bond described in said Resolution.

MT. ZION PUBLIC SERVICE DISTRICT  
(Name of Borrower)

[CORPORATE SEAL]

(Signature of Executive Official)

Chairman, Public Service Board  
(Title of Executive Official)

P.O. Box 35  
(P. O. Box No. or Street Address)

Mt. Zion, West Virginia 26151  
(City, State and Zip Code)

ATTEST:

(Signature of Attesting Official)

Secretary, Public Service Board  
(Title of Attesting Official)

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$		(6) \$	
(2) \$		(7) \$	
(3) \$		(8) \$	
(4) \$		(9) \$	
(5) \$		(10) \$	

TOTAL \$ \_\_\_\_\_

ASSIGNMENT

Pay to the Order of \_\_\_\_\_  
 \_\_\_\_\_

UNITED STATES OF AMERICA  
 FARMERS HOME ADMINISTRATION

By \_\_\_\_\_  
 \_\_\_\_\_  
 (Title)

(No writing on this Bond except by the Issuer as Registrar)

Date of Registration	In Whose Name Registered	Signature of Secretary of Registrar
_____	_____	_____
_____	_____	_____
_____	_____	_____



### ARTICLE III

#### BOND PROCEEDS; REVENUES AND APPLICATION THEREOF

Section 3.01. Bond Proceeds; Project Construction Account. The proceeds of sale of the Bond shall be deposited on receipt by the Issuer in The Calhoun County Bank, Grantsville, West Virginia, a member of Federal Deposit Insurance Corporation (the "FDIC"), in a special account hereby created and designated as "Mt. Zion Public Service District Project Construction Account" (herein called the "Project Construction Account"). The moneys in the Project Construction Account in excess of the amount insured by FDIC shall be secured at all times by such bank by securities or in a manner lawful for the securing of deposits of State and municipal funds under West Virginia law. Moneys in the Project Construction Account shall be expended by the Issuer solely for the purposes provided herein.

Until completion of acquisition and construction of the Project, the Issuer will transfer from the Project Construction Account and pay to the Purchaser on or before the due date, such sums as shall be from time to time required to make the monthly installments on the Bond if there are not sufficient Net Revenues to make such monthly payment.

Moneys in the Project Construction Account shall be used solely to pay the cost of acquisition and construction of the Project upon vouchers and other documentation approved by Purchaser.

If the Issuer shall determine at any time that all funds on deposit in the Project Construction Account exceed the estimated disbursements on account of the Project for the ensuing 90 days, the Issuer may invest such excess funds in direct obligations of, or obligations the principal of and interest on which are guaranteed by, the United States of America ("Government Obligations"), which shall mature not later than eighteen months after the date of such investment, or in investments secured by a pledge of Government Obligations. All such investments and the income therefrom shall be carried to the credit of the Project Construction Account.

When acquisition and construction of the Project has been completed and all costs thereof have been paid or provision for such payment has been made, any balance remaining in the Project Construction Account shall be disposed of in accordance with the regulations of the Purchaser.

Section 3.02. Covenants of the Issuer as to Revenues and Funds. So long as the Bond shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund hereinafter described, a sum sufficient to pay, when due or at the earliest practical prepayment date, the entire principal of the Bond remaining unpaid, together with interest accrued and to accrue thereon, the Issuer further covenants with the holder of the Bond as follows:

A. REVENUE FUND. The entire Gross Revenues derived from the operation of the System, and all parts thereof, and all tap fees received, shall be deposited as collected by the Issuer in a special fund in a bank or trust company in the State of West Virginia which is a member of FDIC, which Fund, known as the "Mt. Zion Public Service District Revenue Fund" (herein call the "Revenue Fund") was established by the 1966 Resolution and is hereby continued. The Revenue Fund is now on deposit with the bank named in Section 3.01. The Revenue Fund shall constitute a trust fund for the purposes provided in the Resolutions and shall be kept separate and distinct from all other funds of the Issuer and used only for the purposes and in the manner provided in the Resolutions.

B. DISPOSITION OF REVENUES. All Revenues at any time on deposit in the Revenue Fund shall be disposed of only in the following order and priority:

(1) The Issuer shall first, each month, set aside in the Operation and Maintenance Fund established by the 1966 Resolution and hereby continued within the Bank named in Section 3.01 hereof, such sum as the Governing Body shall determine, in accordance with its budget, to be necessary for Operating Expenses.

(2) The Issuer shall next, on or before the due date of payment of each installment on the Bonds, transfer from the Revenue Fund and pay to the National Finance Office designated in the Bond or otherwise the amount required to pay the interest on the Bond, and to amortize the principal of the Bond over the life of the Bond issue, and shall transfer from the Revenue Fund and deposit into the "Bond Fund", established by the 1966 Resolution and now with said Bank, one-twelfth of the amount required to pay the interest becoming due on the Series A and B Bonds on the next interest payment date and one-twelfth of the amount of principal maturing on the next principal maturity date for the Series A and B Bonds.

The District shall also pay to the said Bank, from time to time, such amounts as shall be required to

pay the fiscal charges due to paying agents for paying the Bonds and the interest thereon.

(3) The Issuer shall next, by the 15th day of each month, transfer from the Revenue Fund and deposit with the said Bank in the Reserve Fund established by the 1966 Resolution and hereby continued, 20% of the amount deposited into the Bond Fund in such month, and 1/12th of 1/10th of the amount of principal and interest becoming due on the Bond in any year, until the amount in the Reserve Fund equals the sum of \$16,100, such sum being herein called the "Minimum Reserve." The term "minimum reserve" defined in the 1974 Resolution to mean \$6,600 is hereby redefined to mean the sum of \$16,100. After the Minimum Reserve has been accumulated in the Reserve Fund, the Issuer shall monthly deposit into the Reserve Fund such part of the moneys remaining in the Revenue Fund, after such provision for payment of maturing principal of and interest on the 1966 and 1974 Bonds and other payments or deposits required by the 1966 and 1974 Resolutions, and after provision for payment of monthly installments on the Bond and payment of operating expenses of the System, as shall be required to maintain the Minimum Reserve in the Reserve Fund. Moneys in the Reserve Fund shall be used solely to make up any deficiency in the Bond Fund for payment of the principal of and interest on the 1966 and 1974 Bonds as the same mature and for payment of monthly payments of the principal of and interest on the Bond to said National Finance Office as the same shall become due, on an equal pro rata basis and on a parity with each other, or for prepayment of installments on the Bonds, or for mandatory prepayment of the Bonds as hereinafter provided, and for no other purpose; provided, however, that when the Minimum Reserve has been accumulated in the Reserve Fund all earnings of investments of moneys therein shall at least annually be transferred to and deposited in the Revenue Fund and used for ratable prepayment of principal of the Bonds.

(4) The Issuer shall next, by the fifteenth day of each month, transfer from the Revenue Fund and deposit in the Repair and Replacement Fund, established by the 1966 Resolution with said Bank and hereby continued, the moneys remaining in the Revenue Fund and not permitted to be retained therein, including the amount required to be deposited into the Repair and Replacement Fund pursuant to the 1966 and 1974 Resolutions, which sum shall not be less than \$75, until there has been accumulated in the Repair and Replacement Fund the aggregate sum of \$61,700, and

thereafter such sums as shall be required to maintain such amount therein. Moneys in the Repair and Replacement Fund shall be used first to make up any deficiencies in the Bond Fund and for payment of principal of and interest on the 1966 and 1974 Bonds, as the same mature, and for monthly payments of principal of and interest on the Bond as the same become due, and next to restore to the Reserve Fund any sum or sums transferred to the Bond Fund or otherwise. Thereafter, and provided that payments into the Bond Fund and Reserve Fund are current and in accordance with the foregoing provisions, moneys in the Repair and Replacement Fund may be withdrawn by the Issuer and used for repairs and for replacements of equipment and improvements for the System, or any part thereof.

(5) After all the foregoing provisions for use of moneys in the Revenue Fund have been fully complied with, any moneys remaining therein and not permitted to be retained therein may be used to prepay installments of or to redeem the 1966 and 1974 Bonds outstanding, and to prepay portions of the principal amounts of the Bonds, ratably, or for any lawful purpose.

Whenever the moneys in the Bond Fund and the Reserve Fund shall be sufficient to purchase or redeem the Bonds outstanding in full, it shall be the mandatory duty of the Issuer, anything to the contrary herein notwithstanding, to direct said Bank to purchase or redeem the Bonds at the earliest practical date and in accordance with applicable provisions hereof, any such purchase to be at a price or prices not exceeding the then market price of the Bonds so purchased, but in no event exceeding the redemption price of the respective series of Bonds.

The aforesaid Bank (and any successor appointed by the Issuer) is hereby designated as the Fiscal Agent for the administration of the Bond Fund, the Reserve Fund and the Repair and Replacement Fund as herein provided, and all amounts required therefor will be deposited therein by the Issuer upon transfers of funds from the Revenue Fund at the times provided herein, together with written advice stating the amount remitted for deposit into each such Fund.

All the funds provided for in this Section shall constitute trust funds and shall be used only for the purposes and in the order provided herein, and until so used, the Purchaser shall have a lien thereon for further securing payment of the Bonds and the interest thereon,

but the aforesaid Bank shall not be a trustee as to such funds. The moneys in excess of the sum insured by FDIC in any of such funds shall at all times be secured, to the full extent thereof in excess of such insured sum, in a manner lawful for securing deposits of State and municipal funds under the laws of the State of West Virginia.

If on any payment date the revenues are insufficient to make the payments and transfers as hereinabove provided, the deficiency shall be made up in the subsequent payments and transfers in addition to those which would otherwise be required to be made on the subsequent payment dates.

The Fiscal Agent shall keep the moneys in the Bond Fund, the Reserve Fund and the Repair and Replacement Fund invested and reinvested to the fullest extent practicable in direct obligations of, or obligations the payment of the principal of and interest on which are guaranteed by, the United States of America and having maturities not exceeding two years. Earnings upon moneys in the Reserve Fund, so long as the Minimum Reserve is on deposit and maintained therein, shall be paid annually in January into the Revenue Fund by the Fiscal Agent.

C. CHANGE OF FISCAL AGENT. The Issuer may designate another bank insured by FDIC as Fiscal Agent if the aforesaid Bank should cease for any reason to serve or if the Governing Body determines by resolution that said Bank or its successor should no longer serve as Fiscal Agent. Upon any such change, the Governing Body will cause notice of the change to be sent by registered or certified mail to the Purchaser and to the original purchaser of any of the Bonds, and shall cause such notice to be published one time in The Daily Bond Buyer or other financial journal published in the English language in the City of New York.

D. USER CONTRACTS. The Issuer, prior to delivery of the Bond, shall obtain signed user agreements from at least 112 bona fide full time users initially to be served by the Project and deposit in the Project Construction Account not less than \$5,600, based on a tap fee of \$50.

## ARTICLE IV

### GENERAL COVENANTS

Section 4.01. General Statement. So long as the Bond shall be outstanding and unpaid, or until there shall have been set apart in the Reserve Fund a sum sufficient to prepay the entire principal of the Bond remaining unpaid, together with interest accrued and to accrue thereon to the date of prepayment, the covenants and agreements contained herein shall be and constitute valid and legally binding covenants between the Issuer and the Purchaser.

Section 4.02. Rates. The Issuer will, in the manner provided in the Act, fix and collect such rates, fees or other charges for the services and facilities of the System, and revise the same from time to time whenever necessary, as will always provide Revenues in each fiscal year sufficient to produce Net Revenues equal to not less than 110% of the annual debt service on the Bonds and sufficient to make the payments required herein into the Bond Fund, the Reserve Fund and the Repair and Replacement Fund and all the necessary expenses of operating and maintaining the System during such fiscal year and such rates, fees and other charges shall not be reduced so as to be insufficient to provide adequate Revenues for such purposes.

Section 4.03. Sale of the System. The System will not be sold without the prior written consent of the Purchaser so long as the Bond is outstanding. Such consent will provide for disposition of the proceeds of any such sale.

Section 4.04. Issuance of Additional Parity Bonds. No additional parity bonds payable out of the Revenues of the System shall be issued, except with the prior written consent of the Purchaser.

Section 4.05. Insurance and Bonds. The Issuer hereby covenants and agrees that it will, as an expense of construction, operation and maintenance of the System, procure, carry and maintain, so long as the Bond remains outstanding, insurance with a reputable insurance carrier or carriers covering the following risks and in the following amounts:

(a) Fire, Lightning, Vandalism, Malicious Mischief and Extended Coverage Insurance, to be procured upon acceptance of any part of the Project from the contractor, and immediately upon any portion of the System now in use, on

all above-ground structures of the System and mechanical and electrical equipment in place or stored on the site in an amount equal to the full insurable value thereof. In the event of any damage to or destruction of any portion of the System, the Issuer will promptly arrange for the application of the insurance proceeds for the repair or reconstruction of such damaged or destroyed portion. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance to protect the interests of the Issuer during construction of the Project in the full insurable value thereof.

(b) Public Liability Insurance, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from the operation of the System, such insurance to be procured not later than the date of delivery of the Bond.

(c) Vehicular Public Liability Insurance, in the event the Issuer owns or operates any vehicle in the operation of the System, or in the event that any vehicle not owned by the Issuer is operated at any time or times for the benefit of the Issuer, with limits of not less than \$500,000 for one or more persons injured or killed in one accident to protect the Issuer from claims for bodily injury and/or death, and not less than \$200,000 to protect the Issuer from claims for damage to property of others which may arise from such operation of vehicles, such insurance to be procured prior to acquisition or commencement of operation of any such vehicle for the Issuer.

(d) Workmen's Compensation Coverage for All Employees of the District Eligible Therefor and Performance and Payment Bonds, such bonds to be in the amounts of 100% of the construction contract, will be required of each prime contractor, and such payment bonds will be filed with the Clerk of the County Commission of said

County prior to commencement of construction of the Project in compliance with West Virginia Code Section 38-2-39.

(e) Fidelity Bonds will be provided as to every member of the Governing Body and as to every officer and employee thereof having custody of the Revenue Fund or of any revenues or other funds of the Issuer in an amount at least equal to the total funds in the custody of any such person at any one time, and initially in the amount of \$10,000 upon the treasurer, provided, however, that no bond shall be required insofar as custody of the Project Construction Account is concerned so long as checks thereon require the signature of a representative of the Purchaser, or in such amounts as are required by the Purchaser.

(f) Provided, however, and in lieu of and notwithstanding the foregoing provisions of this Section, during construction of the Project and so long as the Bond is outstanding, the Issuer will carry insurance and bonds or cause insurance and bonds to be carried for the protection of the Issuer, and during such construction will require each contractor and subcontractor to carry insurance, of such types and in such amounts as the Purchaser may specify, with insurance carriers or bonding companies acceptable to the Purchaser.

Section 4.06. Statutory Mortgage. For the further protection of the Purchaser, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding and shall take effect immediately upon the delivery of the Bond and shall be for the equal benefit of the Bonds.

Section 4.07. Events of Default. Each of the following events is hereby declared an "Event of Default":

(a) Failure to make payment of any monthly amortization installment upon the Bond at the date specified for payment thereof; and

(b) Failure duly and punctually to observe or perform any of the covenants, conditions and agreements on the part of the Issuer contained



in the Bond or herein, or violation of or failure to observe any provision of any pertinent law.

Section 4.08. Enforcement. Upon the happening of any Event of Default specified above, then, and in every such case, the Purchaser may proceed to protect and enforce its rights by an appropriate action in any court of competent jurisdiction, either for the specific performance of any covenant or agreement, or execution of any power, or for the enforcement of any proper legal or equitable remedy as shall be deemed most effectual to protect and enforce such rights.

Upon application by the Purchaser, such court may, upon proof of such default appoint a receiver for the affairs of the Issuer and the System. The receiver so appointed shall administer the System on behalf of the Issuer, shall exercise all the rights and powers of the Issuer with respect to the System, shall proceed under the direction of the court to obtain authorization to increase rates and charges of the System, and shall have the power to collect and receive all revenues and apply the same in such manner as the court may direct.

Section 4.09. Fiscal Year; Budget. While the Bond is outstanding and unpaid and to the extent not now prohibited by law, the System shall be operated and maintained on a fiscal year basis commencing on July 1 of each year and ending on the following June 30, which period shall also constitute the budget year for the operation and maintenance of the System. Not later than thirty days prior to the beginning of each fiscal year, the Issuer agrees to adopt the Annual Budget for the ensuing year, and no expenditures for operation and maintenance expenses of the System in excess of the Annual Budget shall be made during such fiscal year unless unanimously authorized and directed by the Governing Body. Copies of each Annual Budget shall be delivered to the Purchaser by the beginning of each fiscal year.

If for any reason the Issuer shall not have adopted the Annual Budget before the first day of any fiscal year, it shall adopt a Budget of Current Expenses from month to month until the adoption of the Annual Budget; provided, however, that no such monthly budget shall exceed the budget for the corresponding month in the next year preceding by more than ten per centum; and provided further, that adoption of a Budget of Current Expenses shall not constitute compliance with the covenant to adopt an Annual Budget unless failure to adopt an Annual Budget be for a reason-beyond the control of the Issuer. Each such Budget of Current Expenses shall be mailed immediately to the Purchaser.

Section 4.10. Compensation of Members of Governing Body.

The Issuer hereby covenants and agrees that no compensation for policy direction shall be paid to the members of the Governing Body in excess of the amount permitted by the Act. Payment of any compensation to any such member for policy direction shall not be made if such payment would cause the Net Revenues to fall below the amount required to meet all payments provided for herein, nor when there is default in the performance of or compliance with any covenant or provision hereof.

Section 4.11. Covenant to Proceed and Complete.

The Issuer hereby covenants to proceed as promptly as possible with the construction of the Project to completion thereof in accordance with the plans and specifications prepared by the Consulting Engineer and on file with the Secretary on the date of adoption hereof, subject to permitted changes.

Section 4.12. Books and Records, Audits.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and the Purchaser shall have the right at all reasonable times to inspect the System and all records, accounts and data of the Issuer relating thereto.

The Issuer shall, at least once a year, cause said books, records and accounts of the System to be properly audited by an independent competent firm of certified public accountants and shall mail a copy of such audit report to the Purchaser.

Section 4.13. Maintenance of System.

The Issuer covenants that it will continuously operate, in an economical and efficient manner, and maintain the System as a revenue-producing utility as herein provided so long as the Bond is outstanding.

Section 4.14. No Competition.

The Issuer will not permit competition with the System within its boundaries or within the territory served by it and will not grant or cause, consent to or allow the granting of any franchise, permit or other authorization for any person, firm, corporation, public or private body, agency or instrumentality whatsoever to provide any of the services supplied by the System within the boundaries of the Issuer or within the territory served by the System.

Section 4.15. Concerning Arbitrage.

The proceeds of sale of the Bond will not be invested in such a way as to violate the regulations of the Internal Revenue Service or of the Treasury Department of the United States of America in connection with the

arbitrage provisions of Section 103(c) of the Internal Revenue Code of 1954, as amended.

ARTICLE V

RATES, ETC.

Section 5.01. Initial Schedule of Rates and Charges; Rules. A. The initial schedule of rates and charges for the services and facilities of the System, subject to change consonant with the provisions hereof, shall be as established by the Governing Body and as set forth in the Final Order of the Public Service Commission of West Virginia, entered on November 30, 1983, in Case No. 83-651-W-30-B, which Final Order is incorporated herein by reference as a part hereof.

B. There shall not be any discrimination or differential in rates between customers in similar circumstances.

C. All delinquent fees, rates and charges for services or facilities of the System shall be liens on the premises served of equal degree, rank and priority with the lien on such premises of state, county, school and municipal taxes, as provided in the Act. When such fees, rates and charges have been delinquent for thirty days, the Issuer shall have power pursuant to the Act forthwith to foreclose the lien on the premises served in the same manner provided by the laws of the State of West Virginia for the foreclosure of mortgages on real property.

D. The Issuer will not render or cause to be rendered any free services of any nature by the System nor any of the facilities; and in the event that the Issuer or any department, agency, officer or employee thereof should avail itself or themselves of the services or facilities of the System, the same fees, rates and charges applicable to other customers receiving like services under similar circumstances shall be charged, such charges shall be paid as they accrue, and revenues so received shall be deposited and accounted for in the same manner as other revenues of the System.

E. The Issuer may require any applicant for any service by the System to deposit a reasonable and equitable amount to insure payment of all charges for the services rendered by the System, which deposit shall be handled and disposed of under the applicable rules and regulations of the Public Service Commission of West Virginia.

F. The Issuer, to the extent permitted by law, will not accept payment of any water bill from a customer served with water and sewer services by the Issuer without payment at the same time of a sewer bill owed by such customer for the same premises.

## ARTICLE VI

### MISCELLANEOUS

Section 6.01. Modification or Amendment. The Bond Legislation may not be modified or amended after final passage without prior written consent of the Purchaser.

Section 6.02. Delivery of Bond No. R-1. The Chairman, Secretary and Treasurer of the Governing Body are hereby authorized and directed to cause Bond No. R-1, hereby awarded to the Purchaser pursuant to prior agreement, to be delivered to the Purchaser as soon as the Purchaser will accept such delivery.

Section 6.03. Severability of Invalid Provisions. If any one or more of the covenants, agreements or provisions hereof should be held contrary to any express provision of law or contrary to the policy of express law, although not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions hereof, and shall in no way affect the validity of all the other provisions hereof or the Bond.

Section 6.04. 1966 and 1974 Resolutions; Conflicting Provisions Repealed. The 1966 and 1974 Resolutions and all parts thereof not expressly hereby changed shall continue in full force and effect and this Bond Legislation shall be supplemental to the 1966 and 1974 Bond Resolutions.

All other resolutions and orders, or parts thereof, in conflict with the provisions hereof are, to the extent of such conflicts, hereby repealed; provided that this section shall not be applicable to the Loan Resolution (Form FmHA 442-47).

Section 6.05. Table of Contents and Headings. The Table of Contents and headings of the articles, sections and subsections hereof are for convenience only and shall neither control nor affect in any way the meaning or construction of any of the provisions hereof.

Section 6.06. Effective Time. This Resolution shall take effect immediately upon its adoption.

Adopted: 2/2-84

Edward McFowin  
Chairman of Public Service Board

Kilma L. Mace  
Member

Billie Jean Shaffer  
Member

02/01/84  
ZION1-A

§ 16-13-24. Article to be construed liberally.

This article being necessary for the public health, safety and welfare, it shall be liberally construed to effectuate the purpose thereof. (1933, Ex. Sess., c. 25, § 24.)

Quoted in West Virginia Water Serv. Co. v. Cunningham, 143 W. Va. 1, 98 S.E.2d 891 (1957).

ARTICLE 13A.

PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE AND GAS SERVICES.

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| <p>Sec.</p> <p>16-13A-1. Legislative findings.</p> <p>16-13A-1a. Jurisdiction of the public service commission.</p> <p>16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.</p> <p>16-13A-1c. General purpose of districts.</p> <p>16-13A-2. Creation of districts by county commission; enlarging, reducing or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.</p> <p>16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.</p> <p>16-13A-3a. Removal of members of public service board.</p> <p>16-13A-4. Board chairman; members' compensation; procedure; district name.</p> <p>16-13A-5. General manager of board.</p> <p>16-13A-6. Employees of board.</p> <p>16-13A-7. Acquisition and operation of district properties.</p> <p>16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.</p> <p>16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.</p> <p>16-13A-9a. Limitations with respect to foreclosure.</p> | <p>Sec.</p> <p>16-13A-10. Budget.</p> <p>16-13A-11. Accounts; audit.</p> <p>16-13A-12. Disbursement of district funds.</p> <p>16-13A-13. Revenue bonds.</p> <p>16-13A-14. Items included in cost of properties.</p> <p>16-13A-15. Bonds may be secured by trust indenture.</p> <p>16-13A-16. Sinking fund for revenue bonds.</p> <p>16-13A-17. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.</p> <p>16-13A-18. Operating contracts.</p> <p>16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.</p> <p>16-13A-19. Statutory mortgage lien created; foreclosure thereof.</p> <p>16-13A-20. Refunding revenue bonds.</p> <p>16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.</p> <p>16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.</p> <p>16-13A-23. Validation of acts and proceedings of public service boards.</p> <p>16-13A-24. Acceptance of loans, grants or temporary advances.</p> <p>16-13A-25. Borrowing and bond issuance; procedure.</p> |
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**Editor's notes.** — For redesignation of department of health as division of health, within the department of health and human resources, see § 5F-2-1.

**Textbooks.** — Instructions for Virginia and West Virginia (3rd ed.), § 24-128.10.

**Constitutionality of article.** — The act from which this article was derived, authorizing the creation of public service districts by the county courts of this State, defining the powers and duties of the governing boards of such districts in the acquisition, construction, maintenance, operation, improvement and extension of property supplying water and sewerage services, and authorizing the issuance of bonds of such districts payable solely from revenue to be derived from the operation of such properties, does not violate any provision of the Constitution of this State or the Fourteenth Amendment to the Constitution of the United States. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

The title to Acts 1953, c. 147, is sufficient to give a fair and reasonable index to all of the purposes of the act. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**And purpose.** — The purpose of this article is to provide water and sewerage facilities in unincorporated districts. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Public service districts are "public utilities."** 50 Op. Att'y Gen. 447 (1963).

Hence, they are required to pay a special license fee pursuant to § 24-3-6 for support of the public service commission. 50 Op. Att'y Gen. 447 (1963).

Cited in *Berkeley County Pub. Serv. Dist. v. Vitro Corp. of Am.*, 152 W. Va. 252, 162 S.E.2d 189 (1968); *State v. Neary*, 365 S.E.2d 395 (W. Va. 1987).

### § 16-13A-1. Legislative findings.

The Legislature of the state of West Virginia hereby determines and finds that the present system of public service districts within the state has provided a valuable service at a reasonable cost to persons who would otherwise have been unable to obtain public utility services. To further this effort, and to ensure that all areas of the state are benefiting from the availability of public service district utility services and to further correct areas with health hazards, the Legislature concludes that it is in the best interest of the public to implement better management of public service district resources by expanding the ability and the authority of the public service commission to assist public service districts by offering advice and assistance in operational, financial and regulatory affairs.

In addition to the expanded powers which shall be given to the public service commission, the Legislature also concludes that it is in the best interest of the public for each county commission to review current technology available and consider consolidating existing public service districts where it is feasible and will not result in the interference with existing bond instruments. Further, if such consolidation is not feasible, the Legislature finds that it is in the best interest of the public for each county commission to review current technology available and consider consolidating or centralizing the management of public service districts within its county or multi-county area to achieve efficiency of operations. The Legislature also finds that additional guidelines should be imposed on the creation of new public service districts and that county commissions shall dissolve inactive public service districts as hereinafter provided. The Legislature also finds that the public service commission shall promulgate rules and regulations to effectuate the expanded powers given to the commission relating to public service districts. (1953, c. 147; 1980, c. 60; 1986, c. 81.)



**Purpose found in order creating district and in hearings.** — The purpose for the creation of a public service district may be ascertained by a review of the order establishing the district and the history behind the creation of the district (the notice of hearing and hearings held prior to the creation of the district). Op. Att'y Gen., July 8, 1976.

The county courts (now county commissions) may not supersede the authority delegated by them to public service districts created in accordance with the provi-

sions of this article. Op. Att'y Gen., June 27, 1973.

A public service district, which was created only for the purposes of furnishing water services, has no power to condemn real estate for sewerage facilities. Canyon Pub. Serv. Dist. v. Tasa Coal Co., 156 W. Va. 606, 195 S.E.2d 647 (1973).

Cited in State ex rel. APCO v. Gainer, 149 W. Va. 740, 143 S.E.2d 351 (1965); Shobe v. Latimer, 162 W. Va. 779, 253 S.E.2d 54 (1979).

### § 16-13A-1a. Jurisdiction of the public service commission.

The jurisdiction of the public service commission relating to public service districts shall be expanded to include the following powers, and such powers shall be in addition to all other powers of the public service commission set forth in this code:

- (a) To study, modify, approve, deny or amend the plans created under section one-b [§ 16-13A-1b] of this article for consolidation or merger of public service districts and their facilities, personnel or administration;
- (b) To petition the appropriate circuit court for the removal of a public service district board member or members; and
- (c) To create by general order a separate division within the public service commission to provide assistance to public service districts in technological, operational, financial and regulatory matters. (1986, c. 81.)

### § 16-13A-1b. County commissions to develop plan to create, consolidate, merge, expand or dissolve public service districts.

Each county commission shall conduct a study of all public service districts which have their principal offices within its county and shall develop a plan relating to the creation, consolidation, merger, expansion or dissolution of such districts or the consolidation or merger of management and administrative services and personnel and shall present such plan to the public service commission for approval, disapproval, or modification: Provided, That within ninety days of the effective date of this section each county commission in this state shall elect either to perform its own study or request that the public service commission perform such study. Each county commission electing to perform its own study has one year from the date of election to present such plan to the public service commission. For each county wherein the county commission elects not to perform its own study, the public service commission shall conduct a study of such county. The public service commission shall establish a schedule for such studies upon a priority basis, with those counties perceived to have the greatest need of creation or consolidation of public service districts receiving the highest priority. In establishing the priority schedule, and in the performance of each study, the bureau of public health and

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the division of environmental protection shall offer their assistance and cooperation to the public service commission. Upon completion by the public service commission of each study, it shall be submitted to the appropriate county commission for review and comment. Each county commission has six months in which to review the study conducted by the public service commission, suggest changes or modifications thereof, and present such plan to the public service commission. All county plans, whether conducted by the county commission itself or submitted as a result of a public service commission study, shall, by order, be approved, disapproved or modified by the public service commission in accordance with rules promulgated by the public service commission and such order shall be implemented by the county commission. (1986, c. 81; 1994, c. 61.)

**Effect of amendment of 1994.** — The amendment substituted "bureau of public health" for "department of health"; substituted "division of environmental protection" for "de-  
partment of natural resources"; deleted "and regulations" following "rules" in the last sentence; and made stylistic changes.

### § 16-13A-1c. General purpose of districts.

Any territory constituting the whole or any part of one or more counties in the state so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of, properties supplying water or sewerage services or gas distribution services or all of these within such territory, will be conducive to the preservation of the public health, comfort and convenience of such area, may be constituted a public service district under and in the manner provided by this article. The words "public service properties," when used in this article, shall mean and include any facility used or to be used for or in connection with (1) the diversion, development, pumping, impounding, treatment, storage, distribution or furnishing of water to or for the public for industrial, public, private or other uses (herein sometimes referred to as "water facilities"), (2) the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes (herein sometimes referred to as "sewer facilities" or "landfills") or (3) the distribution or the furnishing of natural gas to the public for industrial, public, private or other uses (herein sometimes referred to as "gas utilities or gas system"). (1986, c. 81.)

### § 16-13A-2. Creation of districts by county commission; enlarging, reducing or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.

The county commission of any county may, on its own motion by order duly adopted or upon the recommendation of the public service commission, propose the creation of such public service district within such county, setting forth in

such order a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district; or twenty-five percent of the registered voters who reside within the limits of such proposed public service district within one or more counties may petition for the creation thereof, which petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of this section [June 6, 1986], no new public service district shall be created under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules and regulations promulgated by the public service commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not such territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where such territory or part thereof is included within the boundaries of a separate public service district organized to supply water, sewerage services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of such proposed district except upon the adoption of a resolution of the governing body of such city, incorporated town or other municipal corporation consenting.

Such petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if such territory is situated in more than one county, then such petition shall be filed in the office of the clerk of the county commission of the county in which the major portion of such territory extends, and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county commission of the other county or counties into which the territory extends. The clerk of the county commission receiving such petition shall present it to the county commission of such county at the first regular meeting after such filing or at a special meeting called for the consideration thereof.

When the county commission of any county enters an order on its own motion proposing the creation of a public service district, as aforesaid, or when a petition for such creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in such county on the creation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of such action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service

icient to identify the proposed district, or in the limits of such es may petition for sion, including e embraced therein er the effective date ict shall be created roval of the public in accordance with mmission and may county commission may be included ne or more cities, own and operate not it includes one corporations being ed, however, That aries of more than or part thereof is district organized g furnished within incorporated town boundaries of such he governing body on consenting. unty commission oposed district is or ty, then such on mission of the and a copy thereof ks of the county erritory extends. hall present it to eeting after such reof. order on its own bresaid, or when unty commission on the creation hall be not more ch action. If the one county, the ide for notifying er counties into s of the county ed public service

district is located shall cause notice of such hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three (§ 59-3-1 et seq.), chapter fifty-nine of this code, and the publication area for such publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to such hearing. In all cases where proceedings for the creation of such public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of such notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

All persons residing in or owning or having any interest in property in such proposed public service district shall have an opportunity to be heard for and against its creation. At such hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and extension of public service properties by such public service district will be conducive to the preservation of public health, comfort and convenience of such area, the county commission shall by order create such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of such area or that the creation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create the district as amended. If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by expansion, merger or other means, it shall refuse to enter an order creating the proposed district and shall enter an order expanding, merging or consolidating the area with an existing public service district, in accordance with rules and regulations adopted by the public service commission for such purpose: Provided, That no expansion of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such expanded service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, expanding, merging or consolidating the district: Provided, however,



That within ten days after the entry of an order creating, expanding or merging or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules and regulations relating to such filings and the approval, disapproval or modification of county commission orders for creating, expanding, merging or consolidating districts.

The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not been extended, or dissolve the district if inactive or establish or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply with like effect as if a district were being created. The commission shall at all times attempt to bring about the expansion or merger of existing public service districts in order to provide increased services and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article. A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year. (1953, c. 147; 1965, c. 134; 1967, c. 105; 1975, c. 140; 1980, c. 60; 1981, c. 124; 1986, c. 81.)

**Textbooks.** — Instructions for Virginia and West Virginia (3rd ed.), § 24-128.10.

**There is no unlawful delegation of legislative power** to the county courts (now county commissions) of this State under this section in violation of W. Va. Const., art. V, § 1, and art. VI, § 1. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**And there is no unconstitutional delegation of judicial functions** to the county court (now county commission) made by this section.

*State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**District need not be created by general law.** — A public service district is a public corporation and does not come within the constitutional inhibition requiring all corporations to be created by general law. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Voters may not force referendum as to continuing or abolishing district.** — There

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is no authority for voters, by written protest or otherwise, to force a referendum upon the issue of whether or not a created public service district should be continued or abolished. 52 Op. Att'y Gen. 33 (1966).

**Certain provisions mandatory, but provisions for setting time of hearing and giving notice directory.** — The provisions of this section relating to the filing of the petition or motion of the county court (now county commission), the description of the territory to be embraced and like provisions are mandatory, but the use of the word "shall," in relation to the requirements for the posting and publication of notice and the time of setting the hearing are directory and require only substantial compliance. *Canyon Pub. Serv. Dist. v. Tasa Coal Co.*, 156 W. Va. 606, 195 S.E.2d 647 (1973).

**A county court (now county commission) has authority to add sewerage services to the facilities of a public service district which was created for the purpose of furnishing water services, under appropriate proceedings.** *Canyon Pub. Serv. Dist. v. Tasa Coal Co.*, 156 W. Va. 606, 195 S.E.2d 647 (1973).

**Relative powers of commission and voters in area.** — (1) Only the county commission has the affirmative authority to create, enlarge or reduce a public service district; (2) in the absence of any action by a county commission, the requisite number of qualified voters in the affected geographic area may petition a county commission to create, enlarge or reduce a public service district, and, that upon the filing of such petition, a hearing shall be held thereon; (3) the county commission may, in its discretion, refuse to act in an affirmative manner upon such formal petition for creation, enlarge-

ment or reduction of such public service district, which action is not subject to protest or public referendum; (4) the county commission may, on its own motion or on the basis of such proper petition, enter an order creating, enlarging or reducing a public service district, which such action and order are subject to a hearing requiring proper notice, and a formal protest and public referendum depending upon the number of qualified voters who protest such action. Op. Att'y Gen., Nov. 13, 1975.

**"Shall apply with like effect," etc.** — Because a protest against creation triggers a referendum, the language "shall apply with like effect as if a district were being created" can mean only that a protest against enlargement or reduction likewise triggers a referendum. Op. Att'y Gen., Nov. 13, 1975.

**Overlapping districts.** — Where there is no bond indebtedness outstanding to be paid by a public service district, the county commission creating a public service district may undertake to enlarge or reduce the areas of various overlapping districts or may even consolidate the overlapping districts into one district. Op. Att'y Gen., July 8, 1976.

**Merger or consolidation of districts.** — This section authorizes either merger or consolidation of public service districts. Op. Att'y Gen., June 12, 1985, No. 9.

A merger or consolidation results in one corporation which, in the case of merger, will be the corporation designated by the commissioners as the surviving corporation, and with respect to a consolidation, will be a new corporate entity. Op. Att'y Gen., June 12, 1985, No. 9.

Cited in *State v. Neary*, 365 S.E.2d 395 (W. Va. 1987).

### § 16-13A-3. District to be a public corporation and political subdivision; powers thereof; public service boards.

From and after the date of the adoption of the order creating any public service district, it is a public corporation and political subdivision of the state, but without any power to levy or collect ad valorem taxes. Each district may acquire, own and hold property, both real and personal, in its corporate name, and may sue, may be sued, may adopt an official seal and may enter into contracts necessary or incidental to its purposes, including contracts with any city, incorporated town or other municipal corporation located within or without its boundaries for furnishing wholesale supply of water for the distribution system of the city, town or other municipal corporation, and contract for the operation, maintenance, servicing, repair and extension of any properties owned by it or for the operation and improvement or extension by the district of all or any part of the existing municipally owned public service properties of any city, incorporated town or other municipal corporation included within the district: Provided, That no contract shall extend beyond a

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maximum of forty years, but provisions may be included therein for a renewal or successive renewals thereof and shall conform to and comply with the rights of the holders of any outstanding bonds issued by the municipalities for the public service properties.

The powers of each public service district shall be vested in and exercised by a public service board consisting of not less than three members, who shall be persons residing within the district who possess certain educational, business or work experience which will be conducive to operating a public service district. Each board member shall, within six months of taking office, successfully complete the training program to be established and administered by the public service commission in conjunction with the division of environmental protection and the bureau of public health. Board members shall not be or become pecuniarily interested, directly or indirectly, in the proceeds of any contract or service, or in furnishing any supplies or materials to the district, nor shall a former board member be hired by the district in any capacity within a minimum of twelve months after such board member's term has expired or such board member has resigned from the district board. The members shall be appointed in the following manner:

Each city, incorporated town or other municipal corporation having a population of more than three thousand but less than eighteen thousand is entitled to appoint one member of the board, and each such city, incorporated town or other municipal corporation having a population in excess of eighteen thousand shall be entitled to appoint one additional member of the board for each additional eighteen thousand population. The members of the board representing such cities, incorporated towns or other municipal corporations shall be residents thereof and shall be appointed by a resolution of the governing bodies thereof and upon the filing of a certified copy or copies of the resolution or resolutions in the office of the clerk of the county commission which entered the order creating the district, the persons so appointed become members of the board without any further act or proceedings. If the number of members of the board so appointed by the governing bodies of cities, incorporated towns or other municipal corporations included in the district equals or exceeds three, then no further members shall be appointed to the board and the members so appointed are the board of the district.

If no city, incorporated town or other municipal corporation having a population of more than three thousand is included within the district, then the county commission which entered the order creating the district shall appoint three members of the board, who are persons residing within the district, which three members become members of the board of the district without any further act or proceedings.

If the number of members of the board appointed by the governing bodies of cities, incorporated towns or other municipal corporations included within the district is less than three, then the county commission which entered the order creating the district shall appoint such additional member or members of the board, who are persons residing within the district, as is necessary to make the number of members of the board equal three; and the member or members appointed by the governing bodies of the cities, incorporated towns or other



municipal corporations included within the district and the additional member or members appointed by the county commission as aforesaid, are the board of the district. A person may serve as a member of the board in one or more public service districts.

The population of any city, incorporated town or other municipal corporation, for the purpose of determining the number of members of the board, if any, to be appointed by the governing body or bodies thereof, is the population stated for such city, incorporated town or other municipal corporation in the last official federal census.

Notwithstanding any provision of this code to the contrary, whenever a district is consolidated or merged pursuant to section two [§ 16-13A-2] of this article, the terms of office of the existing board members shall end on the effective date of the merger or consolidation. The county commission shall appoint a new board according to rules promulgated by the public service commission.

The respective terms of office of the members of the first board shall be fixed by the county commission and shall be as equally divided as may be, that is approximately one third of the members for a term of two years, a like number for a term of four, and the term of the remaining member or members for six years, from the first day of the month during which the appointments are made. The first members of the board appointed as aforesaid shall meet at the office of the clerk of the county commission which entered the order creating the district as soon as practicable after the appointments and shall qualify by taking an oath of office: Provided, That any member or members of the board may be removed from their respective office as provided in section three-a [§ 16-13A-3a] of this article.

Any vacancy shall be filled for the unexpired term within thirty days, otherwise successor members of the board shall be appointed for terms of six years and the terms of office shall continue until successors have been appointed and qualified. All successor members shall be appointed in the same manner as the member succeeded was appointed.

The board shall organize within thirty days following the first appointments and annually thereafter at its first meeting after the first day of January of each year by selecting one of its members to serve as chair and by appointing a secretary and a treasurer who need not be members of the board. The secretary shall keep a record of all proceedings of the board which shall be available for inspection as other public records. Duplicate records shall be filed with the county commission and shall include the minutes of all board meetings. The treasurer is lawful custodian of all funds of the public service district and shall pay same out on orders authorized or approved by the board. The secretary and treasurer shall perform other duties appertaining to the affairs of the district and shall receive salaries as shall be prescribed by the board. The treasurer shall furnish bond in an amount to be fixed by the board for the use and benefit of the district.

The members of the board, and the chair, secretary and treasurer thereof, shall make available to the county commission, at all times, all of its books and records pertaining to the district's operation, finances and affairs, for inspection.



tion and audit. The board shall meet at least monthly. (1953, c. 147; 1965, c. 134; 1971, c. 72; 1981, c. 124; 1983, c. 166; 1986, c. 81; 1994, c. 61.)

**Effect of amendment of 1994.** — The amendment, in the second paragraph, substituted "bureau of public health" for "department of health," and substituted "division of environmental protection" for "department of natural resources"; in the third paragraph, deleted "not" prior to "less than eighteen thousand," deleted "shall thereby" prior to "become members," and substituted "so appointed are" for "shall be and constitute"; deleted "and constitute" prior to "the board of the district" in the fourth paragraph; deleted "additional" prior to "member or members" in the fifth paragraph; deleted "and regulations" following "rules" in the seventh paragraph; deleted "the" prior to "same out on orders" in the penultimate paragraph; and made stylistic changes.

**Textbooks.** — Instructions for Virginia and West Virginia (3rd ed.), § 24-128.10.

**Exemptions.** — Public service districts of West Virginia are political subdivisions of the State, and as such, they are specifically, by express statute, exempted from the duty of paying registration fees (provided by § 17A-10-8), the privilege tax (imposed by § 17A-3-4),

and the certificate of title charge (required by § 17A-3-4). 49 Op. Atty Gen. 131 (1961).

**Furnishing water to municipal corporation in another state.** — A public service district may furnish water wholesale in bulk quantities to a municipal corporation in another state. 51 Op. Atty Gen. 739 (1966).

**Authority of districts.** — Public service districts are agents of the county commission by which they were created, having no authority other than that expressly set out in this article. Op. Atty Gen., July 8, 1976.

**Furnishing water to border residents in neighboring state.** — See Op. Atty Gen., June 26, 1975.

**Compensation of board members for performing additional duties prohibited.** — Board members of a public service district could not be compensated for performing the duties of treasurer and/or secretary, or for reading meters for the public service district. Op. Atty Gen., July 14, 1988, No. 2.

Cited in *State v. Neary*, 365 S.E.2d 395 (W. Va. 1987).

### § 16-13A-3a. Removal of members of public service board.

The county commission or the public service commission or any other appointive body creating or establishing a public service district under the provisions of this article, or any group of five percent or more of the customers of a public service district, may petition the circuit court of the county in which the district maintains its principal office for the removal of any member of the governing board thereof for consistent violations of any provisions of this article, for reasonable cause which includes, but is not limited to, a continued failure to attend meetings of the board, failure to diligently pursue the objectives for which the district was created, or failure to perform any other duty either prescribed by law or required by a final order of the public service commission or for any malfeasance in public office. Any board member charged with a violation under this section who offers a successful defense against such charges shall be reimbursed for the reasonable costs of such defense from district revenues. Such costs shall be considered as costs associated with rate determination by the public service district and the public service commission. If the circuit court judge hearing the petition for removal finds that the charges are frivolous in nature, the judge may assess all or part of the court costs, plus the reasonable costs associated with the board member's defense, against the party or parties who petitioned the court for the board member's removal. (1963, c. 75; 1971, c. 72; 1981, c. 124; 1986, c. 81.)

**Textbooks.** — Instructions for Virginia and West Virginia (3rd ed.), § 24-128.10.

Quoted in *State v. Neary*, 365 S.E.2d 395 (W. Va. 1987).

# § 16-13A-4. Board chairman: members' compensation: procedure; district name.

The chairman shall preside at all meetings of the board and may vote as any other members of the board but if he should be absent from any meeting, the remaining members may select a temporary chairman and if the member selected as chairman resigns as such or ceases for any reason to be a member of the board, the board shall select one of its members as chairman to serve until the next annual organization meeting. Salaries of each of its board members shall be as follows: For districts with fewer than six hundred customers, each board member shall receive fifty dollars per attendance at regular monthly meetings and thirty dollars per attendance at additional special meetings, total salary not to exceed nine hundred dollars per annum; for districts with six hundred customers or more but fewer than two thousand customers, each board member shall receive one hundred dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed eighteen hundred dollars per annum; and for districts with two thousand customers or more, each board member shall receive one hundred dollars per attendance at regular monthly meetings and fifty dollars per attendance at additional special meetings, total salary not to exceed three thousand dollars per annum. The public service district shall certify the number of customers served to the public service commission beginning on the first day of July, one thousand nine hundred eighty-six, and continue each fiscal year thereafter. Board members may be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as provided for by the rules and regulations of the board. The board shall by resolution determine its own rules of procedure, fix the time and place of its meetings and the manner in which special meetings may be called. Public notice of meetings shall be given in accordance with section three [§ 6-9A-3], article nine-a, chapter six of this code. Emergency meetings may be called as provided by section three [§ 6-9A-3], article nine-a, chapter six of this code. A majority of the members constituting the board also constitute a quorum to do business. The members of the board are not personally liable or responsible for any obligations of the district or the board but are answerable only for willful misconduct in the performance of their duties. At any time prior to the issuance of bonds as hereinafter provided, the board may by resolution change the official or corporate name of the public service district and such change shall be effective from and after filing an authenticated copy of such resolution with the clerk of the county commission of each county in which the territory embraced within such district or any part thereof is located. The official name of any district created under the provisions of this article may contain the name or names of any city, incorporated town or other municipal corporation included therein or the name of any county or counties in which it is located. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

Compensation of board members for performing additional duties prohibited. — Board members of a public service district could not be compensated for performing the

duties of treasurer and/or or secretary, or for reading meters for the public service district. Op. Att'y Gen., July 14, 1988, No. 2.

**§ 16-13A-5. General manager of board.**

The board may employ a general manager to serve a term of not more than five years and until his successor is employed, and his compensation shall be fixed by resolution of the board. Such general manager shall devote all or the required portion of his time to the affairs of the district and may employ, discharge and fix the compensation of all employees of the district, except as in this article otherwise provided, and he shall perform and exercise such other powers and duties as may be conferred upon him by the board.

Such general manager shall be chosen without regard to his political affiliations and upon the sole basis of his administrative and technical qualifications to manage public service properties and affairs of the district and he may be discharged only upon the affirmative vote of two thirds of the board. Such general manager need not be a resident of the district at the time he is chosen. Such general manager may not be a member of the board but shall be an employee of the board.

The board of any public service district which purchases water or sewer service from a municipal water or sewer system or another public service district may, as an alternative to hiring its own general manager, elect to permit the general manager of the municipal water or sewer system or public service district from which such water or sewer service is purchased provide professional management to the district, if the appropriate municipality or public service board agrees to provide such assistance. The general manager shall receive reasonable compensation for such service. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

**§ 16-13A-6. Employees of board.**

The board may in its discretion from time to time by resolution passed by a majority vote provide for the employment of an attorney, fiscal agent, one or more engineers and such other employees as the board may determine necessary and expedient. The board shall in and by such resolution fix the term of employment and compensation and prescribe the duties to be performed by such employees. (1953, c. 147; 1981, c. 124.)

**§ 16-13A-7. Acquisition and operation of district properties.**

The board of such districts shall have the supervision and control of all public service properties acquired or constructed by the district, and shall have the power, and it shall be its duty, to maintain, operate, extend and improve the same. All contracts involving the expenditure by the district of more than five thousand dollars for construction work or for the purchase of equipment and improvements, extensions or replacements, shall be entered into only after

notice inviting bids shall have been published as a Class I legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for such publication shall be as specified in section two [§ 16-13A-2] of this article in the county or counties in which the district is located. The publication shall not be less than ten days prior to the making of any such contract. To the extent allowed by law, in-state contractors shall be given first priority in awarding public service district contracts. It shall be the duty of the board to ensure that local in-state labor shall be utilized to the greatest extent possible when hiring laborers for public service district construction or maintenance repair jobs. It shall further be the duty of the board to encourage contractors to use American-made products in their construction to the extent possible. Any obligations incurred of any kind or character shall not in any event constitute or be deemed an indebtedness within the meaning of any of the provisions or limitations of the constitution, but all such obligations shall be payable solely and only out of revenues derived from the operation of the public service properties of the district or from proceeds of bonds issued as hereinafter provided. No continuing contract for the purchase of materials or supplies or for furnishing the district with electrical energy or power shall be entered into for a longer period than fifteen years. (1953, c. 147; 1967, c. 105; 1981, c. 124; 1982, c. 24; 1986, c. 81.)

**§ 16-13A-8. Acquisition and purchase of public service properties; right of eminent domain; extraterritorial powers.**

The board may acquire any publicly or privately owned public service properties located within the boundaries of the district regardless of whether or not all or any part of such properties are located within the corporate limits of any city, incorporated town or other municipal corporation included within the district and may purchase and acquire all rights and franchises and any and all property within or outside the district necessary or incidental to the purpose of the district.

The board may construct any public service properties within or outside the district necessary or incidental to its purposes and each such district may acquire, construct, maintain and operate any such public service properties within the corporate limits of any city, incorporated town or other municipal corporation included within the district or in any unincorporated territory within ten miles of the territorial boundaries of the district: Provided, That if any incorporated city, town or other municipal corporation included within the district owns and operates either water facilities, sewer facilities or gas facilities or all of these, then the district may not acquire, construct, establish, improve or extend any public service properties of the same kind within such city, incorporated towns or other municipal corporations or the adjacent unincorporated territory served by such cities, incorporated towns or other municipal corporations, except upon the approval of the public service commission, the consent of such cities, incorporated towns or other municipal corporations and in conformity and compliance with the rights of the holders



of any revenue bonds or obligations theretofore issued by such cities, incorporated towns or other municipal corporations then outstanding and in accordance with the ordinance, resolution or other proceedings which authorize the issuance of such revenue bonds or obligations.

Whenever such district has constructed, acquired or established water facilities, sewer facilities or gas facilities for water, sewer or gas services within any city, incorporated town or other municipal corporation included within a district, then such city, incorporated town or other municipal corporation may not thereafter construct, acquire or establish any facilities of the same kind within such city, incorporated town or other municipal corporation without the consent of such district.

For the purpose of acquiring any public service properties or lands, rights or easements deemed necessary or incidental for the purposes of the district, each such district has the right of eminent domain to the same extent and to be exercised in the same manner as now or hereafter provided by law for such right of eminent domain by cities, incorporated towns and other municipal corporations: Provided, That such board may not acquire all or any substantial part of a privately owned waterworks system unless and until authorized so to do by the public service commission of West Virginia, and that this section shall not be construed to authorize any district to acquire through condemnation proceedings either in whole or substantial part an existing privately owned waterworks plant or system or gas facilities located in or furnishing water or gas service within such district or extensions made or to be made by it in territory contiguous to such existing plant or system, nor may any such board construct or extend its public service properties to supply its services into areas served by or in competition with existing waterworks or gas facilities or extensions made or to be made in territory contiguous to such existing plant or system by the owner thereof. (1953, c. 147; 1980, c. 60; 1981, c. 124.)

**District may exercise control over sewers where ownership is unknown** unincorporated areas. 45 Op. Att'y Gen. 506 (1953).

**Valid grant of power of eminent domain.** — The grant of power of eminent domain to public service districts by this section is valid. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Nuisance is element of just compensation.** — If a facility creates a nuisance this harm is simply an element of just compensation in an eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

**Procedure for affixing compensable interests.** — Public service commission, in the absence of specific statutory authority, is not empowered to determine whether particular property interests acquired or to be acquired by a utility are compensable in an eminent domain action, or to render any type of monetary judgment for such property interests. Affixing the value of the property taken is the function of the trier of fact in an eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

### **§ 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.**

The board may make, enact and enforce all needful rules and regulations in connection with the acquisition, construction, improvement, extension, man-

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agement, maintenance, operation, care, protection and the use of any public service properties owned or controlled by the district, and the board shall establish rates and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation and depreciation of such public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds hereunder. The schedule of such rates and charges may be based upon either (a) the consumption of water or gas on premises connected with such facilities, taking into consideration domestic, commercial, industrial and public use of water and gas; or (b) the number and kind of fixtures connected with such facilities located on the various premises; or (c) the number of persons served by such facilities; or (d) any combination thereof; or (e) may be determined on any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. Where water, sewer and gas services are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate thereof. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. All new applicants for service shall deposit a minimum of fifty dollars with the district to secure the payment of service rates and charges in the event they become delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another minimum deposit of fifty dollars has been remitted to the district. Whenever any rates, rentals or charges for services or facilities furnished remain unpaid for a period of thirty days after the same become due and payable, the property and the owner thereof, as well as the user of the services and facilities provided are delinquent and the owner, user and property are liable at law until such time as all such rates and charges are fully paid: Provided, That the property owner shall be given notice of any said delinquency by certified mail, return receipt requested. The board may, under reasonable rules promulgated by the public service commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both: Provided, however, That upon written request of the owner or owners of the premises, the board shall shut off and discontinue water and gas services where any rates, rentals, or charges for services or facilities remain unpaid by the user of the premises for a period of sixty days after the same became due and payable.

In the event that any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separately either water facilities or

sewer facilities, and the district owns and operates the other kind of facilities, either water or sewer, as the case may be, then the district and such publicly or privately owned utility, city, incorporated town or other municipal corporation or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: Provided, That any contracts entered into by a public service district pursuant to this section shall be submitted to the public service commission for approval. Any public service district providing water and sewer service to its customers has the right to terminate water service for delinquency in payment of either water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer district is providing water service, and the district providing sewer service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer district that is providing water service, upon the request of the district providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account: Provided, however, That any termination of water service must comply with all rules and orders of the public service commission.

Any district furnishing sewer facilities within the district may require, or may by petition to the circuit court of the county in which the property is located, compel or may require the bureau of public health to compel all owners, tenants or occupants of any houses, dwellings and buildings located near any such sewer facilities, where sewage will flow by gravity or be transported by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine (§ 16-1-9), article one, chapter sixteen of this code, from such houses, dwellings or buildings into such sewer facilities, to connect with and use such sewer facilities, and to cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such houses, dwellings and buildings where there is such gravity flow or transportation by such other methods approved by the bureau of public health including, but not limited to, vacuum and pressure systems, approved under the provisions of section nine, article one, chapter sixteen of this code, and such houses, dwellings and buildings can be adequately served by the sewer facilities of the district, and it is hereby found, determined and declared that the mandatory use of such sewer facilities provided for in this paragraph is necessary and essential for the health and welfare of the inhabitants and residents of such districts and of the state: Provided, That if the public service district determines that the property owner must connect with the sewer facilities even when sewage from such dwellings may not flow to the main line by gravity and the property owner must incur costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for such changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance and purchase of a pump, or any other method approved by the bureau of public health; maintenance and

operation costs for such extra installation should be reflected in the users charge for approval of the public service commission. The circuit court shall adjudicate the merits of such petition by summary hearing to be held not later than thirty days after service of petition to the appropriate owners, tenants or occupants.

Whenever any district has made available sewer facilities to any owner, tenant or occupant of any house, dwelling or building located near such sewer facility, and the engineer for the district has certified that such sewer facilities are available to and are adequate to serve such owner, tenant or occupant, and sewage will flow by gravity or be transported by such other methods approved by the bureau of public health from such house, dwelling or building into such sewer facilities, the district may charge, and such owner, tenant or occupant shall pay the rates and charges for services established under this article only after thirty-day notice of the availability of the facilities has been received by the owner.

All delinquent fees, rates and charges of the district for either water facilities, sewer facilities or gas facilities are liens on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes. In addition to the other remedies provided in this section, public service districts are hereby granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts.

Anything in this section to the contrary notwithstanding, any establishment, as defined in section three [§ 22-11-3], article eleven, chapter twenty-two, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the division of environmental protection, as prescribed by section eleven [§ 22-11-11], article eleven, chapter twenty-two of this code, is exempt from the provisions of this section. (1953, c. 147; 1965, c. 134; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1989, c. 174; 1994, c. 61.)

**Effect of amendment of 1994.** — The amendment substituted "bureau of public health" for "department of health" throughout the section; deleted "and regulations" following "reasonable rules" in the first paragraph and following "all rules" in the second paragraph; and made stylistic changes.

**Lien not a deprivation of property without due process.** — The provision that delinquent fixed rates and charges for services rendered by a public service district shall be a lien on the premises served of equal dignity, rank and priority with the lien on such premises of state, county, school and municipal taxes, does not deprive the owners of their property without due process of law. *State ex rel. McMillion v. Stahl*, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**Requiring connections with sewer facilities.** — The boards of public service districts have no authority to require potential users who live outside the boundaries of the districts, but within the 10-mile limit, to hook onto the district's sewer facilities. *Op. Att'y Gen.*, July 8, 1976.

**Abandonment of private systems.** — Where a public service district requires a property owner, tenant, or occupant to connect onto its sewer system and to abandon a private sewer system located on the property, such person cannot recover from the public service district the value of the private system on the ground that such abandonment constitutes a taking of private property without just compensation within the meaning of W. Va. Const., art.



III, § 9. Kingmill Valley Pub. Serv. Dist. v. Riverview Estates Mobile Home Park, 182 W. Va. 116, 386 S.E.2d 483 (1989).

**When duty arises.** — Owners, tenants, or occupants have a duty under this section to pay rates and charges for the district sewer facilities from and after the date of receipt of notice (now 30 days after receipt) that such facilities are available. Rhodes v. Malden Pub. Serv.

Dist., 301 S.E.2d 601 W. Va. 1953 (construing this section prior to 1980 and 1981 amendments).

**Sewage lagoons buffer-zone requirements.** — Public Service Commission did not err in finding that the proposed sewage lagoons site satisfied the buffer-zone requirements. Sexton v. Public Serv. Comm'n, 185 W. Va. 305, 423 S.E.2d 914 (1992).

### § 16-13A-9a. Limitations with respect to foreclosure.

No public service district shall foreclose upon the premises served by such district for delinquent fees, rates or charges for which a lien is authorized by sections nine or nineteen [§§ 16-13A-9 or 16-13A-19] of this article except through the bringing and maintenance of a civil action for such purpose brought in the circuit court of the county wherein the district lies. In every such action, the court shall be required to make a finding based upon the evidence and facts presented that the district prior to the bringing of such action had exhausted all other remedies for the collection of debts with respect to such delinquencies. In no event shall foreclosure procedures be instituted by any such district or on its behalf unless such delinquency had been in existence or continued for a period of two years from the date of the first such delinquency for which foreclosure is being sought. (1982, c. 74.)

### § 16-13A-10. Budget.

The board shall establish the beginning and ending of its fiscal year, which period shall constitute its budget year, and at least thirty days prior to the beginning of the first full fiscal year after the creation of the district and annually thereafter the general manager shall prepare and submit to the board a tentative budget which shall include all operation and maintenance expenses, payments to a capital replacement account and bond payment schedules for the ensuing fiscal year. Such tentative budget shall be considered by the board, and, subject to any revisions or amendments that may be determined by the board, shall be adopted as the budget for the ensuing fiscal year. Upon adoption of the budget, a copy of the budget shall be forwarded to the county commission. No expenditures for operation and maintenance expenses in excess of the budget shall be made during such fiscal year unless unanimously authorized and directed by the board. (1953, c. 147; 1981, c. 124.)

**Textbooks.** — Instructions for Virginia and West Virginia (3rd ed.), § 24-128.10.

### § 16-13A-11. Accounts; audit.

The general manager, under direction of the board, shall install and maintain a proper system of accounts, in accordance with all rules, regulations or orders pertaining thereto by the public service commission, showing receipts from operation and application of the same, and the board shall at least once a year cause such accounts to be properly audited: Provided, That such audit

may be any audit by an independent public accountant completed within one year of the time required for the submission of the report. Provided, however, That if the district is required to have its books, records and accounts audited annually by an independent certified public accountant as a result of any covenant in any board resolution or bond instrument, a copy of such audit may be submitted in satisfaction of the requirements of this section, and is hereby found, declared and determined to be sufficient to satisfy the requirements of article nine (§ 6-9-1 et seq.), chapter six of this code pertaining to the annual audit report by the state tax commission. A copy of the audit shall be forwarded within thirty days of submission to the county commission and to the public service commission.

The treasurer of each public service district shall keep and preserve all financial records of the public service district for ten years, and shall at all times have such records readily available for public inspection. At the end of his term of office, the treasurer of each public service district shall promptly deliver all financial records of the public service district to his successor in office. Any treasurer of a public service district who knowingly or willfully violates any provision of this section is guilty of a misdemeanor, and shall be fined not less than one hundred dollars nor more than five hundred dollars or imprisoned in the county jail not more than ten days, or both. (1953, c. 147; 1981, c. 124; 1986, c. 81.)

**Textbooks.** — Instructions for Virginia and West Virginia (3rd ed.), § 24-128.10.

#### § 16-13A-12. Disbursement of district funds.

No money may be paid out by a district except upon an order signed by the chairman and secretary of such board, or such other person or persons authorized by the chairman or secretary, as the case may be, to sign such orders on their behalf. Each order for the payment of money shall specify the purposes for which the amount thereof is to be paid, with sufficient clearness to indicate the purpose for which the order is issued, and there shall be endorsed thereon the name of the particular fund out of which it is payable and it shall be payable from the fund constituted for such purpose, and no other. All such orders shall be reflected in the minutes of the next meeting of the board. (1953, c. 147; 1981, c. 124.)

#### § 16-13A-13. Revenue bonds.

For constructing or acquiring any public service properties for the authorized purposes of the district, or necessary or incidental thereto, and for constructing improvements and extensions thereto, and also for reimbursing or paying the costs and expenses of creating the district, the board of any such district is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds of such district, payable solely from the revenues derived from the operation of the public service properties under control of the district. Such bonds may be issued in one or more series, may bear such date or dates, may mature at such time or times not exceeding forty

years from their respective dates, may bear interest at such rate or rates not exceeding eighteen percent per annum payable at such times, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the board. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond is nonnegotiable, all such bonds shall be, and shall be treated as, negotiable instruments for all purposes. Bonds bearing the signatures of officers in office on the date of the signing thereof shall be valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon shall have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds may be negotiated or sold in such manner and at such time or times as is found by the board to be most advantageous, and all such bonds may be sold at such price that the interest cost of the proceeds therefrom does not exceed nineteen percent per annum, based on the average maturity of such bonds and computed according to standard tables of bond values. Any resolution or resolutions providing for the issuance of such bonds may contain such covenants and restrictions upon the issuance of additional bonds thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds thereby authorized. (1953, c. 147; 1970, cc. 11, 12; 1970, 1st Ex. Sess., c. 2; 1980, c. 33; 1981, 1st Ex. Sess., c. 2; 1989, c. 174.)

**Cross references.** — Procedure for borrowing and issuing bonds, § 16-13A-25.

#### § 16-13A-14. Items included in cost of properties.

The cost of any public service properties acquired under the provisions of this article shall be deemed to include the cost of the acquisition or construction thereof, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest upon bonds prior to and during construction or acquisition and for six months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof. (1953, c. 147.)

### § 16-13A-15. Bonds may be secured by trust indenture.

In the discretion and at the option of the board such bonds may be secured by a trust indenture by and between the district and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the State of West Virginia, but no such trust indenture shall convey mortgage or create any lien upon the public service properties or any part thereof. The resolution authorizing the bonds and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the district and the members of its board and officers in relation to the construction or acquisition of public service properties and the improvement, extension, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or revenues of the public service properties or other money pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders and such trustee. (1953, c. 147.)

### § 16-13A-16. Sinking fund for revenue bonds.

At or before the time of the issuance of any bonds under this article the board shall by resolution or in the trust indenture provide for the creation of a sinking fund and for monthly payments into such fund from the revenues of the public service properties operated by the district such sums in excess of the cost of maintenance and operation of such properties as will be sufficient to pay the accruing interest and retire the bonds at or before the time each will respectively become due and to establish and maintain reserves therefor. All sums which are or should be, in accordance with such provisions, paid into such sinking fund shall be used solely for payment of interest and for the retirement of such bonds at or prior to maturity as may be provided or required by such resolutions. (1953, c. 147.)

### § 16-13A-17. Collection, etc., of revenues and enforcement of covenants; default; suit, etc., by bondholder or trustee to compel performance of duties; appointment and powers of receiver.

The board of any such district shall have power to insert enforceable provisions in any resolution authorizing the issuance of bonds relating to the collection, custody and application of revenues of the district from the

operation of the public service properties under its control and to the enforcement of the covenants and undertakings of the district. In the event there shall be default in the sinking fund provisions aforesaid or in the payment of the principal or interest on any of such bonds or, in the event the district or its board or any of its officers, agents or employees, shall fail or refuse to comply with the provisions of this article, or shall default in any covenant or agreement made with respect to the issuance of such bonds or offered as security therefor, then any holder or holders of such bonds and any such trustee under the trust indenture, if there be one, shall have the right by suit, action, mandamus or other proceeding instituted in the circuit court for the county or any of the counties wherein the district extends, or in any other court of competent jurisdiction, to enforce and compel performance of all duties required by this article or undertaken by the district in connection with the issuance of such bonds, and upon application of any such holder or holders, or such trustee, such court shall, upon proof of such defaults, appoint a receiver for the affairs of the district and its properties, which receiver so appointed shall forthwith directly, or by his agents and attorneys, enter into and upon and take possession of the affairs of the district and each and every part thereof, and hold, use, operate, manage and control the same, and in the name of the district exercise all of the rights and powers of such district as shall be deemed expedient, and such receiver shall have power and authority to collect and receive all revenues and apply same in such manner as the court shall direct. Whenever the default causing the appointment of such receiver shall have been cleared and fully discharged and all other defaults shall have been cured, the court may in its discretion and after such notice and hearing as it deems reasonable and proper direct the receiver to surrender possession of the affairs of the district to its board. Such receiver so appointed shall have no power to sell, assign, mortgage, or otherwise dispose of any assets of the district except as hereinbefore provided. (1953, c. 147.)

**Rules of Civil Procedure.** — As to abolition of the procedural distinctions between law and equity, see Rule 2.

As to receivers, see Rule 66.

As to application of rules to writ of mandamus, see Rule 81(a)(5).

As to effect of rules on jurisdiction and venue, see Rule 82.

**Mandamus.** — Mandamus is a proper remedy to be pursued by the holder of a municipal revenue bond to require a municipal corporation to comply with rate covenants in its rev-

enue bonds. *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966).

Under this section, any holder of the bonds of the Union public service district shall have the right by mandamus to enforce and compel the performance of all the duties required by statute or undertaken by the district in connection with the issuance of bonds by such district. *State ex rel. Allstate Ins. Co. v. Union Pub. Serv. Dist.*, 151 W. Va. 207, 151 S.E.2d 102 (1966).

## § 16-13A-18. Operating contracts.

The board may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the public service properties within the district, or any part thereof, for such period of time and under such terms and conditions as shall be agreed upon between the board and such persons, firms or corporations. The board shall have power to provide in the



resolution authorizing the issuance of bonds, or in any trust indenture securing such bonds, that such contracts or agreements shall be valid and binding upon the district as long as any of said bonds, or interest thereon, are outstanding and unpaid. (1953, c. 147.)

**§ 16-13A-18a. Sale, lease or rental of water, sewer or gas system by district; distribution of proceeds.**

In any case where a public service district owns a water, sewer or gas system, and all the members of the public service board thereof deem it for the best interests of the district to sell, lease or rent such water, sewer or gas system to any municipality or privately owned water, sewer or gas system, or to any water, sewer or gas system owned by an adjacent public service district, the board may so sell, lease or rent such water, sewer or gas system upon such terms and conditions as said board, in its discretion, considers in the best interests of the district: Provided, That such sale, leasing or rental may be made only upon approval by the public service commission of West Virginia.

In the event of any such sale, the proceeds thereof, if any, remaining after payment of all outstanding bonds and other obligations of the district, shall be ratably distributed to any persons who have made contributions in aid of construction of such water, sewer or gas system, such distribution not to exceed the actual amount of any such contribution, without interest, and any balance of funds thereafter remaining shall be paid to the county commission of the county in which the major portion of such water, sewer or gas system is located to be placed in the general funds of such county commission. (1963, c. 75; 1981, c. 124; 1986, c. 81.)

**§ 16-13A-19. Statutory mortgage lien created; foreclosure thereof.**

There shall be and is hereby created a statutory mortgage lien upon such public service properties of the district, which shall exist in favor of the holders of bonds hereby authorized to be issued, and each of them, and the coupons attached to said bonds, and such public service properties shall remain subject to such statutory mortgage lien until payment in full of all principal of and interest on such bonds. Any holder of such bonds, of any coupons attached thereto, may, either at law or in equity, enforce said statutory mortgage lien conferred hereby and upon default in the payment of the principal of or interest on said bonds, may foreclose such statutory mortgage lien in the manner now provided by the laws of the State of West Virginia for the foreclosure of mortgages on real property. (1953, c. 147.)

**Rules of Civil Procedure.** — As to abolition of the procedural distinctions between law and equity, see Rule 2.

The provision granting to bondholders a

statutory mortgage lien is valid. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

**§ 16-13A-20. Refunding revenue bonds.**

The board of any district having issued bonds under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds of such district for the purpose of retiring or refinancing such outstanding bonds, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds shall be applicable to such refunding bonds, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds to be so refunded. (1953, c. 147.)

**The only purpose for refunding bonds** is the retirement or refinancing of outstanding bond issues of a particular district. Op. Att'y Gen., July 8, 1976.

**Combination of two outstanding bond issues into one refunding bond issue** may well be restricted by the use of the singular

language in this section. Op. Att'y Gen., July 8, 1976.

**Previous issuance of bonds required.** — This section is clearly written in language which speaks only of refunding bonds issued by any district which has previously issued bonds. Op. Att'y Gen., July 8, 1976.

**§ 16-13A-21. Complete authority of article; liberal construction; district to be public instrumentality; tax exemption.**

This article is full and complete authority for the creation of public service districts and for carrying out the powers and duties of same as herein provided. The provisions of this article shall be liberally construed to accomplish its purpose and no procedure or proceedings, notices, consents or approvals, are required in connection therewith except as may be prescribed by this article: Provided, That all functions, powers and duties of the public service commission of West Virginia, the bureau of public health, the division of environmental protection and the environmental quality board remain unaffected by this article. Every district organized, consolidated, merged or expanded under this article is a public instrumentality created and functioning in the interest and for the benefit of the public, and its property and income and any bonds issued by it are exempt from taxation by the state of West Virginia, and the other taxing bodies of the state: Provided, however, That the board of any such district may use and apply any of its available revenues and income for the payment of what such board determines to be tax or license fee equivalents to any local taxing body and in any proceedings for the issuance of bonds of such district may reserve the right to annually pay a fixed or computable sum to such taxing bodies as such tax or license fee equivalent. (1953, c. 147; 1986, c. 81; 1994, c. 61.)

**Effect of amendment of 1994.** — The amendment substituted "bureau of public health, the division of environmental protection and the environmental quality board" for "state department of health and the state water resources board"; deleted "declared" preceding "a public instrumentality"; and made stylistic changes.

**Tax exemption constitutional.** — The tax exemption granted to the property, income, and bonds of the district does not violate W. Va. Const., art. X, § 1. State ex rel. McMillion v. Stahl, 141 W. Va. 233, 89 S.E.2d 693 (1955).

Applied in Rhodes v. Malden Pub. Serv. Dist., 301 S.E.2d 601 (W. Va. 1983).

**§ 16-13A-22. Validation of prior acts and proceedings of county courts for creation of districts, inclusion of additional territory, and appointment of members of district boards.**

All acts and proceedings taken by any county court of this State purporting to have been carried out under the provisions of this article which have been taken, prior to the date this section takes effect [January 29, 1960], for the purpose of creating public service districts or for the purpose of subsequent inclusion of additional territory to existing public service districts, after notice published by any such county court having territorial jurisdiction thereof of its intention to include such additional territory after hearing thereon, are hereby validated, ratified, approved and confirmed notwithstanding any other lack of power (other than constitutional) of any such county court to create such public service districts or to include additional territory to existing public service districts or irregularities (other than constitutional) in such proceedings, relating to the appointment and qualification of more than three members to the board of any such public service district or the subsequent appointment of successors of any or all of such members, notwithstanding that no city, incorporated town or other municipal corporation having a population in excess of three thousand is included within the district, and the appointment and qualification of such members, and further including any irregularities in the petition for the creation of any public service district, irregularities in the description of the area embraced by such district, and irregularities in the notice and publication of notice for the hearing creating such district, prior to the date this section takes effect, is hereby validated, ratified, approved and confirmed; and, further, in such cases where more than three members of the board of such districts have been so appointed prior to the date this section takes effect then such county court shall appoint, and they are hereby authorized and empowered to appoint, successors to such members in the manner as otherwise provided by this article. (1958, c. 14; 1960, c. 19.)

**Editor's notes.** — As to the designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

**§ 16-13A-23. Validation of acts and proceedings of public service boards.**

All acts and proceedings taken by any public service board the members of which were appointed, prior to the date this section takes effect [March 13, 1965], by any county court of this State having territorial jurisdiction thereof, are hereby validated, ratified, approved and confirmed, as to defects and irregularities which may otherwise exist on account of their appointment and qualification: Provided, however, That nothing herein contained shall be construed to excuse a criminal act. (1958, c. 14; 1960, c. 19; 1965, c. 134.)



**Editor's notes.** — As to the designation of county courts as county commissions, see W. Va. Const., art. IX, § 9.

**§ 16-13A-24. Acceptance of loans, grants or temporary advances.**

Any public service district created pursuant to the provisions of this article is authorized and empowered to accept loans or grants and procure loans or temporary advances evidenced by notes or other negotiable instruments issued in the manner, and subject to the privileges and limitations, set forth with respect to bonds authorized to be issued under the provisions of this article, for the purpose of paying part or all of the cost of construction or acquisition of water systems, sewage systems or gas facilities, or all of these, and the other purposes herein authorized, from any authorized agency or from the United States of America or any federal or public agency or department of the United States or any private agency, corporation or individual, which loans or temporary advances, including the interest thereon, may be repaid out of the proceeds of the bonds authorized to be issued under the provisions of this article, the revenues of the said water system, sewage system or gas facilities or grants to the public service district from any authorized agency or from the United States of America or any federal or public agency or department of the United States or from any private agency, corporation or individual or from any combination of such sources of payment, and to enter into the necessary contracts and agreements to carry out the purposes hereof with any authorized agency or the United States of America or any federal or public agency or department of the United States, or with any private agency, corporation or individual. Any other provisions of this article to the contrary notwithstanding, interest on any such loans or temporary advances may be paid from the proceeds thereof until the maturity of such notes or other negotiable instrument. (1958, c. 14; 1980, c. 60; 1981, c. 124; 1986, c. 118.)

**Permissible borrowing by public service districts.** — The borrowing by public service districts of money from counties and/or municipalities, as evidenced by a note, is permissible borrowing under this section. Op. Att'y Gen., May 6, 1988, No. 27.

**§ 16-13A-25. Borrowing and bond issuance; procedure.**

Notwithstanding any other provisions of this article to the contrary, a public service district shall not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of sections thirteen, twenty or twenty-four [§§ 16-13A-13, 16-13A-20 or 16-13A-24] of this article, without the prior consent and approval of the public service commission. Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the public service commission in accordance with the provisions

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of chapter twenty-four [§ 24-1-1 et seq.] of this code, when a public service district is seeking to acquire or construct public service property.

Sixty days prior to making formal application for said certificate, the public service district shall prefile with the public service commission its plans and supporting information for said project and shall publish a Class II legal advertisement in a newspaper or newspapers of general circulation in each city, incorporated town or municipal corporation if available in the district, which legal advertisement shall state:

(a) The amount of money to be borrowed, or the amount of revenue bonds to be issued: Provided, That if the amount is an estimate, the notice may be stated in terms of an amount "not to exceed" a specific amount;

(b) The interest rate and terms of the loan or bonds: Provided, That if the interest rate is an estimate, the notice may be stated in terms of a rate "not to exceed" a specific rate;

(c) The public service properties to be acquired or constructed, and the cost of same;

(d) The anticipated rates which will be charged by the district: Provided, That if the rates are an estimate, the notice may be stated in terms of rates "not to exceed" a specific rate; and

(e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the public service commission. The public service commission may grant its consent and approval for the certificate, or any other request for approval under this section, subject to such terms and conditions as may be necessary for the protection of the public interest, pursuant to the provisions of chapter twenty-four [§ 24-1-1 et seq.] of this code, or may withhold such consent and approval for the protection of the public interest.

In the event of disapproval, the reasons therefor shall be assigned in writing by the commission. (1969, 1st Ex. Sess., c. 6; 1981, c. 124; 1986, c. 81.)

**Cross references.** — Class II legal advertisement defined, § 59-3-2.

**Certificate of necessity and convenience.** — Under this section, a public service district must first obtain a certificate of public convenience and necessity before it can acquire or construct public service property. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

**Eminent domain not subject to public**

**service commission review.** — Although construction of a new facility proposed by a utility will often require the taking of private property through eminent domain, in the absence of express statutory language, the public service commission has no duty to review and decide issues that are inherent in the eminent domain proceeding. *Sexton v. Public Serv. Comm'n*, 188 W. Va. 305, 423 S.E.2d 914 (1992).

## ARTICLE 13B.

### COMMUNITY IMPROVEMENT ACT.

Sec.		Sec.	
16-13B-1.	Short title.	16-13B-4.	Determination of need and feasibility of creating an assessment district.
16-13B-2.	Definitions.	16-13B-5.	Notice to property owners before creation of assessment district and construction of project;
16-13B-3.	Power and authority of counties and municipalities relating to flood relief, wastewater and water projects.		

ARTICLE 13A.

**PUBLIC SERVICE DISTRICTS FOR WATER, SEWERAGE  
AND GAS SERVICES.**

Sec.

16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of

Sec.

county commission; filing list of members and districts with the secretary of state.

16-13A-25. Borrowing and bond issuance; procedure.

**§ 16-13A-1a. Jurisdiction of the public service commission.**

Cited in State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 464 S.E.2d 777 (W. Va. 1995).

**§ 16-13A-2. Creation of districts by county commission; enlarging, reducing, merging, or dissolving district; consolidation; agreements, etc.; infringing upon powers of county commission; filing list of members and districts with the secretary of state.**

(a) The county commission of any county may propose the creation, enlargement, reduction, merger, dissolution, or consolidation of a public service district by any of the following methods: (1) on its own motion by order duly adopted, (2) upon the recommendation of the public service commission, or (3) by petition of twenty-five percent of the registered voters who reside within the limits of the proposed public service district within one or more counties. The petition shall contain a description, including metes and bounds, sufficient to identify the territory to be embraced therein and the name of such proposed district: Provided, That after the effective date of this section, no new public service district shall be created, enlarged, reduced, merged, dissolved or consolidated under this section without the written consent and approval of the public service commission, which approval and consent shall be in accordance with rules promulgated by the public service commission and may only be requested after consent is given by the appropriate county commission or commissions pursuant to this section. Any territory may be included regardless of whether or not the territory includes one or more cities, incorporated towns or other municipal corporations which own and operate any public service properties and regardless of whether or not it includes one or more cities, incorporated towns or other municipal corporations being served by privately owned public service properties: Provided, however, That the same territory shall not be included within the boundaries of more than one public service district except where the territory or part thereof is included within the boundaries of a separate public service district organized to supply

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water, sewerage services or gas facilities not being furnished within such territory or part thereof: Provided further, That no city, incorporated town or other municipal corporation shall be included within the boundaries of the proposed district except upon the adoption of a resolution of the governing body of the city, incorporated town or other municipal corporation consenting.

(b) The petition shall be filed in the office of the clerk of the county commission of the county in which the territory to constitute the proposed district is situated, and if the territory is situated in more than one county, then the petition shall be filed in the office of the clerk of the county commission of the county in which the major portion of the territory extends, and a copy thereof (omitting signatures) shall be filed with each of the clerks of the county commission of the other county or counties into which the territory extends. The clerk of the county commission receiving such petition shall present it to the county commission of the county at the first regular meeting after the filing or at a special meeting called for the consideration thereof.

(c) When the county commission of any county enters an order on its own motion proposing the creation, enlargement, reduction, merger, dissolution or consolidation of a public service district, as aforesaid, or when a petition for the creation is presented, as aforesaid, the county commission shall at the same session fix a date of hearing in the county on the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed public service district, which date so fixed shall be not more than forty days nor less than twenty days from the date of the action. If the territory proposed to be included is situated in more than one county, the county commission, when fixing a date of hearing, shall provide for notifying the county commission and clerk thereof of each of the other counties into which the territory extends of the date so fixed. The clerk of the county commission of each county in which any territory in the proposed public service district is located shall cause notice of the hearing and the time and place thereof, and setting forth a description of all of the territory proposed to be included therein to be given by publication as a Class I legal advertisement in compliance with the provisions of article three [§ 59-3-1 et seq.], chapter fifty-nine of this code, and the publication area for the publication shall be by publication in each city, incorporated town or municipal corporation if available in each county in which any territory in the proposed public service district is located. The publication shall be at least ten days prior to the hearing.

(d) In all cases where proceedings for the creation, enlargement, reduction, merger, dissolution or consolidation of the public service districts are initiated by petition as aforesaid, the person filing the petition shall advance or satisfactorily indemnify the payment of the cost and expenses of publishing the hearing notice, and otherwise the costs and expenses of the notice shall be paid in the first instance by the county commission out of contingent funds or any other funds available or made available for that purpose. In addition to the notice required herein to be published, there shall also be posted in at least five conspicuous places in the proposed public service district, a notice containing the same information as is contained in the published notice. The posted notices shall be posted not less than ten days before the hearing.

(e) All persons residing in or owning or having any interest in property in the proposed public service district shall have an opportunity to be heard for and against its creation, enlargement, reduction, merger, dissolution or consolidation. At the hearing the county commission before which the hearing is conducted shall consider and determine the feasibility of the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district. If the county commission determines that the construction or acquisition by purchase or otherwise and maintenance, operation, improvement and extension of public service properties by the public service district will be conducive to the preservation of public health, comfort and convenience of such area, the county commission shall by order create, enlarge, reduce, merge, dissolve or consolidate such public service district. If the county commission, after due consideration, determines that the proposed district will not be conducive to the preservation of public health, comfort or convenience of the area or that the creation, enlargement, reduction, merger, dissolution or consolidation of the proposed district as set forth and described in the petition or order is not feasible, it may refuse to enter an order creating the district or it may enter an order amending the description of the proposed district and create, enlarge, reduce, merge, dissolve or consolidate the district as amended.

(f) If the county commission determines that any other public service district or districts can adequately serve the area of the proposed public service district, whether by enlargement, reduction, merger, dissolution or consolidation, it shall refuse to enter the order, but shall enter an order creating, enlarging, reducing, merging, dissolving or consolidating the area with an existing public service district, in accordance with rules adopted by the public service commission for such purpose: Provided, That no enlargement of a public service district may occur if the present or proposed physical facilities of the public service district are determined by the appropriate county commission or the public service commission to be inadequate to provide such enlarged service. The clerk of the county commission of each county into which any part of such district extends shall retain in his office an authentic copy of the order creating, enlarging, reducing, merging, dissolving or consolidating the district: Provided, however, That within ten days after the entry of an order creating, enlarging, reducing, merging, dissolving or consolidating a district, such order must be filed for review and approval by the public service commission. The public service commission shall provide a hearing in the affected county on the matter and may approve, reject or modify the order of the county commission if it finds it is in the best interests of the public to do so. The public service commission shall adopt rules relating to such filings and the approval, disapproval or modification of county commission orders for creating, enlarging, merging, dissolving or consolidating districts. The provisions of this section shall not apply to the implementation by a county commission of an order issued by the public service commission pursuant to this section and section one-b [§ 16-13A-1b] of this article.

(g) The county commission may, if in its discretion it deems it necessary, feasible and proper, enlarge the district to include additional areas, reduce the area of the district, where facilities, equipment, service or materials have not

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been extended, or dissolve the district if inactive or create or consolidate two or more such districts. If consolidation of districts is not feasible, the county commission may consolidate and centralize management and administration of districts within its county or multi-county area to achieve efficiency of operations: Provided, That where the county commission determines on its own motion by order entered of record, or there is a petition to enlarge the district, merge and consolidate districts, or the management and administration thereof, reduce the area of the district or dissolve the district if inactive, all of the applicable provisions of this article providing for hearing, notice of hearing and approval by the public service commission shall apply. The commission shall at all times attempt to bring about the enlargement or merger of existing public service districts in order to provide increased services, and to eliminate the need for creation of new public service districts in those areas which are not currently serviced by a public service district: Provided, however, That where two or more public service districts are consolidated pursuant to this section, any rate differentials may continue for the period of bonded indebtedness incurred prior to consolidation. The districts may not enter into any agreement, contract or covenant that infringes upon, impairs, abridges or usurps the duties, rights or powers of the county commission, as set forth in this article, or conflicts with any provision of this article.

(h) A list of all districts and their current board members shall be filed by the county commission with the secretary of state and the public service commission by the first day of July of each year. (1953, c. 147; 1965, c. 134; 1967, c. 105; 1975, c. 140; 1980, c. 60; 1981, c. 124; 1986, c. 81; 1995, c. 125.)

**Effect of amendment of 1995.** — The amendment added the subsection designations; in (a), rewrote the former first sentence as the present first two sentences; inserted "enlargement, reduction, merger, dissolution or consolidation" following "creation" throughout (c), (d), and (e); inserted "enlarge, reduce, merge, dissolve or consolidate" twice in (e); rewrote (f); in (g), substituted "create" for "establish" in the first sentence, deleted "with like effect as if a

district were being created" from the end of the second sentence, and substituted "enlargement" for "expansion" in the third sentence, and made stylistic changes.

**Editor's notes.** — Concerning the reference in (a) to "the effective date of this section," this language was added by Acts 1986, c. 81, which passed March 8, 1986, and became effective ninety days from passage.

**§ 16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.**

**Quoted in** State ex rel. Water Dev. Auth. v. Northern Wayne County Pub. Serv. Dist., 464 S.E.2d 777 (W. Va. 1995).

**§ 16-13A-25. Borrowing and bond issuance; procedure.**

Notwithstanding any other provisions of this article to the contrary, a public service district shall not borrow money, enter into contracts for the provision of engineering, design or feasibility studies, issue or contract to issue revenue bonds or exercise any of the powers conferred by the provisions of section



thirteen, twenty or twenty-four [§ 16-13A-13, § 16-13A-20 or § 16-13A-24] of this article, without the prior consent and approval of the public service commission. Unless the properties to be constructed or acquired represent ordinary extensions or repairs of existing systems in the usual course of business, a public service district must first obtain a certificate of public convenience and necessity from the public service commission in accordance with the provisions of chapter twenty-four [§ 24-1-1 et seq.] of this code, when a public service district is seeking to acquire or construct public service property.

Thirty days prior to making formal application for the certificate, the public service district shall profile with the public service commission its plans and supporting information for the project and shall publish a Class II legal advertisement in a newspaper or newspapers of general circulation in each city, incorporated town or municipal corporation if available in the public service district, which legal advertisement shall state:

(a) The amount of money to be borrowed, or the amount of revenue bonds to be issued: Provided, That if the amount is an estimate, the notice may be stated in terms of an amount "not to exceed" a specific amount;

(b) The interest rate and terms of the loan or bonds: Provided, That if the interest rate is an estimate, the notice may be stated in terms of a rate "not to exceed" a specific rate;

(c) The public service properties to be acquired or constructed, and the cost of the public service properties;

(d) The anticipated rates which will be charged by the public service district: Provided, That if the rates are an estimate, the notice may be stated in terms of rates "not to exceed" a specific rate; and

(e) The date that the formal application for a certificate of public convenience and necessity is to be filed with the public service commission. The public service commission may grant its consent and approval for the certificate, or any other request for approval under this section, subject to such terms and conditions as may be necessary for the protection of the public interest, pursuant to the provisions of chapter twenty-four of this code, or may withhold such consent and approval for the protection of the public interest.

In the event of disapproval, the reasons for the disapproval shall be assigned in writing by the commission. (1969, 1st Ex. Sess., c. 6; 1981, c. 124; 1986, c. 81; 1996, c. 213.)

**Effect of amendment of 1996.** — The amendment, in the second paragraph, substituted "Thirty days" for "Sixty days" and in-

serted "public service" preceding the second occurrence of "district"; inserted "public service" in (d); and made stylistic changes.

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