

WEST DUNBAR PUBLIC SERVICE DISTRICT  
\$100,000 SEWER REVENUE BOND,  
SERIES 1993

DATE OF CLOSING: MARCH 18, 1993

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March 25, 1993

340-1518 WALTERS DIRECT DIAL NO.

R. Witter Hallan, Esq.  
Municipal Bond Commission  
1900 Kanawha Boulevard, East  
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Charleston, WV 25305

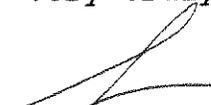
Re: West Dunbar Public Service District  
\$100,000 Sewer Revenue Bond, Series 1993

Dear Witter:

Enclosed please find your transcript of the closing documents for the above-referenced financing.

It was a pleasure working with you on this financing.  
Best regards.

Very truly yours,

  
Sammie L. Gee

SLG/amd

Enclosure

ABB028DC

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MAR 26 1993  
MBC

WEST DUNBAR PUBLIC SERVICE DISTRICT

\$100,000 Sewer Revenue Bond,  
Series 1993

TRANSCRIPT OF PROCEEDINGS

<u>Document No.</u>	<u>Description</u>	<u>Index No.</u>
<u>I. Organizational Documents</u>		
1.1	Certified copy of Article 13A, Chapter 16 of the Code of West Virginia, 1931, as amended (the "Act").	1
1.2	Order, dated August 4, 1969, of the County Court of Kanawha County, proposing creation of West Dunbar Public Service District.	2
1.3	Certified copy of Resolution and Order creating the West Dunbar Public Service District (the "District") in Kanawha County, West Virginia, adopted by the County Court of Kanawha County on August 29, 1969.	3
1.4	Minutes approving Rules of Procedure, dated December 21, 1992.	4
1.5	Rules of Order and Procedure.	5
1.6	Minutes of the Board meeting electing officers of the Board dated January 28, 1993.	6
1.7	Certified copy of order recorded in the office of the Clerk of the County Commission of Kanawha County, West Virginia, appointing members to the Public Service Board (the "Board") of the District.	7

1.8	Certificate of the official oaths of office of the Board members.	8
1.9	Copy of United States Environmental Protection Agency (the "EPA") Grant Agreement dated September 20, 1988 and Part B letter dated January 22, 1993.	9
1.10	(a) Loan Resolution (Form FmHA 1942-47).	10
	(b) FmHA Letter of Conditions dated June 28, 1990.	
	(c) Supplemental letter dated September 12, 1990.	
	(d) Association Water or Sewer System Grant Agreement.	
1.11	Letter of Commitment for the Sub-Grant (\$75,000).	11

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*I, Ken Hechler, Secretary of State of the  
State of West Virginia, hereby certify that*

THIS IS A TRUE COPY OF CHAPTER 16, ARTICLE 13A OF THE WEST  
VIRGINIA CODE AND CHAPTER 16, ARTICLE 13A OF THE 1992 CUMULATIVE  
SUPPLEMENT TO THE WEST VIRGINIA CODE AS INDICATED BY THE RECORDS  
OF THIS OFFICE.

*Given under my hand and the  
Great Seal of the State of  
West Virginia, on this*

FIFTH

*day of*

MARCH

*19 93*



*Ken Hechler*

*Secretary of State.*

**Textbooks.** — Administrative Law in West Virginia (Neely), § 3.07.  
 Applied in City of Morgantown v. Town of Star City, 156 W. Va. 529, 195 S.E.2d 166 (1973).

### § 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.

- | Sec.  | Sec.  |
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| 16-13A-1a. Jurisdiction of the public service commission.   | 16-13A-10. Budget.  |
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|   | 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.         |
|   | 16-13A-23. Validation of acts and proceedings of public service boards.   |
|   | 16-13A-24. Acceptance of loans, grants or temporary advances.   |

## § 16-13A-1

## PUBLIC HEALTH

Sec.

16-13A-25. Borrowing and bond issuance; procedure.

**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.

**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 com-

mission 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 provisions 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 [June 6, 1986] 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 shall have 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 department of health and the department of natural resources 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 shall have 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 and regulations promulgated by the public service commission and such order shall be implemented by the county commission. (1986, c. 81.)

#### **§ 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

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.)

**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 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 dis-**

trict 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, enlargement or reduction of such public service district, which action is not sub-

ject 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 shall thereafter be 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 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 department of natural resources and the department of 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 not less than eighteen thousand shall be 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 shall thereby 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 shall equal or exceed three, then no further members shall be appointed to the board and the members shall be and constitute 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 shall become members of and constitute 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 additional member or members shall thereupon become members of the board; 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, shall be and constitute 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, shall be conclusively considered to be 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 and regulations 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 chairman 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 the 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 chairman, 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 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.)

**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. Att'y 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. Att'y 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. Att'y Gen., July 8, 1976.

**Furnishing water to border residents in neighboring state.** — See Op. Att'y Gen., June 26, 1975.

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.)

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.)

**§ 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).

### § 16-13A-9. Rules and regulations; 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, management, 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 issu-

ance 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 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 shall be delinquent and the owner, user and property shall be held 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 and regulations 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 non-payment 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 shall have 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, regulations 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 department of 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 department of 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 department of 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, 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 department of 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 department of 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 two [§ 20-5A-2], article five-a, chapter twenty, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the department of natural resources, as prescribed by section seven [§ 20-5A-7], article five-a, chapter twenty 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.)

**Effect of amendment of 1989.** — The amendment in the first paragraph, added the present fourth through seventh sentences, and added the proviso at the end of the last sentence; substituted "shall covenant" for "may covenant" in the first sentence of the second paragraph, and substituted "users" for "user's" near the end of the third paragraph.

**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*, 386 S.E.2d 483 (W. Va. 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. 1983) (construing this section prior to 1980 and 1981 amendments).

**§ 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.)

**§ 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.)

**§ 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.

Effect of amendment of 1989. — The amendment substituted "eighteen percent" for

"twelve percent" in the second sentence and "nineteen percent" for "thirteen percent" in the fifth sentence; and made a minor punctuation change.

#### § 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.** — Abolition of the procedural distinctions between law and equity, Rule 2.

Receivers, Rule 66.

Application of rules to writ of mandamus, Rule 81(a)(5).

Effect of rules on jurisdiction and venue, 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 reve-

nue 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.** — Abolition of the procedural distinctions between law and equity, 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 shall constitute 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, shall be 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 state department of health and the state water resources board shall remain unaffected by this article. Every district organized, consolidated, merged or expanded under this article is declared to be 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 shall be 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.)

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 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 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.)

### § 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 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.

## ARTICLE 14.

### BARBERS AND BEAUTICIANS.

Sec.  
16-14-1. Jurisdiction over barbers and beauticians; powers and duties of director of health.  
16-14-2. Barbering, beauty culture and manicuring defined.

Sec.  
16-14-3. Regulations to be promulgated by board of health; enforcement.  
16-14-4 to 16-14-17. [Repealed.]

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.

Michie's Jurisprudence. — For a general treatment of barbering and beauty culture, see 3A M.J., Barbers and Beauticians.

# WEST VIRGINIA CODE

*ANNOTATED*

## VOLUME 5

*1991 Replacement*

### 1992 Cumulative Supplement

Including Acts passed during the 1992 Regular Session and  
the 1992 First Extraordinary Session

Prepared by the Editorial Staff of the Publishers

*Under the Supervision of*

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CHARLOTTESVILLE, VIRGINIA

1992





AT A REGULAR SESSION OF THE COUNTY COURT OF KANAWHA COUNTY, WEST VIRGINIA, CONTINUED AND HELD FOR SAID COUNTY AT THE COURTHOUSE THEREOF ON MONDAY, THE 4TH DAY OF AUGUST, A.D., 1969.

PRESENT: HONORABLE E. S. THOMPSON, PRESIDENT, DEWEY E. S. KUHNS AND HENRY C. SHORES, GENTLEMEN COMMISSIONERS OF THE COUNTY.

RE: AN ORDER WHEREBY THE COUNTY COURT OF KANAWHA COUNTY, WEST VIRGINIA, PROPOSES ON ITS OWN MOTION TO CREATE A PUBLIC SERVICE DISTRICT TO BE KNOWN AS "WEST DUNBAR PUBLIC SERVICE DISTRICT" FOR THE PURPOSE OF ACQUIRING, CONSTRUCTING, OPERATING, MAINTAINING AND IMPROVING A PUBLIC SERVICE SYSTEM OR PUBLIC WATER SYSTEM, OR BOTH, FOR THE RESIDENTS OF AN AREA KNOWN AS THE UNINCORPORATED COMMUNITY OF WEST DUNBAR, WITHIN KANAWHA COUNTY AND FIXING A DATE FOR HEARING OF SAID MOTION AND PROVIDING FOR THE PUBLICATION OF NOTICE OF SUCH HEARING.

WHEREAS, there has heretofore been filed in the Office of the Clerk of the County Court of Kanawha County, West Virginia, a petition to this Court for the creation of a public service district within Kanawha County, West Virginia; and

WHEREAS, at this meeting the said County Clerk has presented such petition to the Court; and

WHEREAS, upon presentation and consideration of said petition it is found and determined to be desirable and proper in accordance with Chapter 16, Article 13A, of the Code of West Virginia, for this Court on its own motion to propose the creation of said public service district and to fix a date of hearing on said motion and to provide for the publication of this order.

NOW, THEREFORE, upon the Court's own motion it is hereby ORDERED by the County Court of Kanawha County, West Virginia, as

follows:

Section 1: That the County Court of Kanawha County, West Virginia, hereby finds and declares that there has been filed in the office of the Clerk and presented to this Court by said Clerk a petition for the creation of a public service district within Kanawha County, West Virginia, which said petition contains a description sufficient to identify the territory to be embraced within said public service district and which petition has been signed by a substantial number of legal voters resident within and owning real property within the limits of the proposed public service district. The County Court of Kanawha County further finds and declares that it is in all respects desirable and proper for the County Court on its own motion to propose the creation of said public service district. The motion proposing the creation of said public service district was duly made, seconded and carried.

Section 2: The County Court of Kanawha County does declare and find the following matters and things to be suitable, proper and in accordance with Chapter 16, Article 13A of the Code of West Virginia:

(a) The name and corporate title of said public service district shall be the "West Dunbar Public Service District."

(b) The territory to be embraced in said public service district shall be as follows:

"BEGINNING at a point at the junction of Finney Branch and the Great Kanawha River, such point being on the western corporation line of the City of Dunbar, Union District, Kanawha County, West Virginia;

thence following the meanders of said corporation line generally in a North-easterly direction for approximately 9800 feet to a point on the Western boundary line of the Dunbar Annex;

thence a meander line along the Dunbar Annex corporation line approximately 1870 feet in a Northerly direction to the Southeastern corner of Parcel No. 33, Map No. 35, Union District, Kanawha County, West Virginia, as shown on a map on file in the Office of the Assessor;

thence in a Northwesterly direction along the property line of said parcel approximately 280 feet to a corner;

thence following the property line of said parcel approximately 700 feet in a North, Northeasterly direction to a corner;

thence, in a West, Northwesterly direction for approximately 1330 feet to the Northeastern corner of parcel No. 26 of the aforementioned map;

thence along the Northern boundary line of said parcel and crossing Finney Branch Road, approximately 700 feet in a West, Northwesterly direction to the Southeast corner of parcel No. 9 of the aforementioned map;

thence approximately 225 feet Northeast along the Eastern boundary of said parcel to a corner;

thence approximately 950 feet in a Northwesterly direction along the North boundary line of parcels 9, 10, and 11 to the Northwestern corner of parcel No. 11;

thence approximately 1100 feet Southwest to the Northeastern corner of Parcel No. 22, Map No. 34, Union District, Kanawha County, West Virginia;

thence a meander line approximately 1950 feet in a Northwesterly direction along the Northern boundary of parcels No. 22 and 21 to the Northwestern corner of parcel No. 21;

thence in a Southwesterly direction along the Western boundary of parcel No. 20 approximately 800 feet to the Southeastern corner of parcel No. 20;

thence approximately 450 feet north west to the Southwestern corner of said parcel;

thence in a Southwesterly direction crossing Interstate Route 64 and W. Va. Route 25 (Fairlawn Avenue) and along the Eastern boundary of the West Virginia State College property approximately 3750 feet to a corner;

thence along the college property line approximately 450 feet Southeast to a corner;

thence following the college property line approximately 900 feet Southwest to the Kanawha River;

thence along the Kanawha River approximately 4150 feet Southeast to the point of beginning, a map of which is attached hereto and made a part hereof.

(c) The purpose of said public service district shall be to construct, acquire, maintain, and improve a public sewerage system or a public water system, or both, within such territory and also outside of such territory to the extent permitted by law.

(d) The territory described above does not include within its limits the territory of any other public service district organized under Article 13A, of Chapter 16, of the Code of West Virginia, nor does such territory include within its limits any



city, incorporated town or other municipal corporation or any part thereof.

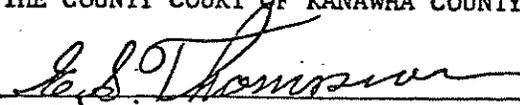
Section 3: That on the 29th day of August, 1969, being a day in the regular session of this Court, at 10 o'clock a.m., E.D.S.T., on said day, in the County Court Room in the Court House, this Court will conduct a public hearing on the creation of the proposed public service district for the purpose of considering and determining the feasibility thereof and to consider and determine if the construction, maintenance and operation of said public service district will be conducive to the preservation of public health, comfort and convenience of residents of said area, at which time and place all persons residing in or owning or having any interest in property in the proposed public service district may appear before this County Court and shall have an opportunity to be heard for or against the creation of said public service district.

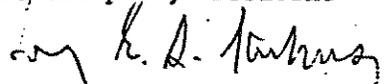
Section 4: The Clerk of this Court is hereby ORDERED and DIRECTED to cause notice of such meeting and hearing be given by the publication of this order. This order shall be published in the Charleston Gazette and the Charleston Daily Mail, newspapers of general circulation published in Kanawha County, as a Class I legal advertisement in compliance with the provisions of Chapter 59, Article 3 of the official code of West Virginia of 1931, as amended.

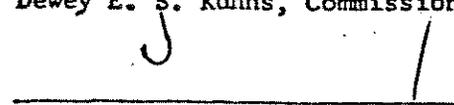
Dated the 4th day of August, 1969.

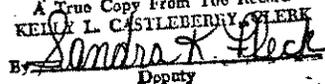
Teste:

THE COUNTY COURT OF KANAWHA COUNTY

  
E. S. Thompson, President

  
Dewey E. S. Kuhns, Commissioner

  
Henry C. Shores, Commissioner

A True Copy From The Record  
KEITH L. CASTLEBERRY, CLERK  
By   
Deputy



AT A REGULAR SESSION OF THE COUNTY COURT OF KANAWHA COUNTY, WEST VIRGINIA, CONTINUED AND HELD FOR SAID COUNTY AT THE COURTHOUSE THEREOF ON FRIDAY , THE 29TH DAY OF AUGUST A.D., 1969.

PRESENT: HONORABLE E. S. THOMPSON, PRESIDENT, DEWEY E. S. KUHNS AND HENRY C. SHORES, GENTLEMEN COMMISSIONERS OF THE COUNTY.

RE: A RESOLUTION AND ORDER CREATING THE WEST DUNBAR PUBLIC SERVICE DISTRICT IN KANAWHA COUNTY, WEST VIRGINIA

WHEREAS, the County Court of Kanawha County, West Virginia did heretofore, by an order adopted on the 4th day of August, 1969, fix a date for a public hearing on the creation of the proposed West Dunbar Public Service District, and in and by said order provide that all persons residing in or having any interest in property in the proposed West Dunbar Public Service District might appear before the County Court at this meeting and have the opportunity to be heard for and against the creation of said District; and,

WHEREAS, notice of this hearing was duly given in the manner provided and required by said order and by Article 13A of Chapter 16 of the West Virginia Code, and all interested persons have been afforded an opportunity of being heard for and against the creation of said District, but no written protest has been filed by the requisite number of qualified voters registered and residing within said proposed Public Service District and said County Court has given due consideration to all matters for which such hearing was offered; and,

WHEREAS, said hearing was held at the time and place stated in said order on August 29, 1969, at 10 o'clock A. M. E.D.S.T., and the Court considered the question of creating said Public Service District; and

WHEREAS, it is now deemed desirable by said County Court to adopt a resolution and order creating said District;

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

Section 1. That said West Dunbar Public Service District within Kanawha County, West Virginia, is hereby created, and said District shall have the following boundaries:

"BEGINNING at a point at the junction of Finney Branch and the Great Kanawha River, such point being on the western corporation line of the City of Dunbar, Union District, Kanawha County, West Virginia;

thence following the meanders of said corporation line generally in a North-easterly direction for approximately 9800 feet to a point on the Western boundary line of the Dunbar Annex;

thence a meander line along the Dunbar Annex corporation line approximately 1870 feet in a Northerly direction to the Southeastern corner of Parcel No. 33, Map No. 35, Union District, Kanawha County, West Virginia, as shown on a map on file in the Office of the Assessor;

thence in a Northwesterly direction along the property line of said parcel approximately 2800 feet to a corner;

thence following the property line of said parcel approximately 700 feet in a North, Northeasterly direction to a corner;

thence, in a West, Northwesterly direction for approximately 1330 feet to the Northeastern corner of parcel No. 26 of the aforementioned map;

thence along the Northern boundary line of said parcel and crossing Finney Branch Road, approximately 700 feet in a West, Northwesterly direction to the Southeast corner of parcel No. 9 of the aforementioned map;

thence approximately 225 feet Northeast along the Eastern boundary of said parcel to a corner;

thence approximately 950 feet in a Northwesterly direction along the North boundary line of parcels 9, 10, and 11 to the North-western corner of parcel No. 11;

thence approximately 1100 feet Southwest to the Northeastern corner of Parcel No. 22, Map No. 34, Union District, Kanawha County, West Virginia;

thence a meander line approximately 1950 feet in a North-westerly direction along the Northern boundary of parcels No. 22 and 21 to the Northwestern corner of parcel No. 21;

thence in a Southwesterly direction along the Western boundary of parcel No. 21 approximately 800 feet to the Southeastern corner of parcel No. 20;

thence approximately 450 feet northwest to the Southwestern corner of said parcel;

thence in a Southwesterly direction crossing Interstate Route 64 and W. Va. Route 25 (Fairlawn Avenue) and along the Eastern boundary of the West Virginia State College property approxi-mately 3750 feet to a corner;

thence along the college property line approximately 450 feet Southeast to a corner;

thence following the college property line approximately 900 feet Southwest to the Kanawha River;

thence along the Kanawha River approximately 4150 feet Southeast to the point of beginning, a map of which is attached hereto and made a part hereof.

Section 2. That said Public Service District so created shall have the name and corporate title of West Dunbar Public

Service District and shall constitute a public corporation and political subdivision of the State of West Virginia having all the rights and powers conferred on public service districts by the laws of the State of West Virginia and particularly Article 13A of Chapter 16 of the Code of West Virginia.

Section 3. That the County Court of Kanawha County, West Virginia, has determined that the territory within Kanawha County, West Virginia, having the hereinabove described boundaries, is so situated that the construction or acquisition by purchase or otherwise and the maintenance, operation, improvement and extension of properties supplying water or sewerage, or both, within such territory by said Public Service District will be conducive to the preservation of public health, comfort and convenience of such area.

Adopted by the County Court of Kanawha County, West Virginia on this 29th day of August 1969.

Teste:

THE COUNTY COURT OF KANAWHA COUNTY

I, ALMA Y. KING, do hereby certify that this is a true copy from the record  
Teste: ALMA Y. KING, Clerk  
Kanawha County Commission  
Date 12/18/69 By L. Slavick  
Deputy Clerk

E. S. Thompson  
Dewey E. S. Kuhns  
Henry C. Shores

The Court considered routine matters and there being no further business for consideration, the Court recessed until Saturday the 30th day of August, A.D., 1969.

E. S. Thompson  
PRESIDENT

AT A REGULAR SESSION OF THE COUNTY COURT OF KANAWHA COUNTY, WEST VIRGINIA, CONTINUED AND HELD FOR SAID COUNTY AT THE COURTHOUSE THEREOF ON SATURDAY, THE 30TH DAY OF AUGUST, A.D., 1969.

PRESENT: HONORABLE E. S. THOMPSON, PRESIDENT, DEWEY E. S. KUHNS AND HENRY C. SHORES, GENTLEMEN COMMISSIONERS OF THE COUNTY.

The Court considered routine matters and there being no further business for consideration, the Court recessed until Tuesday, the 2nd day of September, A.D., 1969.

E. S. Thompson  
PRESIDENT



Minutes  
WEST DUNBAR PUBLIC SERVICE DISTRICT  
December 21, 1992

Call to Order. A regular meeting of the West Dunbar Public Service District was held on Monday, December 21, 1992 at the Shawnee Community Education Center, West Dunbar. The meeting was called to order at 7:30 PM and opened with a prayer. Those present were: Commissioners John Berry, William Wiggins and Clarence Brown; the District's Attorney, James Williams; and Samme Gee, Attorney, Jackson and Kelly Law Firm.

Approval of Minutes. The minutes of the November meeting were read and on a motion duly made and seconded, the minutes were accepted as recorded.

The commissioners next discussed the Barron Drive Project and, on a motion duly made and seconded, the commissioners accepted the engineers' recommendation for the award of the contract for this project to the low bidder.

Sewer Refunds. (1) Letter from Pamela Chappell for DeWayne Chappell requesting a refund. Chappell formerly resided at 102 Solon Court, Dunbar and now lives at 1411 West Virginia Avenue, Dunbar. (2) Letter from Elisa Russell, P. O. Box 854, Institute, WV, requesting refund. (3) Letter from Carrie Spillman, 1318 Village Drive, South Charleston, WV, requesting refund. The three letters were given to Commissioner Berry for processing.

Terms of Commissioners. Attorney Gee said that she needs copies of the letters from the Kanawha County Commission advising of the reappointment of the District's commissioners. Attorney Williams was asked to contact the KCC and request that they provide this information.

Publication of Public Notices for District's Meetings. Pursuant to WV Code, Chapter 6, Article 9A, the commissioners approved a resolution establishing the dates, times and place for all regularly scheduled meetings for the 1993 calendar year. The resolution also outlines that said notices will be publicized on FM102 and WBES radio stations; WCHS, WOWK and WSAZ television stations; and, announced in the public service notice sections of The Daily Mail and the Charleston Gazette. The District's regular monthly meetings (calendar year 1993) will be held at the Shawnee Community Education Center at 7:30 PM on the last Thursday of the month, with the exception of the last two meetings in the year which will be held on November 22 and December 23, 1993. The resolution was approved by unanimous vote.

Election of Officers. The commissioners advised Attorney Gee that the District would elect its officers in January. The attorney said that she will need a copy of the minutes indicating the officers for 1993.

**WDPSD MINUTES  
December 21, 1992**

HUD Bond. The commissioners authorized Attorney Gee to work with HUD officials to obtain a letter granting parity of the existing HUD bond and the new FHA loan.

Barron Drive. The commissioners indicated that Barron Drive is within the District's current boundary lines. However, it was noted that Jim Downey was asked to check on this several months ago.

Vernon Street Lift Station. The commissioners discussed a letter from James Brimhall (WVSC) informing of actions taken by the College in the Vernon Lift Station area. Attorney Williams said that he visited the site and it appears that the line is crossing Washington and the College is filling in the area. Commissioner Wiggins said that he believes the culvert crossing Vernon and Washington Streets belongs to the State Road Commission. Attorney Williams was asked to call the State Road Commission regarding the same. The commissioners said that they would look at the area; they will also look at the area where Mr. Brewer said there is a cracked line with raw sewage coming out, down the hill behind Mrs. Rayford's house.

Obstructed Sewer on Marshall Avenue. Attorney Williams was asked to contact Mr. Brewer and inform him of the process for obtaining approval for various work required by the District. Commissioner Wiggins said that he told Brewer not to go on private property; Commissioner Berry said that Brewer told him that the blockage was in the District's line.

Barron Drive. Attorney Williams said that he is working on the information that is needed.

Payment of Legal Invoices. On a motion duly made and seconded, the commissioners approved the payment of all legal invoices.

Adjournment. There being no further business, the meeting was adjourned.



"RESOLUTION ESTABLISHING RULES BY WHICH THE TIME AND PLACE OF ALL REGULARLY SCHEDULED MEETINGS AND THE TIME, PLACE AND PURPOSE OF ALL SPECIAL MEETINGS ARE TO BE MADE AVAILABLE, IN ADVANCE, TO THE PUBLIC AND NEWS MEDIA AND PROVIDING WHEN THIS RESOLUTION AND SUCH RULES SHALL TAKE EFFECT."

Be It Resolved and Ordered by the Public Service Board of West Dunbar Public Service District, Kanawha County, West Virginia:

Section 1. Statutory Mandate for These Rules. The rules established in and by this Resolution are mandated by and promulgated pursuant to Chapter 6, Article 9A, of the Code of West Virginia, 1931, as amended (herein called the "Act"), and other applicable provisions of law.

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

(A) Section 3 of the Act requires each governing body, as defined in the Act, to promulgate rules by which the time and place of all regularly scheduled meetings and the time, place and purpose of all special meetings are made available, in advance, to the public and news media.

(B) The Public Service Board of West Dunbar Public Service District, Kanawha County, West Virginia (herein called the "Board"), is a governing body within the meaning of the Act.

(C) Accordingly, it is hereby ordered that the rules set out in Section 3 hereof be promulgated and established as Rules of Procedure of the Board.

Section 3. Rules. The following are hereby promulgated and established as Rules of Procedure of the Board:

Rule No. 1. Notice of Regularly Scheduled Meetings. Immediately after adoption of this Resolution and in January of each year thereafter, the Board shall instruct the Secretary to, and the Secretary shall, post, and leave posted throughout the year to which it applies, at the regular meeting place where notices customarily are posted a notice setting forth the times and places of the Board's regularly scheduled meetings for the ensuing year. Such notice shall be of size and style sufficient to give notice and shall be of quality sufficient to withstand deterioration throughout the year to which it applies. Additional copies of the notice shall be delivered to the Secretary.

Also immediately after adoption of this Resolution and in January of each year thereafter, the Board shall instruct the Secretary to, and the Secretary shall, distribute to each of the newspapers, television stations, radio stations and other news media listed below a notice identical to that posted.

CHARLESTON NEWS MEDIA

<u>News Media</u>	<u>Address</u>
Charleston Daily Mail	1001 Virginia Street East Charleston, WV 25301
Charleston Gazette	1001 Virginia Street East Charleston, WV 25301
WCHS-TV	P. O. Box 11138 Charleston, WV 25339-1138
WOWK-TV	Suite 2 Municipal Parking Building Charleston, WV 25301
WSAZ-TV	111 Columbia Avenue Charleston, WV 25302
WVSR-FM	P. O. Box 3697 Charleston, WV 25336
WBES-FM	One Players Club Drive Charleston, WV 25311

A notice shall be considered distributed to a news medium when it has been addressed to such news medium at the address listed above, or at such other address as the news medium has in writing requested be used, marked or stamped with first class postage and deposited in the United States mail. In December of each year after the adoption of this Resolution, the Board shall review the above list and shall amend such list as needed, in the opinion of the Board, to reflect properly all the newspapers, television stations, radio stations and other news media that customarily cover news of the area served by the Board.

In the event of any modification in the time or place of a regularly scheduled meeting of the Board, notice of such modification shall be given to the public and news media by posting at the place and distributing to the news media in the manner set forth above, not less than three (3) days prior to the date of such regularly scheduled meeting, or, if such regularly scheduled meeting has been rescheduled for an earlier time, prior to the date of such rescheduled meeting, a notice setting forth such modification in the time or place of such regularly scheduled meeting. A copy of such notice shall be attached to and made a part of the minutes of the meeting for which such notice was given.

Notwithstanding the foregoing provisions, notice of the recess or adjournment of a regularly scheduled meeting and of the time and place for the continuation or reconvening thereof publicly given during such regularly scheduled meeting shall be adequate notice to the public and news media of the time and place thereof.

Provided, failure of the Secretary to comply exactly with the posting and distribution requirements hereof shall not invalidate the actions taken at the meeting for which such notice was posted and distributed if the Board shall determine that such posting and distribution were in substantial compliance herewith.

Rule No. 2. Notice of Special Meeting. Not less than three (3) but not more than eight (8) days prior to the date set for any special meeting of the Board, the Board shall instruct the Secretary to, and the Secretary shall, post on the door of the regular meeting place of the Board, and at such other place, if any, where notices customarily are posted a notice setting forth the time, place and purpose or purposes of such special meeting. Business at such special meeting shall be limited to the purpose or purposes specified in said notice.

As soon as practical after the posting of said notice, but not less than three (3) days prior to the date set for such special meeting, the Secretary shall distribute to each of the newspapers, television stations, radio stations and other news media listed in Rule No. 1 hereof a notice identical to that posted. Amendments made to such list, as provided for in said Rule No. 1, shall be incorporated by reference in this Rule No. 2. A notice shall be considered distributed to a news medium when it has been addressed to such news medium at the address listed in said Rule No. 1, or at such other address as the news medium has in writing requested be used, marked or stamped with first class postage and deposited in the United States mail.

A copy of such notice posted and distributed pursuant to this Rule No. 2 shall be attached to and made a part of the minutes of the meeting for which such notice was given.

Notwithstanding the foregoing provisions, notice of the recess or adjournment of any special meeting and of the time and place for the continuation or reconvening thereof publicly given during such special meeting shall be adequate notice to the public and news media of the time and place thereof, the purpose or purposes therefor remaining the same.

Provided, failure of the Secretary to comply exactly with the posting and distribution requirements hereof shall not invalidate the actions taken at the meeting for which such notice was posted and distributed if the Board shall determine that such posting and distribution were in substantial compliance herewith.

Rule No. 3. Emergency Meeting. A meeting of the Board may be held without the notice to the public and news media required by Rule No. 1 and Rule No. 2 hereof only in the event of an emergency requiring immediate official action. The existence for such an emergency requiring immediate official action shall be determined by the Board and shall be attested to in a certificate by the Secretary describing such emergency and setting forth the reason or reasons immediate official action is required, which certificate shall be attached to and made a part of the minutes of such emergency meeting.

Section 4. Conflicting Provisions Repealed. All resolutions, orders and rules, or parts thereof, in conflict with the provisions of this Resolution are, to the extent of such conflicts, hereby repealed.

Section 5. Effective Time. This Resolution and the rules promulgated hereby shall take effect immediately upon the adoption hereof.

Introduced and Adopted at Board Meeting: December 21, 1992.

Chairman

William E. Wiggins

[SEAL]

Secretary

John Berry

ABB01D86



Minutes  
WEST DUNBAR PUBLIC SERVICE DISTRICT  
January 28, 1993

Call to Order. A regular meeting of the West Dunbar Public Service District was held on Thursday, January 28, 1993 at the Shawnee Community Education Center, West Dunbar, WV. Those attending were: Commissioners John Berry, Clarence Brown, and William Wiggins; the District's Attorney, James Williams; and, Mr. Jim Downey, with Kelley, Gidley, Blair and Wolfe. The meeting was called to order at 7:30 PM and opened with a prayer by the Reverend John Berry.

Approval of Minutes. The minutes of the December meeting were distributed and read. On a motion duly made and seconded, the minutes were accepted as corrected.

Election of Officers. Commissioner Wiggins reminded that the District is required to elect officers each year and he asked Mr. Downey to preside during the election of officers. Mr. Downey then called for nominations for Chairman and Mr. Berry moved that the District retain its present officers. Mr. Brown seconded the motion and the motion carried. The District's officers for 1993 are: (1) Chairman-William Wiggins; (2) Vice Chairman-Clarence Brown; and (3) Secretary-Treasurer-John Berry.

Check from Shawnee Bank. Commissioner Berry was given a check in the amount of \$143.10 from Shawnee Bank to deposit in the District's Revenue Account. Said check represents monies the bank erroneously charged the District for checks written by sewer customers with insufficient funds in their accounts to cover the checks. Shawnee Bank had agreed some years back that the District should not be charged for such checks.

Sewer Deposit Refunds. Letter from David Green, 115 Bunche Ave., Dunbar, WV, requesting a refund of his deposit was given to Commissioner Berry, who will check to see if a refund is warranted.

Reappointment of Commissioners. Letters from the <sup>Kanawha County</sup> ~~Public Service~~ Commission informing of the reappointment of Commissioners Berry, Brown and Wiggins were presented for the file. Commissioners Brown and Berry reported that they have been sworn in.

Barron Drive. Jim Downey noted that the Barron Drive Project does not include Walker Addition. Attorney Williams presented a copy of the Title Opinion/Certificate of Project Site Acquisitions and said that the document has been mailed.

It was reported that Jim Anderson indicated that he will try to get the Farmers' Home Administration closing in February and that Sammie Gee is working on the project. The department of highway permit has been returned and the District must reapply for a new permit. Commissioner Wiggins has signed the new forms.

Vernon Street Lift Station. Jim Downey said that he had visited



At a Regular Session of the County Commission of Kanawha County, West Virginia, held at the Courthouse thereof, on the 7th day of January, 1993, the following order was made and entered:

SUBJECT: REAPPOINTMENT OF REVEREND JOHN D. BERRY TO THE WEST DUNBAR PUBLIC SERVICE DISTRICT

The following motion was offered by Louis H. Bloom

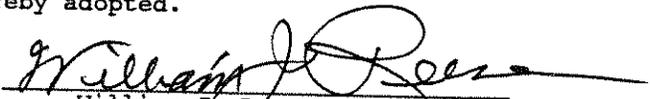
The County Commission of Kanawha County, West Virginia, having been apprised of the expiration of the term of Reverend John D. Berry, a member of the West Dunbar Public Service District, doth ORDER that Reverend John D. Berry, 1007 Willow Drive, Dunbar, West Virginia 25064 be reappointed to the West Dunbar Public Service District for a term expiring August 1, 1993.

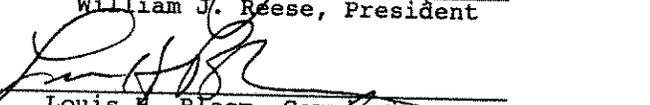
It is further ORDERED that the said Reverend John D. Berry shall appear at the office of the County Commission and shall qualify by taking the oath of office as required by Chapter 16, Article 13A, Section 3 of the Code of West Virginia, 1991, as amended.

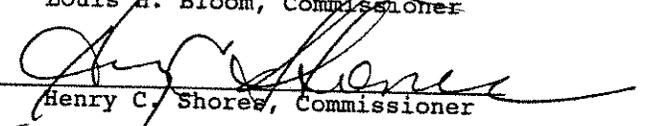
The adoption of the foregoing motion having been moved by Louis H. Bloom, Commissioner, and duly seconded by Henry C. Shores, Commissioner, the vote thereon was as follows:

William J. Reese, President	<u>Aye</u>
Louis H. Bloom, Commissioner	<u>Aye</u>
Henry C. Shores, Commissioner	<u>Aye</u>

WHEREUPON, William J. Reese, President, declared said motion duly adopted; and it is therefore ADJUDGED and ORDERED that said motion be, and the same is hereby adopted.

  
William J. Reese, President

  
Louis H. Bloom, Commissioner

  
Henry C. Shores, Commissioner

Approved By: Betty L. Caplan  
County Attorney

I, ALMA Y. KING, do hereby certify that this is a true copy from the original  
 Teste: ALMA Y. KING, Clerk  
 Kanawha County Commission  
 Date 2/2/93 By [Signature] Deputy

At a Regular Session of the County Commission of Kanawha County, West Virginia, held at the Courthouse thereof, on the 7th day of January, 1993, the following order was made and entered:

SUBJECT: REAPPOINTMENT OF CLARENCE BROWN TO THE WEST DUNBAR PUBLIC SERVICE DISTRICT

The following motion was offered by Louis H. Bloom

The County Commission of Kanawha County, West Virginia, having been apprised of the expiration of the term of Clarence Brown, a member of the West Dunbar Public Service District, doth ORDER that Clarence Brown, 2505 Fairlawn Avenue, Dunbar, West Virginia 25064 be reappointed to the West Dunbar Public Service District for a term expiring August 1, 1995

It is further ORDERED that the said Clarence Brown shall appear at the office of the County Commission and shall qualify by taking the oath of office as required by Chapter 16, Article 13A, Section 3 of the Code of West Virginia, 1991, as amended.

The adoption of the foregoing motion having been moved by Louis H. Bloom, Commissioner, and duly seconded by Henry C. Shores, Commissioner, the vote thereon was as follows:

William J. Reese, President	<u>Aye</u>
Louis H. Bloom, Commissioner	<u>Aye</u>
Henry C. Shores, Commissioner	<u>Aye</u>

WHEREUPON, William J. Reese, President, declared said motion duly adopted; and it is therefore ADJUDGED and ORDERED that said motion be, and the same is hereby adopted.

William J. Reese  
William J. Reese, President

Louis H. Bloom  
Louis H. Bloom, Commissioner

Henry C. Shores  
Henry C. Shores, Commissioner

Approved By: Betty L. Caplan  
County Attorney

I, ALMA Y. KING, do hereby certify that this is a true copy from the original  
Teste: ALMA Y. KING, Clerk  
Kanawha County Commission  
Date 2/2/93 By [Signature] Deputy

At a Regular Session of the County Commission of Kanawha County, West Virginia, held at the Courthouse thereof, on the 7th day of January, 1993, the following order was made and entered:

SUBJECT: REAPPOINTMENT OF WILLIAM WIGGINS TO THE WEST DUNBAR PUBLIC SERVICE DISTRICT

The following motion was offered by Louis H. Bloom

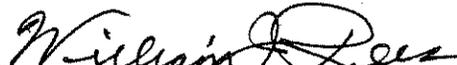
The County Commission of Kanawha County, West Virginia, having been apprised of the expiration of the term of William Wiggins, a member of the West Dunbar Public Service District, doth ORDER that William Wiggins, P.O. Box 301, Dunbar, West Virginia 25064 be reappointed to the West Dunbar Public Service District for a term expiring August 1, 1997.

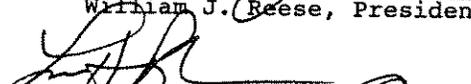
It is further ORDERED that the said William Wiggins shall appear at the office of the County Commission and shall qualify by taking the oath of office as required by Chapter 16, Article 13A, Section 3 of the Code of West Virginia, 1991, as amended.

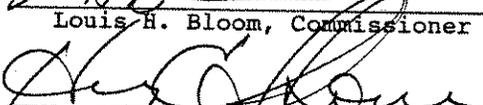
The adoption of the foregoing motion having been moved by Louis H. Bloom, Commissioner, and duly seconded by Henry C. Shores, Commissioner, the vote thereon was as follows:

William J. Reese, President	<u>Aye</u>
Louis H. Bloom, Commissioner	<u>Aye</u>
Henry C. Shores, Commissioner	<u>Aye</u>

WHEREUPON, William J. Reese, President, declared said motion duly adopted; and it is therefore ADJUDGED and ORDERED that said motion be, and the same is hereby adopted.

  
 William J. Reese, President

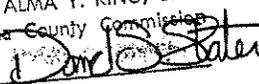
  
 Louis H. Bloom, Commissioner

  
 Henry C. Shores, Commissioner

Approved By:

  
 Betty L. Capron  
 County Attorney

I, ALMA Y. KING, do hereby certify  
 that this is a true copy from the original  
 Tester: ALMA Y. KING, Clerk  
 Kanawha County Commission

Date 2/9/93 By   
 Deputy



OFFICER'S OATH

LIBER 201 611

THE STATE OF WEST VIRGINIA, KANAWHA COUNTY, TO WIT:

I, Clarence Brown, having been duly reappointed to the office of West Dunbar Public Service District

do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, and that I will truly and faithfully discharge all the duties of said office, during my continuance therein, to the best of my skill and judgment, so help me, God.

Clarence Brown

Subscribed and sworn to before the undersigned, Clerk of the County Commission of said county, this 25<sup>th</sup> day of January, 1993

Alma Y. King, Clerk

I, ALMA Y. KING, do hereby certify that this is a true copy from the

Teste: ALMA Y. KING, Clerk Kanawha County Commission

Date 3/16/93 By Gregg A. King Deputy

LIBER 202 78

00176

OFFICER'S OATH

THE STATE OF WEST VIRGINIA, KANAWHA COUNTY, TO WIT:

I, William Wiggins, having been duly reappointed to the office of West Dunbar Public Service District

do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, and that I will truly and faithfully discharge all the duties of said office, during my continuance therein, to the best of my skill and judgment, so help me, God.

William E. Wiggins

Subscribed and sworn to before the undersigned, Clerk of the County Commission of said county, this 26th day of February, 1993.

Alma Y. King Clerk

236-38-5998

I, ALMA Y. KING do hereby certify that this is a true copy from the record  
Teste: ALMA Y. KING, Clerk  
Kanawha County Commission

Date 3/16/93 By Gregg King Deputy

LIBER 201-674

OFFICER'S OATH

THE STATE OF WEST VIRGINIA, KANAWHA COUNTY, TO WIT:

I, John D. Berry, having been duly reappointed to the office of West Dunbar Public Service District

do solemnly swear that I will support the Constitution of the United States and the Constitution of this State, and that I will truly and faithfully discharge all the duties of said office, during my continuance therein, to the best of my skill and judgment, so help me, God.

*John D. Berry*  
-----  
County Commissioner of said

Subscribed and sworn to before the undersigned, Clerk of the county, this 20<sup>th</sup> day of January, 1993.

*Lynne Smith, Dep.*  
-----  
Clerk

I, ALMA Y. KING do hereby certify that this is a true and correct copy.  
Teste: ALMA Y. KING, Clerk  
Kanawha County, West Virginia

Date 3/16/93 *Gregg Aies*  
Deputy





DEPARTMENT OF COMMERCE, LABOR & ENVIRONMENTAL RESOURCES  
**DIVISION OF ENVIRONMENTAL PROTECTION**

617 Broad Street  
Charleston, WV 25301-1218

Gaston Caperton  
Governor

John M. Ranson  
Cabinet Secretary

David C. Callaghan  
Director

Ann A. Spaner  
Deputy Director

January 22, 1993

Mr. William Wiggins, Chairman  
West Dunbar Public Service District  
P.O. Box 582  
Institute, West Virginia 25112

RE: West Dunbar PSD  
C-540539-01

Dear Mr. Wiggins:

You were notified by letter January 7, 1993 that you could award bids to the low, responsive bidder for Contract 1 for the above referenced project. This letter "supersedes" that January 7th letter.

You are hereby advised that the bidding procedures for Contract 1 have been reviewed and approved contingent upon receipt of non-segregated certification and DBE confirmation. The contract may now be awarded to the low, responsive bidder, Coleman Trainor & Company, Incorporated, as indicated by the proposal you have submitted.

Certain construction activities have been assigned to our Engineering Section. You will be contacted by a representative of this section in the near future. The Part B documents that you submitted are being reviewed by this office. The official approval letter and the grant amendment are currently being processed and will be forwarded under separate cover. The total eligible project costs are \$541,400 reflecting an EPA grant of \$297,820.

Should you have any questions, please contact Rosalie Ortega of my staff at (304) 558-0637.

Sincerely,

CONSTRUCTION ASSISTANCE

Mike Johnson, P.E.  
Assistant Chief

MJ/cga

cc: Lee Murphy, EPA  
Richard Ellard, FmHA  
Kelley, Gidley, Blair & Wolfe  
Sammy Gee, Jackson & Kelly



TABLE A - OBJECT CLASS CATEGORY (Non-construction)		TOTAL APPROVED ALLOWABLE BUDGET PERIOD COST
1. PERSONNEL		
2. FRINGE BENEFITS		
3. TRAVEL		
4. EQUIPMENT		
5. SUPPLIES		
6. CONTRACTUAL		
7. CONSTRUCTION		
8. OTHER		
9. TOTAL DIRECT CHARGES		
10. INDIRECT COSTS: RATE % BASE		
11. TOTAL (Share: Recipient _____% Federal _____%)		
12. TOTAL APPROVED ASSISTANCE AMOUNT		\$ N/A
TABLE B - PROGRAM ELEMENT CLASSIFICATION (Non-construction)		
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12. TOTAL (Share: Recipient _____% Federal _____%)		
13. TOTAL APPROVED ASSISTANCE AMOUNT		\$ N/A
TABLE C - PROGRAM ELEMENT CLASSIFICATION (Construction)		
1. ADMINISTRATION EXPENSE		14,485
2. PRELIMINARY EXPENSE		
3. LAND STRUCTURES, RIGHT-OF-WAY		
4. ARCHITECTURAL ENGINEERING BASIC FEES		19,314
5. OTHER ARCHITECTURAL ENGINEERING FEES		26,775
6. PROJECT INSPECTION FEES		33,950
7. LAND DEVELOPMENT		
8. RELOCATION EXPENSES		
9. RELOCATION PAYMENTS TO INDIVIDUALS AND BUSINESSES		
10. DEMOLITION AND REMOVAL		
11. CONSTRUCTION AND PROJECT IMPROVEMENT		472,525
12. EQUIPMENT		
13. <del>XXXXXXXXXX</del> Planning & Design Allowance		54,666
14. TOTAL (Lines 1 thru 13)		
15. ESTIMATED INCOME (If applicable)		
16. NET PROJECT AMOUNT (Line 14 minus 15)		
17. LESS: INELIGIBLE EXCLUSIONS		
18. ADD: CONTINGENCIES		47,185
19. TOTAL (Share: Recipient <u>45</u> % Federal <u>55</u> %)		668,900
20. TOTAL APPROVED ASSISTANCE AMOUNT		\$ 367,890

PART III-AWARD CONDITIONS

a. GENERAL CONDITIONS

The recipient covenants and agrees that it will expeditiously initiate and timely complete the project work for which assistance has been awarded under this agreement, in accordance with all applicable provisions of 40 CFR Chapter I, Subpart B. The recipient warrants, represents, and agrees that it, and its contractors, subcontractors, employees and representatives, will comply with: (1) all applicable provisions of 40 CFR Chapter I, Subchapter B, INCLUDING BUT NOT LIMITED TO the provisions of Appendix A to 40 CFP Part 30, and (2) any special conditions set forth in this assistance agreement or any assistance amendment pursuant to 40 CFR 30.425.

b. SPECIAL CONDITIONS

(For cooperative agreements include identification or summarization of EPA responsibilities that reflect or contribute to substantial involvement.)

A. The grantee is subject to all the requirements of 40 CFR Part 35, Subpart I, Part 30, Part 33 and other pertinent regulations. The grantee is directed to certain following special considerations of those requirements.

"1. Regulations Affecting Federal Grant Payments

- (a) Payments shall not be made for Step III professional services until the grantee complies with the procurement requirements of 40 CFR Part 33, Subpart A.
- (b) Payments shall be made in accordance with 40 CFR 35.2300.

2. Project Schedule

EPA's policy requires that projects be initiated, constructed, and placed in operation in a timely manner. For that reason, the schedule shown below, which was developed in conjunction with your grant application, is included as a special condition. The grantee is expected to take all appropriate actions to ensure that this schedule is maintained.

In the event that the project is delayed for reasons beyond the control of the grantee, this schedule may be revised. If the delay arises from mismanagement and could otherwise have been avoided, the schedule will not be revised, in which case EPA will be compelled to determine if ineligible incremental costs have been incurred as a result.

3. Project Initiation (40 CFR 35.2212)

Construction is expected to be initiated on the following schedule.

Failure of the grantee to initiate construction of all major contracts within 12 months of approval of plans and specifications will result in disallowance of incremental costs in accordance with 40 CFR 35.2212, "Project Initiation".

Plans and Specifications approval	<u>02/89</u>	<u>          </u>	<u>          </u>
Bid Advertisement	<u>03/89</u>	<u>          </u>	<u>          </u>
Construction Contract Award	<u>07/89</u>	<u>          </u>	<u>          </u>
Construction Start (NTP)	<u>07/89</u>	<u>          </u>	<u>          </u>

4. Grant Payment Milestones (40 CFR 35.2206)

Grant payments cannot exceed 50% of the Federal share unless the grantee has furnished a satisfactory final plan of operation, and cannot exceed 90% unless the grantee has furnished a satisfactory Operations and Maintenance Manual. The following dates represent an estimate of the timing of those payments.

Final Plan of Operation Approval	<u>10/89</u>
Operation and Maintenance Manual Approval	<u>12/89</u>

5. Sewer Use Ordinance and User Charge System (40 CFR 35.2208)

The sewer use ordinance must be adopted, and the user charge system implemented, before the system is placed in operation. The following dates represent an estimate of that operational date.

Sewer Use Ordinance Adoption	<u>N/A</u>
User Charge System Implementation	<u>N/A</u>

6. Notice of Building Completion (40 CFR 35.2216)

Grantee agrees to notify the State when construction is completed and also agrees to submit a preliminary final payment request on schedule.

Grantee's request to State for final physical inspection	<u>01/90</u>
Preliminary Final Payment Request	<u>02/90</u>

7. Project Performance (40 CFR 35.2218)

Federal Regulations place special emphasis on the performance of the project. It is vitally important that the facility performs as designed and on schedule. The grantee, therefore, agrees to initiate operation and certify performance by the dates below. It is likewise important that the final Federal share of the project be determined at the earliest possible date. The grantee, therefore, agrees to submit its request for final payment in accordance with this schedule.

Initiation of Operation	<u>01/90</u>
Project Performance Certification	<u>01/91</u>
Final Payment Request	<u>02/91</u>

8. Subagreements and Contracts

- (a) The grantee agrees to negotiate a subagreement and contract for all services to be awarded under this grant. Such subagreements and contracts shall be in conformance with and incorporate the required clauses of 40 CFR Part 33.
- (b) A copy of the proposed subagreements and contracts shall be submitted to the Regional Administrator for review and pre-award approval as appropriate under 40 CFR Part 33. The submittal of the proposed subagreements and contracts shall include the procurement records required in Appendix A to 40 CFR Part 33.
- (c) The grantee shall submit to the Regional Administrator the proposed subagreement and contract cost or price data on EPA Form 5700-41 or on a form which contains similar information.

9. Flood Insurance

The grantee agrees to acquire and maintain at his own cost any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended. This condition shall not be applicable if, on the date of execution of this Grant Agreement by both parties, flood insurance was not available pursuant to the Flood Insurance Act of 1968, as amended, for property in the project location.

10. Land Acquisition

The grantee shall not make any offer to acquire allowable real property until the Regional Administrator approves the price the grantee will offer the property owner (40 CFR 35.2210).

11. Review

The grantee recognizes that approval of any part of this grant, change orders, grant increase amendments, subagreements, any specific items, or eligibility of any other costs will be subject to final review, including project officer review, audit review, and final determination of the Grant Approving official.

12. Advertisement for Bids

Prior to the advertisement for construction bids, the grantee agrees to submit to the Regional Administrator for approval the following:

A user charge system (40 CFR 35.2140); and

Final design drawings and specifications (40 CFR 35.2040 (b) (5)).

13. MBE/WBE Requirements

The recipient agrees to submit to the Chief, Construction Grants Branch, ATTN: EEO Specialist, EPA, Region III, a completed Standard Form-334 within 30 days after the date the recipient begins building the project (see 40 CFR 35.2202). This Standard Form-334 will contain the information on subagreement awards to minority and women's businesses during the design phase of the project. The recipient agrees to submit to the Chief, Construction Grants Branch, ATTN: EEO Specialist, EPA, Region III, a completed Standard Form-334 within 30 days after the end of each Federal fiscal quarter during which the recipient or its contractors award any subagreements for building and building-related services and supplies.

14. Public Participation

Additional public participation is required to inform prospective users of the expected costs and rates. The grantee shall submit to the DNR project officer, within 2 months, a plan/schedule for conducting the additional public participation.

15. EPA's National Municipal Policy

Nothing in this grant agreement shall be construed to excuse the grantee from meeting the requirements of the National Municipal Policy and the enforceable requirements of the Clean Water Act, as amended.

The schedule for completion of this project will be revised as needed to correspond to any schedule approved in the context of an enforcement action.

16. Eligibility Agreement

The grantee and the Environmental Protection Agency agree, pursuant to section 203(a) (2) of the Clean Water Act, that only those items specified in the project description (scope) portion of the grant agreement are eligible for Federal participation in accordance with 40 CFR Part 35.2250 (determination of allowable costs).

17. Notice to Proceed

The grantee shall issue the notice to proceed on the design phase of this project no later than sixty days after acceptance of this grant. Upon issue of the notice, the grantee shall also advise DNR of this action.

Notice to Proceed

11/88 "

PART IV

**NOTE:** The Agreement must be completed in duplicate and the Original returned to the Grants Administration Division for Headquarters awards and to the appropriate Grants Administrations Office for State and local awards within 3 calendar weeks after receipt or within any extension of time as may be granted by EPA.

Receipt of a written refusal or failure to return the properly executed document within the prescribed time, may result in the withdrawal of the offer by the Agency. Any change to the Agreement by the recipient subsequent to the document being signed by the EPA Award Official which the Award Official determines to materially alter the Agreement shall void the Agreement.

OFFER AND ACCEPTANCE

The United States of America, acting by and through the U.S. Environmental Protection Agency (EPA), hereby offers assistance/~~amendment~~ to the West Dunbar Public Service District

for 55 % of all approved costs incurred up to and not exceeding \$ 367,890

for the support of approved budget period effort described in application (including all application modifications) C-540539-01 West Dunbar Public Service District included herein by reference.

ISSUING OFFICE (Grants Administration Office)	AWARD APPROVAL OFFICE
ORGANIZATION/ADDRESS Environmental Protection Agency Grants Management Branch (3PM70) 841 Chestnut Building Philadelphia, Pennsylvania 19107	ORGANIZATION/ADDRESS Environmental Protection Agency Water Management Division (3WMOO) 841 Chestnut Building Philadelphia, Pennsylvania 19107

THE UNITED STATES OF AMERICA BY THE U.S. ENVIRONMENTAL PROTECTION AGENCY		
SIGNATURE OF AWARD OFFICIAL	TYPED NAME AND TITLE	DATE
	James M. Seif, Regional Administrator	SEP 20 1988

This Agreement is subject to applicable U.S. Environmental Protection Agency statutory provisions and assistance regulations. In accepting this award or amendment and any payments made pursuant thereto, (1) the undersigned represents that he is duly authorized to act on behalf of the recipient organization, and (2) the recipient agrees (a) that the award is subject to the applicable provisions of 40 CFR Chapter I, Subchapter B and of the provisions of this agreement (Parts I thru IV), and (b) that acceptance of any payments constitutes an agreement by the payee that the amounts, if any found by EPA to have been overpaid will be refunded or credited in full to EPA.

BY AND ON BEHALF OF THE DESIGNATED RECIPIENT ORGANIZATION		
SIGNATURE	TYPED NAME AND TITLE	DATE
	Mr. William E. Wiggins, Chairman	October 17, 1988





LOAN RESOLUTION  
(Public Bodies)

A RESOLUTION OF THE Board  
OF THE West Dunbar Public Service District  
AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS FOR THE PURPOSE OF PROVIDING A  
PORTION OF THE COST OF ACQUIRING, CONSTRUCTING, ENLARGING, IMPROVING, AND/OR EXTENDING ITS  
Sewer System  
FACILITY TO SERVE AN AREA LAWFULLY WITHIN ITS JURISDICTION TO SERVE.

WHEREAS, it is necessary for the West Dunbar Public Service District  
(Public Body)  
(herein after called Association) to raise a portion of the cost of such undertaking by issuance of its bonds in the principal amount of  
One Hundred Thousand Dollars (\$100,000.00)

pursuant to the provisions of Chapter 16, Article 13A, West Virginia Code; and

WHEREAS, the Association intends to obtain assistance from the Farmers Home Administration, United States Department of Agriculture, (herein called the Government) acting under the provisions of the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et seq.) in the planning, financing, and supervision of such undertaking and the purchasing of bonds lawfully issued, in the event that no other acceptable purchaser for such bonds is found by the Association:

NOW THEREFORE, in consideration of the premises the Association hereby resolves:

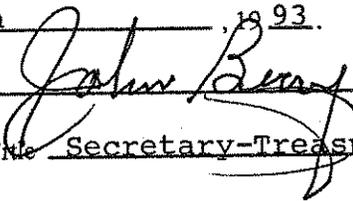
1. To have prepared on its behalf and to adopt an ordinance or resolution for the issuance of its bonds containing such items and in such forms as are required by State statutes and as are agreeable and acceptable to the Government.
2. To refinance the unpaid balance, in whole or in part, of its bonds upon the request of the Government if at any time it shall appear to the Government that the Association is able to refinance its bonds by obtaining a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time as required by section 333(c) of said Consolidated Farm and Rural Development Act (7 U.S.C. 1983(c)).
3. To provide for, execute, and comply with Form FmHA 400-4, "Assurance Agreement," and Form FmHA 400-1, "Equal Opportunity Agreement," including an "Equal Opportunity Clause," which clause is to be incorporated in, or attached as a rider to, each construction contract and subcontract involving in excess of \$10,000.
4. To indemnify the Government for any payments made or losses suffered by the Government on behalf of the Association. Such indemnification shall be payable from the same source of funds pledged to pay the bonds or any other legal permissible source.
5. That upon default in the payments of any principal and accrued interest on the bonds or in the performance of any covenant or agreement contained herein or in the instruments incident to making or insuring the loan, the Government at its option may (a) declare the entire principal amount then outstanding and accrued interest immediately due and payable, (b) for the account of the Association (payable from the source of funds pledged to pay the bonds or any other legally permissible source), incur and pay reasonable expenses for repair, maintenance, and operation of the facility and such other reasonable expenses as may be necessary to cure the cause of default, and/or (c) take possession of the facility, repair, maintain, and operate or rent it. Default under the provisions of this resolution or any instrument incident to the making or insuring of the loan may be construed by the Government to constitute default under any other instrument held by the Government and executed or assumed by the Association, and default under any such instrument may be construed by the Government to constitute default hereunder.
6. Not to sell, transfer, lease, or otherwise encumber the facility or any portion thereof, or interest therein, or permit others to do so, without the prior written consent of the Government.
7. Not to defease the bonds, or to borrow money, enter into any contract or agreement, or otherwise incur any liabilities for any purpose in connection with the facility (exclusive of normal maintenance) without the prior written consent of the Government if such undertaking would involve the source of funds pledged to pay the bonds.
8. To place the proceeds of the bonds on deposit in an account and in a manner approved by the Government. Funds may be deposited in institutions insured by the State or Federal Government or invested in readily marketable securities backed by the full faith and credit of the United States. Any income from these accounts will be considered as revenues of the system.
9. To comply with all applicable State and Federal laws and regulations and to continually operate and maintain the facility in good condition.
10. To provide for the receipt of adequate revenues to meet the requirements of debt service, operation and maintenance, and the establishment of adequate reserves. Revenue accumulated over and above that needed to pay operating and maintenance, debt service and reserves may only be retained or used to make prepayments on the loan. Revenue cannot be used to pay any expenses which are not directly incurred for the facility financed by FmHA. No free service or use of the facility will be permitted.

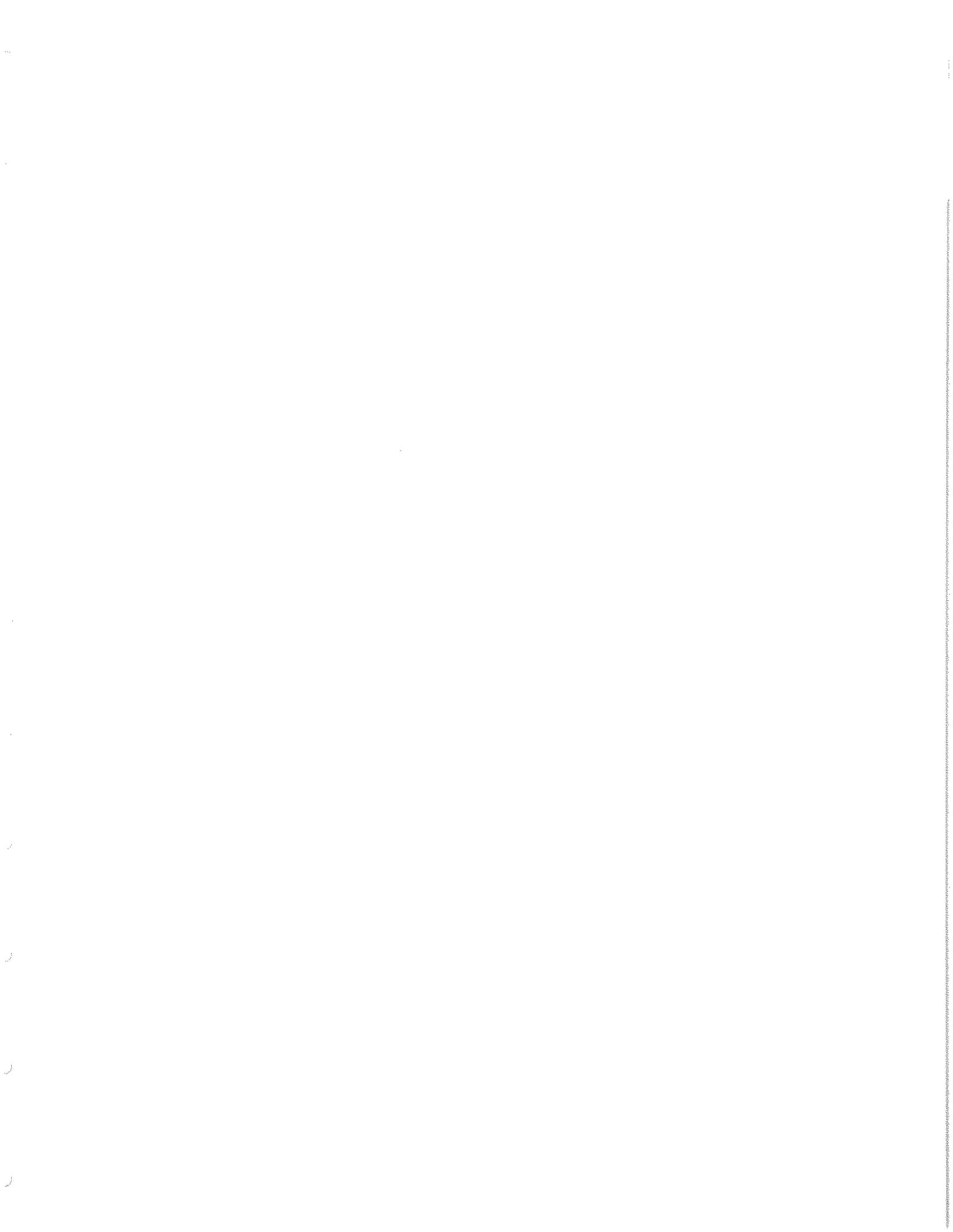


**CERTIFICATION TO BE EXECUTED AT LOAN CLOSING**

I, the undersigned, as Secretary of the West Dunbar Public Service District  
 hereby certify that the Board of Directors of such Association is composed of  
3 members, of whom \_\_\_\_\_, constituting a quorum, were present at a meeting thereof duly called and  
 held on the 28th day of June, 1990; and that the foregoing resolution was adopted at such meeting  
 by the vote shown above. I further certify that as of March 18, 1993,  
 the date of closing of the loan from the Farmers Home Administration, said resolution remains in effect and has not been rescinded or  
 amended in any way.

Dated, this 18th day of March, 1993.

  
 \_\_\_\_\_  
 Title Secretary-Treasurer





United States  
Department of  
Agriculture

Farmers  
Home  
Administration

603 Morris Street  
Charleston, WV  
25301

Work Copy

603 Morris Street  
Charleston, WV 25301

June 28, 1990

Revised 1-10-90

Mr. William E. Wiggins, Chairman  
West Dunbar Public Service District  
P.O. Box 582  
Institute, WV 25112

Dear Mr. Wiggins:

This letter, with attachments i through 11 and enclosures, establishes conditions which must be understood and agreed to by you before further consideration may be given to your application. Any changes in project cost, source of funds, scope of services, or any other significant changes in the project or applicant must be reported to and approved by FmHA by written amendment to this letter. Any changes not approved by FmHA shall be cause for discontinuing processing of the application.

This letter is not to be considered as loan and grant approval or as representation to the availability of funds. The docket may be completed on the basis of a loan not to exceed \$100,000, an FmHA grant not to exceed \$198,000 and other funding in the amount of \$442,000, for a total project cost of \$740,000. This other funding is planned in the form of grants from EPA and the Sub-Area Planning Group.

If FmHA makes the loan, you may make a written request that the interest rate be the lower of the rate in effect at the time of loan approval or the time of loan closing. If you do not request the lower of the two interest rates, the interest rate charged will be the rate in effect at the time of loan approval. The loan will be considered approved on the date a signed copy of Form FmHA 1940-1, "Request for Obligation of Funds," is mailed to you. If you want the lower of the two rates, your written request should be submitted to FmHA as soon as practical. In order to avoid possible delays in loan closing, such a request should ordinarily be submitted at least 30 calendar days before loan closing.

Extra copies of this letter are being provided for use by your engineer, attorney, bond counsel and accountant. The enclosures and attachments listed below are attached to the copies as noted.



Page 2

Enclosed are the following:

- Attachment No. 1 - Final Project Planning Factors  
(All Copies)
- Attachment No. 2 - West Dunbar Public Service District Loan  
and Grant Docket Table of Contents (All Copies)
- Attachment No. 3 - FmHA Instruction 1942-A, Section 1942.17  
(Applicant Copy)
- Attachment No. 4 - FmHA Instruction 1942-A, Section 1942.18  
(Engineer Copy)
- Attachment No. 5 - FmHA Instruction 1942-A, Section 1942.19  
(Attorney and Bond Council Copies)
- Attachment No. 6 - FmHA Supplemental General Conditions  
(Engineer Copy)
- Attachment No. 7 - Standards for Audit of Governmental  
Organizations, Programs, Activities and Functions  
(Accountant's Copy)
- Attachment No. 8 - West Dunbar Public Service District  
Sewer Users Agreement (Applicant and Attorney Copies)
- Attachment No. 9 - Declination Statement (Applicant and  
Attorney Copies)
- Attachment No. 10 - Sample Credit Agreement (Applicant  
and Attorney Copies)
- Attachment No. 11 - Various other FmHA Forms as identified  
on Attachment No. 2

The agreement you provided for engineering service is being reviewed and will be addressed under separate cover. You must immediately provide the agreement you have entered with your attorney and that agreement will have to be approved or concurred in by FmHA before any further processing action is taken on your request.

Your documents concerning the creation of your authority are administratively acceptable; however, they will be further reviewed by our Office of General Council at the time your file is forwarded for closing instructions. Any changes required by our Office of General Council will be included in the closing instructions.

The conditions referred to above are as follows:

1. Loan Repayment - The loan will be scheduled for repayment over a period of 40 years. The payments due the first 24 months will consist of interest only. Payments for the remaining 456 months will be equal amortized monthly installments. For planning purposes use a 5% interest rate and a monthly amortization factor of .00491, which provides for a monthly payment of \$491.00. Your authority must establish and fund monthly a debt service reserve account in an amount equal to at least 1/10th of your monthly debt service payment.



You are reminded that your authority may be required to refinance (graduate) the unpaid balance of its FmHA loan, in whole or in part, upon the request of FmHA if at anytime it shall be determined the authority is able to obtain a loan for such purposes from responsible cooperative or private sources at reasonable rates and terms for loans for similar purposes and periods of time.

2. Security - The loan must be secured by a statutory lien of highest priority available, a pledge of the system's revenues and other agreements between you and the lender (FmHA) as set forth in the bond resolution which must be properly adopted and executed by the appropriate officials of your organization. Additional security requirements are contained in Form FmHA 1942-31 and Form 1942-47 which are mentioned later.

You must also provide evidence that your District is current on the payments on all of its outstanding indebtednesses and that any reserves required in connection therewith are current. This evidence must be provided before authorization to advertise the project for construction bids can be granted.

3. Users - This conditional commitment is based upon your providing evidence that you will have at least 767 (70 new users) bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of signed users agreements and a certification from you that identifies and attests to the number of users that are actually connected to and using the authority's existing sewer system at the time you request authorization to advertise the proposed project for construction bids.

The enclosed Sewer Users Agreement will be used. Each sewer user signing an agreement must make a users contribution of \$250.00. Each potential user who is located along planned lines and declines the offered services will be provided an opportunity to sign a service declination statement. Guide 3, FmHA Instruction 1942-A, "Service Declination Statement," a copy of which is enclosed, must be used. If a potential user refuses to sign either a users agreement or a declination statement, the individual making the contact for the authority should complete the declination statement for that potential user and note thereon his/her visit with the potential user, the potential user's refusal to sign, and the reason therefore. The declination statement should also be dated and signed by the individual making the contact.



Before FmHA can agree to the project being advertised for construction bids, you must provide evidence that the total required number of bona fide users has been acquired and that all potential users have been offered the proposed service.

Information and material evidencing compliance with this requirement must consist of (1) your certification (written) as to the number of users connected to and using the sewer service of the existing system (paying monthly bills), (2) signed users agreements, (3) signed service declination statements, (4) records evidencing users contributions having been paid, (5) a map locating each potential user's property in the new service area and identifying it by number, (6) a list of all signed bona fide users numbered with corresponding numbers so as to be a cross-reference with the map required by (5) above and, (7) a list of all declination statements numbered with corresponding numbers so as to be a cross-reference with the map required by (5) above.

4. Bond Counsel - The services of a recognized bond counsel are required. The bond counsel will prepare the form of resolution to be used, in accordance with Section 1942.19 of FmHA Instruction 1942-A. You should immediately provide your bond counsel with a copy of this letter of conditions, its attachments and enclosures.
5. Facility Control - Prior to advertisement for construction bids, you must furnish satisfactory evidence that you have or can obtain adequate continuous and valid control over the lands and rights needed for the project. Such evidence must be in the following form:
  - a. A right-of-way map showing clearly the location of all lands and rights needed for the project. The map must designate public and private lands and rights and the appropriate legal ownership thereof.
  - b. A copy of deed, contracts or options for any lands needed other than rights-of-way, along with a preliminary title opinion covering such lands. Form FmHA 427-9, "Preliminary Title Opinion," may be used. Also, in the case of existing systems or where the authority has already acquired real property (land or facilities), a preliminary title opinion(s) concerning all such property(s) will be provided.



- c. A narrative opinion from your attorney concerning all permits, certifications and other items necessary to show that all legal requirements can be met and stating how they will be met. This narrative should also identify any condemnation proceedings that are anticipated and state how they will be handled.
  - d. A copy of the right-of-way easements for any rights-of-way needed on private lands. Form FmHA 442-20, "Right-of-Way Easement," may be used. Each easement need not be provided this office; however, each must be available for my review. A copy of the easement being used must be provided.
  - e. A certification and legal opinion relative to title to rights-of-way and easements Form FmHA 442-21, "Right-of-Way Certificate," and Form 442-22, "Opinion of Counsel Relative to Rights-of-Way," may be used. These forms may contain a few exceptions such as properties that must be condemned; however, prior to the start of construction or loan closing, whichever occurs first, new Forms FmHA 442-21 and 442-22, must be provided which do not provide for any exceptions.
  - f. On the day of loan closing, the authority's attorney must furnish final title opinions on all land(s) being acquired. In the case of existing systems or where the authority has already acquired real property(s) (land or facilities), the authority's attorney will provide a separate final title opinion(s) covering such property(s) on the day of loan closing.
6. Permits - Copies of all permits needed for the project must be provided for our review prior to advertisement for construction bids. Such permits will include but are not limited to the following:
- West Virginia Department of Highways
  - Railroads
  - State Department of Health
  - Department of Natural Resources
  - Corps of Engineers
  - Public Land Corporation
7. Public Service Commission Approvals - You must obtain the following from the Public Service Commission of West Virginia:



- a. A certificate of Convenience and Necessity.
- b. Approval of user charges that are acceptable to you and the Farmers Home Administration.
- c. Approval of financing for the project's proposed financing arrangements.

The "Rule 42" Exhibit to be attached to the Public Service Commission application must contain at least the information shown in Attachment No. 1. A copy of the Public Service Commission application and its "Rule 42" Exhibit must be provided for our review.

Additionally, you must provide FmHA evidence (current audit or financial statements) that shows the existing operation to be financially sound and that the rates on the existing system are adequate to properly operate and maintain the system, pay all debt service and fund all reserves.

It should be clearly understood that the rates and rate related information included in Attachment No. 1 hereto, were developed based on the information provided by you and your engineer and that it is presented as a minimum requirement only.

Your District and its accountant and engineer must develop the rates and necessary rate related information which is to be included in the District's rate so that it is acceptable to the EPA and includes necessary information (items) to meet all EPA requirements in connection therewith, i.e., industrial costs recovery, surcharge for excessive strength sewage, etc.

5. Accounting - You must obtain the services of a qualified accountant. That accountant must agree (by letter) to develop and provide the following:
  - a. All necessary accounting material required by the Public Service Commission of West Virginia (Rule 42).
  - b. Prior to advertisement for bids, your accountant must state in writing that he will establish or reestablish your accounts and records in accordance with the requirements of the resolution and the requirements of the Public Service Commission within 20 days from the notice to do such.
  - c. Prior to the start of construction, the accountant must certify that the accounts and records as required in (b) above have been properly established or reestablished and are operational.



A representative of my office will review your accounts and records prior to authorizing the issuance of award(s) to the contractor(s).

FmHA regulations (Attachment No. 3) outline requirements for the submission of management reports and audits. Appropriate state statutes place certain audit requirements for your authority. The attached booklet, "Standards for Audit of Governmental Organizations, Programs, Activities and Functions," (Attachment No. 7) outlines FmHA Audit requirements. You are reminded that certain provisions of Office and Management and Budget Circular A-128 are applicable to any public body that receive \$100,000 or more in federal funds in any one year. You must enter into an agreement annually with an accountant (or the State Tax Commission) to perform the audit. The agreement must be in accordance with the requirements of the State Tax Commissioner of West Virginia.

Audit Reports must be prepared to comply with the requirements of OMB Circular A-128 or A-110, as applicable.

9. Insurance and Bonding Requirements:

- a. Prior to preliminary loan closing, you must acquire the following insurance and bond coverage:
  - (1) Liability Insurance - Personal Liability -  
\$500,000 Property Damage - \$200,000-\$200,000. The limits of liability coverage noted herein should be considered as suggested amounts only. FmHA recommends that you consider analyzing your actual needs in detail before you obtain coverage in a specific amount.
  - (2) Workers' Compensation - In accordance with appropriate State laws.
  - (3) Position Fidelity Bond(s) - All positions occupied by persons entrusted with the receipt and/or disbursement of funds must be bonded. As a good business practice you will probably wish to have each position bonded in an amount equal to the maximum amount of funds to be under the control of that position at any one time. The minimum coverage acceptable to FmHA will be for each position to be bonded for an amount at least equal to one annual installment on your loan(s). Form FmHA 440-24, "Position Fidelity Bond," may be used. A certified and effective dated power-of-attorney will be attached to each bond.



(4) National Flood Insurance - In addition to meeting the requirements for the type of assistance requested, the following requirements must be met for financial assistance for acquisition and/or construction in designated special flood or mudslide prone areas:

(a) If flood insurance is available, you must purchase a flood insurance policy at the time of loan closing.

(b) Applicants whose buildings, machinery or equipment are to be located in a community which has been notified as having special flood or mudslide prone areas will not receive financial assistance where flood insurance is not available.

(5) Real Property Insurance - Prior to the acceptance of the facility from the contractor(s), you must obtain real property insurance (fire and extended coverage) on all above ground structures, to include machinery and equipment housed therein. This does not apply to water reservoirs, standpipes, elevated tanks or noncombustible materials used in treatment plants, clearwells, filters and the like.

10. You are, or have been, or may be approved to become, a recipient of Federal financial assistance from the United States Department of Agriculture. In the case of Paralyzed Veterans of America, et al, Plaintiff, V. William French Smith, et al, Defendants, United States District Court, Central District of California, No. 79-1979 WFG, the Honorable William P. Gray ordered the United States Department of Agriculture to notify you that as a recipient of such assistance you are required to comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. Sec. 794), even though the United States Department of Agriculture has not yet issued final regulations implementing Section 504 of the Rehabilitation Act.

Section 504 of the Rehabilitation Act is designed to assure that those who receive Federal financial assistance will not discriminate against handicapped persons. It provides in relevant part as follows:



"No otherwise qualified handicapped individual in the United States. . . shall, solely by reason of his handicap, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."

Effective June 3, 1977, the Department of Health and Human Services issued final regulations implementing Section 504 as it applies to recipients of Federal financial assistance from that agency (45 C.F.R. Part 84). You may look to the HHS regulation for guidance as to your obligation under Section 504 of the Rehabilitation Act.

11. Contract Documents, Final Plans and Specifications:

a. The contract documents should consist of the following:

- (1) FmHA Instruction 1942-A, Guide 19, "Agreement," and Attachments 1-9. (Attachment No. 4) or other agreement approved by FmHA.
- (2) Farmers Home Administration Supplemental General Conditions (Guide 18, 7-1-86 Revised WV). One copy of this item is attached hereto (Attachment No. 6). Additional copies must be reproduced by the engineer.

b. The Contract documents must provide, as a minimum, the following insurance:

- (1) Liability Insurance - Personal Liability - \$500,000; Property Damage - \$200,000-\$200,000. (This coverage must include indemnification of the authority and its engineer.) FmHA Guide 18 suggests certain limits of liability for insurance coverage. Those limits should be considered as minimum requirements only. It is recommended you consider increasing the given limits of liability after analyzing your specific needs.
- (2) Builder's Risk Insurance - On all structures and mechanical and electrical equipment in place or stored on the site to the full insurable value thereof.
- (3) Workers' Compensation - In accordance with applicable State law.

c. The contract documents and final pland and specifications must be submitted to FmHA for approval.



12. Interim Financing - Interim financing will be used for the FmHA loan if it is available at reasonable rates and terms. You must provide FmHA with a copy of the tentative agreement reached in connection with interim financing. The enclosed Sample Credit Agreement (Attachment No. 10) is an acceptable agreement and may be used.
13. Disbursement of Funds - The FmHA funds will be advanced as they are needed in the amount[s] necessary to cover FmHA's proportionate share of any disbursements required of your authority, over 30 day periods. Any funds not disbursed immediately upon receipt must be deposited in an interest bearing account in accordance with OMB Circular A-110. Interest earned on these funds must be remitted promptly, at least quarterly, to the Farmers Home Administration.
14. Other Grants - Prior to advertisement for construction bids, you must provide evidence showing the approval of the other grants. This evidence should include a copy of the grant award. Prior to award of the contract(s) to the contractor(s), you must provide evidence that the "other" grant funds are available for expenditure. This evidence should consist of at least a letter from the grantor stating the funds are available for expenditure.
15. At a properly called meeting, you must adopt and properly execute the following forms, and minutes showing the adoption must be provided:
  - Form FmHA 442-7 - Initial Operating Budget
  - Form FmHA 1940-1 - Request for Obligation of Funds
  - Form FmHA 1942-31 - Association Water or Sewer System Grant Agreement
  - Form FmHA 1942-47 - Loan Resolution
  - Form FmHA 400-1 - Equal Opportunity Agreement
  - Form FmHA 400-4 - Assurance Agreement
  - Form AD 1047 - Certification Regarding Debarment - Primary
  - Form AD 1049 - Certification Regarding Drug-Free Workplace
  - Form FmHA 1910-11 - Applicant Certification, Federal Collection Policies
16. The enclosed Loan Processing Checklist (Attachment No. 2) outlines the items needed to complete the loan and grant docket. All the items listed must be included in the loan docket when it is forwarded to the FmHA State Office with a request for loan closing instructions to be issued.



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17. Upon receipt of the loan and grant docket, which contains all the items required above, FmHA may authorize you to advertise the project for construction bids. Such advertisement must be in accordance with appropriate State statutes. Immediately after bid opening you must provide FmHA with (a) a bid tabulation, (b) recommendations from you and your engineer as to the acceptability of the bids received, and (c) your recommendations for contract awards.
18. When the items required by item 17 have been received by the FmHA State Office, they will be included in the loan docket. If all parties then agree the bids received are acceptable, it is determined that adequate funds are available to cover the total facility costs, and that all the administrative conditions of loan approval have been satisfied, loan closing instructions will be issued. The closing instructions, a copy of which will be forwarded to you, will set forth any further requirements that must be met before the loan can be closed. When all parties agree that the closing requirements can be met, a mutually acceptable date for the preliminary loan closing will be scheduled.

Attached is a copy of Form FmHA 1942-31, "Association Water and Sewer System Grant Agreement," for your review. You will be required to execute a completed form at the time for grant closing.

Any applicant contribution shall be considered as the first funds expended. After providing for all authorized costs, any remaining FmHA project funds will be considered to be FmHA grant funds and refunded to FmHA. If the amount of unused FmHA project funds exceeds the FmHA grant, that part would be FmHA loan funds.

We believe the information herein clearly sets forth the actions which must be taken; however, if you have any questions, please do not hesitate to contact me.

Please complete and return the enclosed Form FmHA 1942-46, "Letter of Intent to Meet Conditions," if you desire further consideration be given your application.



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If the conditions set forth in this letter are not met within six (6) months from the date hereof, FmHA reserves the right to discontinue processing of the application. In the event the project has not advanced to the point of loan closing within the six-month period and it is determined the authority still wishes to proceed, it will be necessary that the proposed budget be reviewed again in detail. If during that review, it is determined the budget is no longer current and/or adequate, FmHA reserves the right to require that it be revised or replaced.

Sincerely yours,

*Forrest W. Southall*  
FORREST W. SOUTHALL  
District Director

cc:

Administrator, FmHA  
Attn: Water and Waste  
Disposal Division  
Washington, DC

State Director, FmHA  
Morgantown, WV

County Supervisor, FmHA  
Charleston, WV

(Bond Counsel)

Clyde Thomas, Accountant  
P.O. Box 175  
Charleston, WV 25301

Kelly, Gidley, Blair and  
Wolfe, Inc.  
550 Eagan St.  
Charleston, WV 25301

James E. Williams  
Attorney at Law  
509 Kanawha Valley Bldg.  
Charleston, WV 25301



Attachment No. 1 to Letter of Conditions  
 Dated: June 28, 1990  
 For: West Dunbar Public Service District

Project Planning Factors

The following estimates are to be used as a basis for project planning and must not be changed without prior approval of FmHA:

<u>Project Costs</u>	<u>Grant</u> (Sub-Area)	<u>Grant</u> (EPA)	<u>FmHA</u> <u>Grant</u>	<u>FmHA</u> <u>Loan</u>	<u>Total</u>
Construction	75,000	273,000	118,000	43,000	509,000
Construction Contg.		20,000	1,000	4,000	25,000
Land and Rights			8,000	3,000	11,000
Legal and Admin. Fees			3,000	2,000	5,000
Engineering Fees		74,000	50,000	25,000	149,000
Basic 72,000					
Insp. 35,000					
Spec. 42,000					
Bond Counsel			3,000	2,000	5,000
Interest				16,000	16,000
Proj. Contg.			15,000	5,000	20,000
<b>TOTALS</b>	<b>75,000</b>	<del>267,000</del> 297,820	198,000	100,000	<del>710,000</del> 670,820

Rates (Sewer Rates based on Water Usage)

Available for general domestic, commercial, and industrial service.

First 2,000 gals. @ \$5.22 per M gals.  
 Next 28,000 gals. @ \$2.21 per M gals.  
 Over 30,000 gals. @ \$1.90 per M gals.

(Minimum Monthly Bill \$10.44 for 2,000 gallons)



Page 2

Delayed Payment Penalty

The above tariff is net. On all accounts not paid in full within twenty (20) days of date of bill, ten percent (10%) will be added to net amount shown.

If any bill is not paid within sixty (60) days after date, water service to the sewer customer will be discontinued. Water service will not be restored until all past due sewer bills have been paid in full and all accrued penalties plus a reconnection charge have been paid.

Connection Charge

Prior to Construction - \$250.000

After the start of construction, there shall be a charge of \$250.00 for connection to the system.

Use and Income Analysis

10 users @ 2,000 gallons @ \$10.44 per user = \$104.40 monthly
10 users @ 3,000 gallons @ \$12.65 per user = \$126.50 monthly
10 users @ 4,000 gallons @ \$14.86 per user = \$148.60 monthly
10 users @ 5,000 gallons @ \$17.07 per user = \$170.70 monthly
7 users @ 6,000 gallons @ \$19.28 per user = \$134.96 monthly
5 users @ 7,000 gallons @ \$21.49 per user = \$107.45 monthly
3 users @ 8,000 gallons @ \$23.70 per user = \$ 71.10 monthly
3 users @ 9,000 gallons @ \$25.91 per user = \$ 77.73 monthly
2 users @ 10,000 gallons @ \$28.12 per user = \$ 56.24 monthly
2 users @ 11,000 gallons @ \$30.33 per user = \$ 60.66 monthly
2 users @ 12,000 gallons @ \$32.54 per user = \$ 65.08 monthly
3 users @ 13,000 gallons @ \$34.75 per user = \$104.25 monthly
2 users @ 14,000 gallons @ \$36.96 per user = \$ 73.92 monthly
1 users @ 15,000 gallons @ \$39.17 per user = \$ 39.17 monthly

70 Total monthly x 12 = annually  
\$1325.01 x 12 = \$15,900.12 Yearly Income



Page 3

Budget

Income \$15,900.12

Expenses

O & M \$9419.12

Debt Service 5892.00

Reserve 589.00

\$15,900.12

Balance and Depreciation -0-

Operation and Maintenance Expenses

Treatment @ Dunbar \$ 4,900.00

Pumping Expense \$ 1,130.00

Billing and Collecting \$ 1,510.00

Administration and General Exp. \$ 1,879.12

TOTAL \$ 9,419.12

UNITED STATES DEPARTMENT OF AGRICULTURE  
 FARMERS HOME ADMINISTRATION  
 Table of Contents  
 Preapplication, Applications - Complete Docket  
 Association Loans and Grants  
 Water and Sewer Systems

PREAPPLICATIONS

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
AD 621	Preapp. for Fed. Assist.	0 & 2	1942.2(a)(1)	App.			3
	Intergovernmental Review	2	1942.2(a)(1)	App.			3
Guide 7/8	Preliminary Engr. Report	2	1942.18(c)	Engr.			6
	Bond Ordn. or Resol. on Outstanding Debts	1	1942.17(h)	App./Att.			2
	Bonds or Notes Outstanding Debts	1	1942.17(h)	App./Att.			2
	Audit for last year of operation	1	1942.17(h)	App./Att.			1
1940-20	Request for Env. Info.	2	1942.17(J)(7)	App./Eng.			3
<del>1940-21</del>	<del>Env. Assessment for Class I Action</del>	<del>2</del>	<del>1942.17(J)(7)</del>	<del>FmHA</del>			<del>3</del>
AD 1049	Certification Regarding Drug-Free Workplace	1	1940-M 1940.606(b)(2)	App		HAVE	5
	Minutes Adopting Drug-Free Workplace Program	1	LOC	App			5

PREAPPLICATIONS

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
<del>1940-22</del>	<del>Env. Check list for Categorical Exclusions</del>	<del>2</del>	<del>1942.17(j)(7)</del>	<del>FmHA</del>			<del>3</del>
	Env. Assessment for Class II Actions (Exhibit H, 1940-G)	2	1942.17(j)(7)	FmHA			3
	Statement from State Historical Preservation Office concerning historical sites and archeological properties	2	1940.304(d)	App.			3
	Brief Stmt. telling how facility will be operated	1	1942.17(b)(3)	App.			5
	<del>List of users by name expected to use over 20,000 gals. per mo.</del>	<del>2</del>	<del>1942.17(h)(2)</del>	<del>App./Engr.</del>			<del>8</del>

PREAPPLICATIONS

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	<del>List of users by number which will have a meter larger than 3/4 x 5/8 and also expected total consumption by these users</del>	<del>2</del>	<del>Preapp/Packet</del>	<del>App./Engr.</del>			<del>0</del>
	<del>Breakdown of planned cost to show that cost related to users with meters larger than 3/4 x 5/8</del>		<del>Preapp/packet</del>	<del>Engr.</del>			<del>0</del>
	Copy of existing rate tariff	2	1942.17(h)	App./Atty/Acct.			0
	Bill analysis for existing system(s)	2	1942.17(h)(2)	App./Engr/Acct.			0
	Projected Bill analysis for new users	2	1942.17(h)(2)	App./Engr/Acct.			0
	<del>Adjustments to historic income and cost--explain changes</del>	<del>2</del>	<del>1942.17(h)(1)</del>	<del>App./Engr/Acct.</del>			<del>0</del>
	Identification of "Other" funding	2	1942.17(n)(5)	App./Att.			2
	Step III Grant Appl. (Sewer Only)	2	1942.17(n)(5)	App./Engr.			Sep. File

PREAPPLICATIONS

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	Statement reporting the <u>total number of potential users</u>		1942.17(h)(2) (1)(A)	App./ Engr/Acct.			8
	Breakdown of sewer cost to show treatment, collection, ellg. and inellg.	2	1942-A Guide 18	Engr.			8
1942-19	Agreement for Engineering Services	3	1942.17(1)(1) Guide 14	App./Engr.			6
	Legal Services Agreement		1942.17(1)(1)	App./Engr.			5
	Survey conducted by uninterested party to determine MHI	1	1942-A 1942.17(f)(6)	App./FmHA			3
	S/O concurrence in results of survey to determine MHI	1	1942-H 1942.356(b)(7)	FmHA-S/O			3
	Documentation on Service Area	1	1942.5(a)	FmHA			3
	Written Certification that "Other" credit is <u>NOT</u> available	2	1942.17(b)(2)	App.			3

PREAMPLICATIONS

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	Documentation on Historical and Archeological Assessments	2	1901.255(2)	FmHA			3
	Copy of Certification of Publication and related Environmental Information	2	1940.331(c)	App.			3
	Project Planning Factors	4	S/Office	FmHA			3
942-51	Development Grant Summary	3	1942-H	FmHA			2
	<del>Grant Determination Worksheet</del>	<del>2</del>	<del>S/Office</del>	<del>FmHA</del>			<del>3</del>
	Finding of No Significant Impact (FONSI)	2	1940-G	FmHA			3
	Evidence of Public Meeting Minutes	2	1942.17 (J)(9)	App.			3

APPLICATIONS

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
AD 622	Notice of Preapplication Review	0 & 3	1942.17(m)(4)	FmHA			3
AD 624	Application for Federal Assistance	0 & 1	1942.17(m)(5)	App.			3
1942-45	Project Summary	0 & 2	1942.5(a)(1)	FmHA		HAVE	1
442-3	Balance Sheet	0 & 1	1942.17(h)	App.			1
442-7	Operating Budget	0 & 2	1942.17(h)	App.		HAVE	3
1942-14	Project Fund Analysis	0 & 4	1942.5(c)	FmHA		HAVE	2
	<del>Certified</del>						
	<del>Copy of Town Charter</del>	<del>1</del>	<del>1942.17(b)(3)</del>	<del>App./Att.</del>			<del>5</del>
	<del>Copy of Bylaws or Rules of Order</del>	<del>1</del>	<del>1942.17(b)(3)</del>	<del>App./Att.</del>			<del>5</del>
	Appraisal Report	1	1942.3	App.			6
Guide 26	CP Program Project Selection Criteria	2	1942-A	FmHA			2

DOCKET

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	Letter of Conditions	7	1942.5(c)	FmHA		<i>HAVE</i>	3
942-46	Letter of Intent to Meet Conditions	2	1942.5(c)	App.		<i>HAVE</i>	3
940-1	Request for Obligation of Funds	4	1942.5(c)(3)	FmHA/App.		<i>HAVE</i>	2
	Written Request from Applicant for the Lower Interest Rate	2	1942.17(f)(1)	FmHA/App.			2
942-31	Association Water or Sewer System Grant Agreement	2	1942-H	FmHA/App.			2
	Evidence of "Other" Funds	1	1942.17(n)(5)	App.			2
	<del>Water (Sewer) Users Agreement (Copy)</del>	1	1942.17(h)(2)(B)	App.			5
AD 1047	Certification Regarding Debarment (Primary)	1	1940-M 1940.606 (b)(1)	App.			5
AD 1048	Certification Regarding Debarment (Contractor)	1 ea	1940-M 1940.606 (b)(1)	All Appropriate Vendors			5
910-11	Applicant Certification Federal Collection Policies	1	1942.5(a)(1)(i)	App			3

DOCKET

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	Evidence of Users:						
	1. Map of Users with each	1	LOC	App.			Sep. File
	2. List of Signed Users Numbered to Map	1	LOC	App.			5
	3. List of Declination Statement Numbered to Map	1	LOC	App.			5
	4. Evidence of Tap Fees Being Paid	1	LOC	App.			5
	5. Having Users Agreements and Declination Statements Available		LOC	App.			-
	Positive Program to Encourage Connections When Completed	1	1942.17(h)(2)(iii)	App.			5
	Verification of Users	1	1942.6(b)	FmHA			3
	Preliminary Bond Transcr. Documents w/no Defeasance Provisions	2	1942.17(J)(6)(ii)	B. Counsel			2

DOCKET

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	Right-of-Way Map	1	Form FmHA 1942-19	Engr.			Sep. File
	Deeds and/or Options		1942.17(J) (4)(1)	App./Att.			
27-9	Preliminary Title Opn.	1	1942.17 (J)(4)(1)	App./Att.			5
	Narrative Opinion from Attorney	1	LOC	Att.			5
42-20	Right-of-Way Easement	1	1942.17 (J)(4)(1)	App.			5
42-21	Right-of-Way Certificate	1	1942.17 (J)(4)(1)	App.			5
42-22	Opinion of Counsel Relative to R/Way		1942.17 (J)(4)(1)	Att.			5
942-47	Loan Resolution	1	1942.17(n) (2)	App.			5
<del>942-9</del>	<del>Association Loan Resolution Security Agreement</del>	<del>1</del>	<del>1942.17(n) (2)</del>	<del>App.</del>			
<del>942-8</del>	<del>Resolution of Members or Stockholders</del>	<del>1</del>	<del>1942.17(j) (1)</del>	<del>App.</del>			<del>5</del>
<del>40-22</del>	<del>Premissary Note</del>	<del>3</del>	<del>1942.17(j) (6)</del>	<del>FmHA</del>			<del>2</del>

DOCKET

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	Application for DOH Permit	1	1942.17 (J)(4)(1)	Engr.			6
	Application for R/R Permit		1942.17 (J)(4)(1)	Engr.			6
	Application for Public Land Corp. Permit	1	1942.17 (J)(4)(1)	Engr.			6
	Application for Corps of Engineers Permit	1	1942.17 (J)(4)(1)	Engr.			6
	Copy of PSC Application	1	State	Att./Acct.			6
	Copy of PSC Rule 42 Exhibit	1	State	Att./Acct.			3
	Agreement with Accountant	1	1942.17 (1)(1)	App./Acct.			6
	Contract Documents, Plans and Specs.	2	1942.18	Engr.			Sep. File
	Dept. of Health Approval	1	1942.17(i) (iv)	Engr.			6
	Dept. of Natural Resource Permit	1	1942.17(k)	Engr.			6

DOCKET

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	Interim Financing Agreement	1	1942.17(n) (3)	App./Att.			1
<del>42-30</del>	<del>Water Purchase Contract</del>	<del>1</del>	<del>1942.18(f)</del>	<del>App./Att.</del>			<del>5</del>
42-30	Sewer Treatment Contract (Copy)	1	1942.18(f)	App./Att.			5
00-1	Equal Opportunity Agreement	1	1942.17 (n)(2)(x)	App.			6
00-4	Assurance Agreement	1	1942.17 (n)(2)(x)	App.			3
	Bond Transcript Documents w/no Defeasance Provisions	3	1942.17 (J)(6)(ii)	B. Counsel			Sep. File
	Records of Mailing of Bonds		2018-E 2018.203	FmHA			1
	OGC Closing Instructions	1	1942.17(n) (3)	FmHA			5
	S/O Closing Instructions	1	1942.17(n) (3)	FmHA			5
27-10	Final Title Opinion	1	1942.17 (J)(4)(i)	Att.			5

DOCKET

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	DOH Permit	1	1942.17 (J)(4)(1)	App.			6
	Railroad Permits	1	1942.17 (J)(4)(1)	App.			6
	Public Land Corp. Permit	1	1942.17 (J)(4)(1)	App.			6
	Corps of Engrs. Permit	1	1942.17 (J)(4)(1)	App.			6
	PSC Order (Approval of Financing)	1	State	App.			6
	Accountant's Certification on Accounting System	1	1942.17 (q)(1)	Acct.			3
	FmHA Approval of Account System		1942.17 (Q)(1)(11)	App./FmHA			3
00-8	Comp. Review	1	1942.6(c)	FmHA			5
924-16	Record of Preconstruction Conference	1	1942.18 (o)(1)	FmHA/Engr.			6
	Bid Tabulation	1	1942.18(k)	Engr.			6
	Recommendation of Award	1	1942.18(J) (B)	Engr.			6
	Recommendation of Award	1	1942.18(J) (B)	App			6

DOCKET

<u>Form No.</u>	<u>Document or Action</u>	<u>No. Needed</u>	<u>Proced. Ref.</u>	<u>Respons. Party</u>	<u>Target Date</u>	<u>Date Rec'd</u>	<u>File Pos.</u>
	Contract Documents with required Ins. and Bonds	2		App./Engr.			Sep. File
	Resume' of Inspector	1	1942.18(o)(3)	Engr.			6
	Liability Insurance		1942.17 (J)(3)(iv)	App.			7
	Workers' Compensation Certificate	1	1942.17 (J)(3)(iv)	App.			7
	Flood Insurance Policy	1	1942.17 (J)(3)(iv)	App.			7
40-24	Fidelity Bond (with Power of Attorney)	1	1942.17 (J)(3)(iv)	App.			7
	OGC Final Opinion	1	1942.17 (o)(4)	FmHA			5





United States  
Department of  
Agriculture

Farmers  
Home  
Administration

603 Morris Street  
Charleston, WV  
25301

September 12, 1990

(304) 347-5355

William E. Wiggins, Chairman  
West Dunbar Public Service District  
P. O. Box 582  
Institute, WV 25112

Dear Mr. Wiggins:

Reference is made to the June 28, 1990 letter of conditions furnished you in connection with your sewer system expansion project. That letter is revised and amended as follows:

Users - This conditional commitment is based upon your providing evidence that you will have at least 767 (70 new users) bona fide users on the proposed system when it has been completed and is placed in operation. This evidence will consist of signed users agreements and a certification from you that identifies and attests to the number of users that are actually connected to and using the authority's existing sewer system at the time you request authorization to advertise the proposed project for construction bids.

The enclosed Sewer Users Agreement will be used. Each sewer user signing an agreement must make an FmHA required minimum users contribution of \$50.00. Each potential user who is located along planned lines and declines the offered services will be provided an opportunity to sign a service declination statement. Guide 3, FmHA Instruction 1942-A, "Service Declination Statement," a copy of which is enclosed, must be used. If a potential user refuses to sign either a users agreement or a declination statement, the individual making the contact for the authority should complete the declination statement for that potential users and note thereon his/her visit with the potential user, the potential user's refusal to sign, and the reason therefore. The declination statement should also be dated and signed by the individual making the contact.

Before FmHA can agree to the project being advertised for construction bids, you must provide evidence that the total required number of bona fide users has been acquired and that all potential users have been offered the proposed service.



Information and material evidencing compliance with this requirement must consist of (1) your certification (written) as to the number of users connected to and using the sewer service of the existing system (paying monthly bills), (2) signed users agreements, (3) signed service delineation statements, (4) records evidencing users contributions having been paid, (5) a map locating each potential users property in the new service area and identifying it by number, (6) a list of all signed bona fide users numbered with corresponding numbers so as to be a cross-reference with the map required by (5) above and, (7) a list of all declination statements numbered with corresponding numbers so as to be a cross-reference with the map required by (5) above.

All the requirements of the June 28, 1930 letter of conditions that are not altered by the above will remain in full force and effect.

We believe the information herein clearly sets forth the actions which must be taken. If you have any questions, please do not hesitate to contact me.

Please complete and return the enclosed Form 1942-46, "Letter of Intent to Meet Conditions, if you plan to proceed with your loan and grant application.

Sincerely yours,

*James H. Anderson*

for FORREST W. SOUTHALL  
District Director

Enclosures

cc: State Director, FmHA  
Morgantown, WV

County Supervisor, FmHA  
Charleston, WV

Samme L. Gee  
Jackson & Kelly  
1600 Laidley Tower  
Charleston, WV 25301

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509 Kanawha Valley Bldg.  
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Charleston, WV 25301

Jim Downey  
Kelly, Gidley, Blair and  
Wolfe, Inc.  
550 Eagan Street  
Charleston, WV 25301



UNITED STATES DEPARTMENT OF AGRICULTURE  
FARMERS HOME ADMINISTRATION

ASSOCIATION WATER OR SEWER SYSTEM GRANT AGREEMENT

THIS AGREEMENT dated June 28, 1990, between

West Dunbar 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)~~ (sewer) system to serve the area under its jurisdiction at an estimated cost of \$ 740,000.00 and has duly authorized the undertaking of such project.

Grantee is able to finance not more than \$ 542,000.00 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 \$ 542,000.00 has been committed to and by Grantee for such project development costs.

Grantor has agreed to grant the Grantee a sum not to exceed \$ 198,000.00 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 \_\_\_\_\_ 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 proposed by the West Dunbar Public Service District and approved by the Public Service Commission of West Virginia, whether for one or more classes of service, as proposed by the West Dunbar Public Service District and approved by the Public Service Commission of West Virginia, ~~as proposed by the West Dunbar Public Service District and approved by the Public Service Commission of West Virginia~~, as proposed by the West Dunbar Public Service District and approved by the Public Service Commission of West Virginia, 1990, 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).*

Extension of the sewer collection system including the construction of collection lines, manholes, clean-outs, and pump station in accordance with the plans and specifications developed by Kelley, Gidley, Blair & Wolfe.

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).*

All tangible items together with appurtenant furnishings and equipment, including all accessions, repairs, and replacements associated with the proposed facility.

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.

ATTEST:

By Charlotte Fuller  
Charlotte L. Fuller  
Secretary  
(Title)

West Dunbar Public Service District

By William E. Wiggins  
William E. Wiggins  
Chairman  
(Title)

UNITED STATES OF AMERICA  
FARMERS HOME ADMINISTRATION

By James G. Anderson  
for FORREST W. SOUTHALL  
District Director  
(Title)



November 1, 1990

Mr. Willaim E. Wiggins  
P.O. Box 301  
Dunbar, WV 25064

Re: West Dunbar Public Service District  
Barron Drive Project

Dear Mr. Wiggins:

Per the request of some of the funding agencies of the Barron Drive Project, I am again putting in writing the position of West Dunbar, Pinewood Park, Institute, Sub Area Committee, Inc., hereinafter called "Sub Area", as it relates to the funding of the Barron Drive Project, hereinafter called "Project".

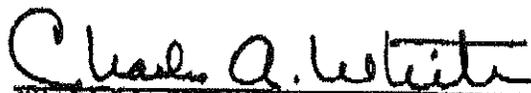
At a duly authorized, regular meeting of the Sub Area, a motion was made that a grant in the amount of Seventy-Five Thousand Dollars (\$75,000.00) be made to the West Dunbar Public Service District towards the funding of the Project, which motion was duly seconded and put to a vote of the members. Said motion passed unanimously.

The grant money was then encumbered and continues to be carried as encumbered upon our records and books.

We are willing to release said money whenever requested to do so by the District.

This letter duplicates an earlier letter.

Sincerely,



CHARLES A. WHITE  
Chairman, West Dunbar, Pinewood  
Park, Institute, Sub-Area Committee, Inc.

Nov. 5, 1990  
Date



Minutes  
West Dunbar Public Service District  
June 28, 1990

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AUG 2 1990  
*Sp.*

A regular meeting of the West Dunbar Public Service District was held on Thursday, June 28, 1990, at the Shawnee Education Center, Myers Avenue, West Dunbar. The meeting was called to order at 7:43 PM and opened with a prayer. Those attending were Commissioners John Berry-Treasurer; Clarence Brown-Vice Chair, and William Wiggins-Chair. Others attending were Mr. Jim Anderson-Farmers Home Administration; Mr. Paul Schulte and Mr. Jim Downey-Kelley, Gidley, Blair & Wolfe (KGBW); Mr. Fred Varian-Higher Education Central Office; Mr. John Potter-West Virginia State College; Mr. Harold Lamb, Right-of-Way Agent; and James Williams, Attorney.

**Barron Drive Project.** Mr. Varian stated that in previous conversations, we talked about various repairs to the pumping station and lines at the College. He went on to say that there must be some misunderstanding about what is to be done. Mr. Varian also indicated that the College wants to give the District the pump station and lines by the railroad track which he said does not include the underground lines on campus. Specifically, he said that the College would give the District the lift station, the area around it, and the line down to the lift station. Mr. Varian noted that the College has made most of the repairs outlined in the KGBW Study, with the exception of 1-2 items and the lift station which needs to be overhauled. However, he said that the College is willing to do what is needed to repair the lift station. Commissioner Wiggins pointed out that if the District takes over the lift station and it breaks down, the District would not have funds to have it repaired. Mr. Varian said that the College is obligated to give the lift station to the District in good working condition.

Mr. Varian asked if the College could tie into the new project and it was pointed out that that phase of the Barron Drive Project was eliminated due to cost factors. Mr. Varian then asked if the District wanted the lift station and Mr. Downey said that maybe the District could benefit by doing a trade off (obtain needed right ways for accepting pump station). The commissioners questioned whether the pump station at the College could be upgraded to accommodate the additional usage from the College; Mr. Downey said that it could if a larger pump were installed with an emergency generator.

Commissioner Wiggins asked what size line would be used on Barron Drive and Mr. Downey said that it would be a eight inch line. Commissioner Brown pointed out that the officials at the Rehabilitation Center still has not made a commitment to the project and Mr. Potter said that he thinks the Rehab might be willing to contribute. He then pointed out the actions taken

by the College with regards to making the repairs that KGBW noted in their study in order to participate in the Barron Drive Project and turn the lift station over to the District. He went on to say that the College has completed all of the repairs outlined in the first report with the exception of one cross-connecting line that is very deep. He noted that in the second report, KGBW identified several other problems related to the Science Building and these items have also been corrected. Mr. Potter noted that the College has reacted as quickly as possible in making these repairs and in each instance, the work was checked by representatives from KGBW.

With regards to the College entering into an agreement to have KGBW do this study, Mr. Downey said that the College and Rehab had contracted with his firm to do the study and we have advised you of what needs to be done to the system to make it acceptable to WDPSD and performed the necessary follow-up inspections. He said that his firm did this and wrote the report. Mr. Downey also noted that KGBW only acts in an advisory capacity to the District and that the District must decide whether they want to accept the donated system from the College.

Mr. Varian asked if there could be a Phase II to include the College in the Barron Drive Project and Mr. Downey noted that it might jeopardize the project to revise it at this point. He said that at a later date, we might want to review the costs to go a different route via a change order which might be done during the construction stage. Mr. Varian asked if there is anything that WVSC might do to help and said that the College might do a little PR work to get the Rehab Center to do their work. Mr. Varian then asked the engineers to make a recommendation and Mr. Downey said that the work might be done through a change order. KGBW then said that they would provide the cost estimates to the College. He also noted that the problem is not related to engineering but that it is a financial consideration; --the District must make the final decision. Mr. Potter suggested that the current lift station be replaced and upgraded and he said that the College might share in the costs of putting in a larger pump. Commissioner Wiggins pointed out that KGBW has agreed to do the costs estimates and the District would consider the matter further at a later date; he noted that the work must be done by a change order.

**Right Aways.** Mr. Lamb was then introduced and he asked the District to verify certain information with the commissioners confirming the following: that the tap fee for the District is \$300; that one dollar per foot would be paid for right away property; and, that the tap would be provided at the District's line when the system is installed. Commissioner Wiggins said

that the latter is true if the customer's line is ready and they have paid their tap fee. Mr. Lamb said that his fee for serving as the District's Right Away Agent for the Barron Drive Project would be \$100 per parcel; Attorney Williams said that there are less than 40 people on the list.

**Farmers Home Administration Loan.** Mr. Anderson then went over the various loan documents explaining the requirements associated to each. He noted that for the record, the District will need to obtain a declination statement from all those who decline and he suggested that Mr. Lamb might do this, since he would be the one going from door to door obtaining the right aways. Commissioner Wiggins said that Mr. Lamb would not be in touch with everyone on Barron Drive, only those from whom right aways are needed. It was also noted that the easement from the Department of Highways would not require each individual to be contacted if they are on right away property. Commissioner Wiggins said that the District would set up a Right Away Account. It was agreed that Attorney Williams will obtain the needed information from Mr. Lamb and issued the checks for the payment of the right aways. Mr. Lamb said that he would be working between the hours of 6:00-9:00 PM; that money should be set aside for the replacement of fences, etc.; and that a video should be made of each parcel before the work starts; Mr. Downey said that this would be done because it is a part of the construction contract. Mr. Lamb said that he would use the information from KGBW and provide Attorney Williams with the right away information that he needs. Mr. Lamb stated that the District would need approximately 60 easements and Mr. Anderson pointed out that the letter of condition from Farmers Home Administration requires 70 users; Curtis Square has 13 units.

Mr. Anderson then asked if the District had selected a bonding company and it was noted that the District had not. He said that he had a list of bonding companies if the District wanted to review it. Commissioner Brown agreed to serve as the contact person "Coordinator" for the project.

**Farmers Home Administration Loan and Grant Application.** Following the review and discussion of the various forms and documents presented by Mr. Anderson pertaining to the grant and loan to be provided by the Farmers Home Administration to supply the additional funds needed for the construction of the Barron Drive Project, it was moved by Commissioner Brown and seconded by Commissioner Berry, that the West Dunbar Public Service District accept and execute the following forms which are conditions of the loan and grant agreement. Specifically, it was moved that

the District accept Farmers Home Administration's forms: (1) #442-7: Initial Operating Budget; (2) #1940-1: Request for Obligation of Funds; (3) #1942-31: Association of Water/Sewer System Grant Agreement; (4) #1942-47: Loan Resolution; (5) #400-1: Equal Opportunity Agreement; (6) #400-4: Assurance Agreement; (7) #1047: Certification Regarding Debarment (Primary); (8) #1049: Certification Regarding Drug-Free Workplace; and (9) #1910-11: Applicant Certification-Federal Collection Policies. The motion was accepted by unanimous vote. The various forms were then presented to Chairman William Wiggins for his signature.

**Rule 42 Information.** It was noted that as of June 21st, the District's Accountant, Mr. Clyde Thomas, had not submitted the information called for under Rule #42. It was further noted that the newspaper advertisement and the affidavit of publication must be submitted to the Public Service Commission.

**Payment of Legal Invoices.** On a motion duly made and seconded, the commissioners approved the payment of all legal invoices.

**Adjournment.** There being no further business, the meeting adjourned at 10:15 PM.

Respectfully Submitted,

*Charlotte Fuller*

Charlotte Fuller  
Recording Secretary

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WEST DUNBAR PUBLIC SERVICE DISTRICT

\$100,000  
West Dunbar Public Service District  
Sewer Revenue Bonds,  
Series 1993

MINUTES ON ADOPTION OF BOND  
RESOLUTION AND SUPPLEMENTAL RESOLUTION

I, John Berry, Secretary-Treasurer of the Public Service Board of West Dunbar 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 West Dunbar Public Service District met in special session, pursuant to notice duly given and posted, a copy of which is attached hereto and incorporated herein, on the 10th day of March, 1993, Shawnee Community Education Center, Dunbar, West Virginia, at 9:30 a.m., prevailing time.

Present: William Wiggins - Chairman and Member, Public Service Board;

Clarence Brown - Vice Chairman and Member, Public Service Board;

John Berry - Secretary-Treasurer and Member, Public Service Board;

Also present were Samme L. Gee and Antoinette M. DePersis of Jackson & Kelly, Bond Counsel and James Williams, Counsel to the District.

William Wiggins, Chairman, presided and John Berry 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 Bond Resolution in writing entitled:

A Resolution authorizing the acquisition of certain existing sewer systems by the West Dunbar Public Service District; authorizing the issuance of West Dunbar Public Service District Sewer Revenue Bonds, Series 1993, in an aggregate principal amount not to exceed \$100,000, and the sale thereof to the Farmers Home Administration, to finance, along with other funds and moneys of, or available to, the West Dunbar Public Service District that

**NOTICE OF SPECIAL MEETING OF THE  
WEST DUNBAR PUBLIC SERVICE DISTRICT**

Notice is hereby given that the West Dunbar Public Service District (the "District") will hold a special meeting on Wednesday, March 10, 1993, at 9:30 a.m. at the Shawnee Community Education Center, Dunbar, West Virginia to consider the approval of the Bond Resolution authorizing the acquisition and construction of certain extensions, additions, betterments and improvements to the public sewer facilities of the District (the "Project") and the financing of the cost, not otherwise provided, thereof, through the issuance by the District of \$100,000 in aggregate principal amount of sewer revenue bonds and the sale thereof to the United States Department of Agriculture, Farmers Home Administration (the "Bonds") and to adopt the Supplemental Resolution relating thereto; and to consider any other business relating to the Bonds and the Project. The meeting is open to the public.

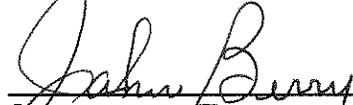
William E. Wiggins, Chairman

CERTIFICATE OF TRUTH AND ACCURACY

I, the undersigned, as Secretary-Treasurer of West Dunbar Public Service District, do hereby certify that the foregoing document is a true and accurate copy of an official record of the Public Service Board of West Dunbar Public Service District, such records being in the custody of the undersigned and that the action taken by the Public Service Board in the foregoing document remains in full force and effect and has not been amended or repealed.

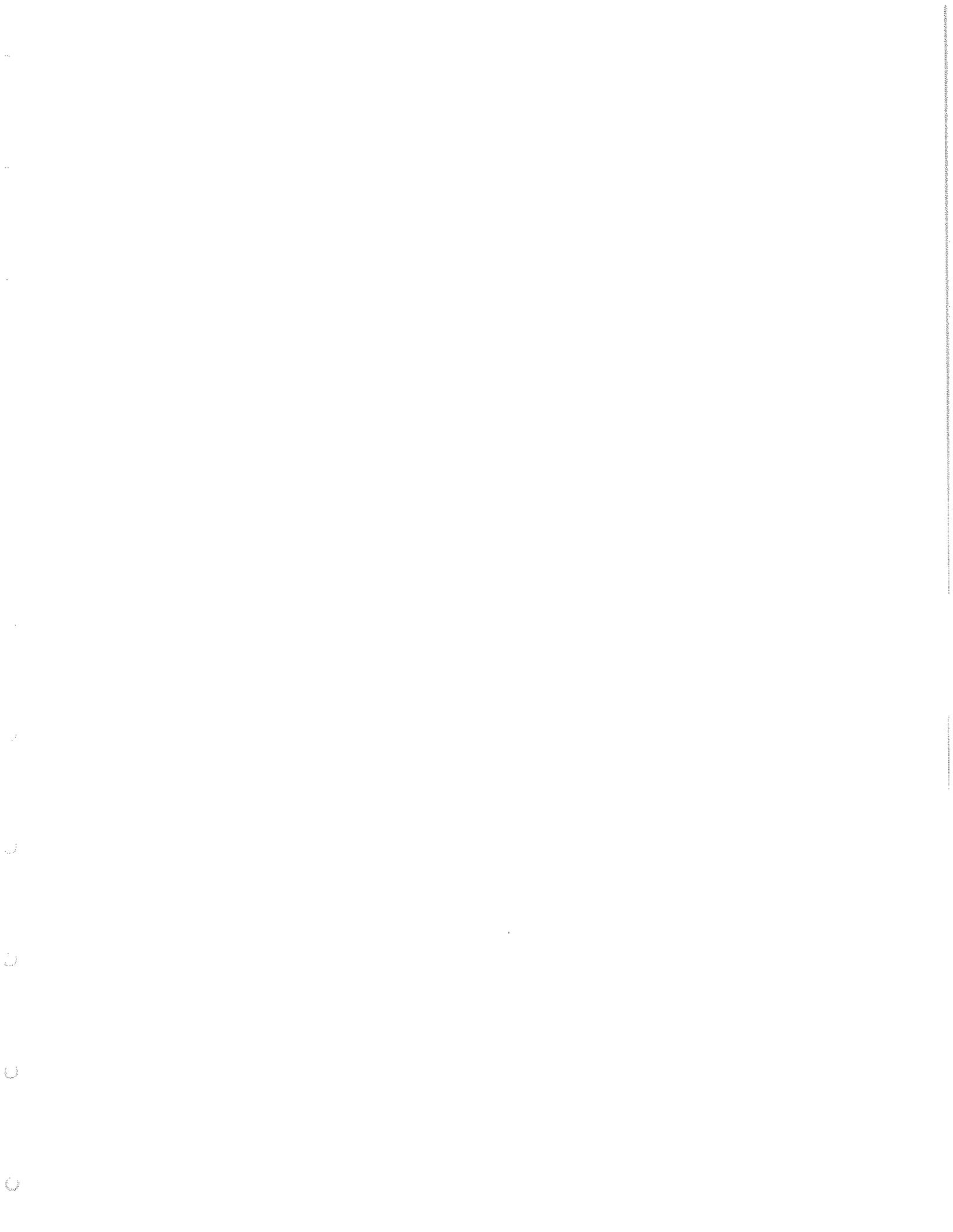
Dated this 18th day of March, 1993.

WEST DUNBAR PUBLIC SERVICE  
DISTRICT

  
\_\_\_\_\_  
Secretary-Treasurer  
Public Service Board

[SEAL]

ABB00161



WEST DUNBAR PUBLIC SERVICE DISTRICT  
SEWER REVENUE BONDS

BOND AND LINE OF CREDIT RESOLUTION

WEST DUNBAR PUBLIC SERVICE DISTRICT

SEWER REVENUE BONDS

BOND RESOLUTION

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WEST DUNBAR PUBLIC SERVICE DISTRICT

BOND AND LINE OF CREDIT RESOLUTION

RESOLUTION AUTHORIZING THE ACQUISITION AND CONSTRUCTION OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE PUBLIC SEWER FACILITIES OF WEST DUNBAR PUBLIC SERVICE DISTRICT AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF, THROUGH THE ISSUANCE BY THE DISTRICT OF \$100,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS AND THE SALE THEREOF TO THE UNITED STATES DEPARTMENT OF AGRICULTURE, FARMERS HOME ADMINISTRATION; PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING AN IRREVOCABLE LINE OF CREDIT IN AN AMOUNT NOT TO EXCEED \$250,000 TO PROVIDE FUNDS FOR SUCH ACQUISITION AND CONSTRUCTION PENDING REIMBURSEMENT FROM THE UNITED STATES DEPARTMENT OF AGRICULTURE, FARMERS HOME ADMINISTRATION AND AUTHORIZING AN AGREEMENT WITH RESPECT TO SAID LINE OF CREDIT; PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND LINE OF CREDIT AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT RESOLVED BY THE PUBLIC SERVICE BOARD OF WEST DUNBAR PUBLIC SERVICE DISTRICT:

ARTICLE I

STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Definitions. The following terms shall have the following meanings herein unless the context expressly requires otherwise:

"Act" means Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended and in effect on the date of adoption of this Resolution.

"Authorized Officer" means the Chairman of the Governing Body of the Issuer or any other person duly appointed as such by the Governing Body.

"Additional Bonds" means additional bonds issued under the provisions and within the limitations prescribed by Section 7.06.

"Board" means the public service board of the Issuer and shall include the membership of the Board as may hereafter be duly constituted as the legal successors to the present membership or any other authority vested with and authorized to exercise the powers of the Issuer.

"Bondholders," "Holder of the Bonds," "Holder," "Registered Owner," "Owner" or any similar term, whenever used herein with respect to an Outstanding Bond or Bonds, means the person in whose name such Bond is registered.

"Bond Registrar" means the bank or other entity to be designated as such in the Supplemental Resolution and its successors and assigns.

"Bonds" means the \$100,000 in aggregate principal amount of Sewer Revenue Bonds and any Additional Bonds hereafter issued within the terms, restrictions and conditions contained in this Resolution.

"Chairman" means the Chairman of the Governing Body of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Bonds for all or a significant portion of the proceeds representing the purchase of the Bonds by FmHA.

"Commission" means the West Virginia Municipal Bond Commission or any other agency of the State that succeeds to the functions of the Commission.

"Consulting Engineers" means Kelly, Gidley, Blair and Wolfe, Inc., Charleston, West Virginia, or any engineer or firm of engineers of reputation for skill and experience with respect to the design and construction of sewerage systems or facilities that shall at any time hereafter be retained by the Issuer as Consulting Engineers for the System.

"Construction Trust Fund" means the Construction Trust Fund established by Section 5.02.

"Costs" or "Costs of the Project" means those costs described in Section 1.03I hereof to be a part of the cost of construction and acquisition of the Project.

"Debt Service" means the scheduled amount of interest and amortization of principal payable on the Bonds during the period of computation, excluding amounts scheduled during such period which

relate to principal which has been retired before the beginning of such period.

"Depository Bank" means a bank or national banking association located in the State, eligible under the laws of the State to receive deposits of state and municipal funds and insured by the FDIC, which Depository Bank shall be named in the Supplemental Resolution.

"Depreciation Account" means the Depreciation Account established by Section 4.01(5).

"EPA" means the United States Environmental Protection Agency and any successor to the functions of the EPA.

"EPA Grant" means the grant from the EPA pursuant to the agreement dated September 20, 1988, as hereafter supplemented and amended.

"Event of Default" means any event or occurrence specified in Section 7.01.

"FDIC" means the Federal Deposit Insurance Corporation and any successor to the functions thereof.

"Fiscal Year" means each 12-month period beginning on July 1 and ending on the succeeding June 30.

"FmHA" or "Government" means the United States Department of Agriculture, Farmers Home Administration, which is expected to be the original purchaser of the Bonds.

"Governing Body" or "Board" means the public service board of the Issuer, as is now or may hereafter be constituted.

"Government Grant" means the grant not to exceed \$198,000 from the Government.

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

"Grants" means collectively the EPA Grant, the Governmental Grant and the Sub-Area Planning Group Grant.

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from

any increase in the value of, capital assets (including Qualified Investments purchased pursuant to Section 9.01) or any Tap Fees.

"Independent Certified Public Accountants" means any certified public accountant or firm of certified public accountants that shall at any time hereafter be retained by the Issuer to prepare an independent annual or special audit of the accounts of the System or for any other purpose except keeping the accounts of the System in the normal operation of its business and affairs.

"Issuer" means the West Dunbar Public Service District, a public corporation and political subdivision of the State.

"Letter of Conditions" means the letter of conditions of FmHA dated June 28, 1990, as supplemented by a letter dated September 12, 1990 and any further supplements thereto.

"Line of Credit" means the irrevocable line of credit in an amount not to exceed \$100,000 authorized by Section 6.01.

"Line of Credit Agreement" means the agreement established the Line of Credit, said agreement to be approved in substantial form by the Supplemental Resolution.

"Net Revenues" means Gross Revenues less Operating Expenses.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, maintenance and operation of the System and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, fiscal agents, depository banks, registrars, paying agents and trustees other than those capitalized as part of the Costs, payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles.

"Outstanding," when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond cancelled by the Bond Registrar at or prior to said date; (ii) any Bond for the payment of which moneys, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Section 9.06 hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, any Bonds registered to the Issuer.

"Paying Agent" means the bank or banks or other entity designated as such for the Bonds in the Supplemental Resolution or such entity or authority as may be designated by the Issuer.

"Prior Bonds" means the Issuer's Sewer Revenue Bonds dated July 1, 1977, issued in the principal amount of \$426,000 and currently outstanding in the principal amount of \$363,000.

"Prior Resolution" means the resolution adopted by the Public Service Board of the West Dunbar Public Service District on July 13, 1978, authorizing the issuance of the Prior Bonds.

"Project" means the acquisition and construction of the sewer facilities as substantially described in Exhibit A attached hereto and incorporated herein by reference.

"PSC" means the Public Service Commission of West Virginia and any successor to the functions thereof.

"PSC Order" means the final order of the PSC in Case No. 90-387-PSD-CN, which was entered by the Administrative Law Judge on February 8, 1991, and became a final order on February 28, 1991.

"Qualified Investments" means and includes 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 evidences 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, 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 any said time account or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said time account;

(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 any said repurchase agreement either must mature as nearly as practicable coincident with the maturity of said repurchase agreement or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreement, 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 Code of West Virginia Code, 1931, as amended; and

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

"Registrar" means the Registrar for the Bonds which shall be appointed by respective resolutions supplemental hereto.

"Reserve Account" means the Reserve Account established by Section 4.01(A) (4).

"Reserve Requirement" means an amount equal to the maximum amount of principal and interest which will mature and become due on the Bonds in any succeeding Fiscal Year.

"Resolution" means this resolution, as from time to time amended or supplemented.

"Revenue Fund" means the Revenue Fund established by Section 4.01(A).

"Secretary" means the Secretary of the Governing Body of the Issuer.

"Sinking Fund" means the Sinking Fund established by Section 4.01(A)(2).

"State" means the State of West Virginia.

"Sub-Area Planning Group Grant" means the grant from the Sub-Area Planning Group in the amount of \$75,000.

"Supplemental Resolution" means any resolution of the Issuer supplementing or amending this Resolution and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Bonds; provided, that any matter intended by this Resolution to be included in the Supplemental Resolution with respect to the Bonds and not so included may be included in another Supplemental Resolution.

"System" means the public service properties for the collection, treatment, purification or disposal of liquid or solid wastes, sewage or industrial wastes, owned by the Issuer, and any improvements or extensions thereto hereafter constructed or acquired from any sources whatsoever, and includes the Project.

"Tap Fees" means the fees paid by prospective customers of the System in order to connect thereto.

Additional terms and phrases are defined in this Resolution as they are used. Accounting terms not specifically defined herein shall be given meaning in accordance with generally accepted accounting principles.

Words importing singular number shall include the plural number in each case and vice versa; words importing persons shall include firms and corporations; and words importing the masculine, feminine or neutral gender shall include any other gender.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Resolution; and the term "hereafter" means after the date of adoption of this Resolution.

Articles, sections and subsections mentioned by number only are the respective articles, sections and subsections of this Resolution so numbered.

Section 1.02. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of the Act and other applicable provisions of law.

Section 1.03. Findings. It is hereby found, determined and declared as follows:

A. The Issuer now owns and operates a public sewerage system, furnishing sewer service to residences, premises and businesses residing or located within and without the area of the Issuer, the acquisition and construction of certain extensions, additions, betterments and improvements thereto being permanently financed by the issuance of the Prior Bonds.

B. The acquisition and construction of the system was financed in part with the proceeds from the Prior Bonds, authorized pursuant to the Prior Resolution.

C. The Prior Bonds of the Issuer are currently outstanding in the principal amount of \$363,000.

D. The Issuer derives revenues from the System, and, except for the pledges thereof to secure and pay the Prior Bonds, said revenues are not pledged or encumbered in any manner.

E. It is deemed necessary and desirable for the health, welfare and safety of the inhabitants of the Issuer that there be constructed certain extensions, additions, betterments and improvements to the System in accordance with the plans and specifications prepared by the Consulting Engineers, which Project is generally described in Exhibit A attached hereto and by this reference made a part hereof.

F. The estimated maximum cost of the construction of the project is \$670,820 of which \$100,000 will be permanently obtained from the proceeds of the Bonds herein authorized, approximately \$198,000 will be obtained from a grant from the government, approximately \$372,820 will be obtained the EPA Grant and approximately \$75,000 from the Sub-Area Planning Group Grant.

G. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all the costs of the operation and maintenance of the System, the principal of and interest on the Prior Bonds authorized to be issued pursuant to the Prior Resolution, the principal of and interest on the Bonds authorized to be issued pursuant to this Resolution and all sinking funds,

reserve and other payments provided for in the Prior Resolution and in this Resolution.

H. Upon the issuance of the Bonds, the Issuer will grant the Government a first lien on the Net Revenues of the System, which lien will be on a parity with the lien of the Prior Bonds. The Issuer has received the written consent of the holder of the Prior Bonds to the issue of the Bonds on a parity with the lien of the Prior Bonds.

I. It is deemed necessary for the Issuer to issue its Bonds, in part to permanently finance the costs of acquisition and construction of the Project. Said costs shall be deemed to include the cost of all property rights, easements, and franchises deemed necessary therefor; the cost of the construction of said extensions, additions, betterments and improvements to the system and any other expenses necessary, incidental, desirable or appurtenant to the acquisition and construction of the Project and such replacements as are necessary therefor; the cost of interim financing for such Project; interest on the Bonds, prior to, during and for six months after the estimated date of completion of construction of the Project; engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; expenses for the service of registrars, paying agents, depositories or other agents in connection with the issuance of the Bonds, and such other expenses as may be necessary or desirable to said acquisition and construction of the project and placing the same in operation and the financing authorized by this Resolution.

J. The period of usefulness of the System after completion of the Project is not less than 40 years.

K. It is in the best interests of the Issuer that its Bonds be sold to FmHA pursuant to the terms and provisions of the Letter of Conditions.

L. 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 Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the obtaining of the PSC Order, the time for rehearing and appeal of which have expired.

Section 1.04. Resolution Constitutes Contract. In consideration of the acceptance of the Bonds by those who shall be the Registered Owners of the same from time to time, this Resolution shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Registered Owners of any and all of such Bonds, all which shall be of equal

rank and without preference, priority or distinction between any one Bond and any other Bonds by reason of priority of issuance or otherwise, except as expressly provided therein and herein all subject to the lien of the Prior Bonds.

## ARTICLE II

### AUTHORIZATION OF EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE SYSTEM

Section 2.01. Authorization of Extensions, Additions, Betterments and Improvements. There is hereby authorized the construction and acquisition of certain extensions, additions, betterments and improvements to the System in accordance with the plans and specifications which have been prepared by the Consulting Engineers; provided, that such plans and specifications, and the construction and acquisition of certain extensions, additions, betterments and improvements to the System in accordance therewith, are subject to specific authorization by the Board pursuant to a Supplemental Resolution.

## ARTICLE III

### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS

Section 3.01. Authorization of Bonds. Subject and pursuant to the provisions hereof, the Bonds of the Issuer, to be known as "West Dunbar Public Service District Sewer Revenue Bonds" (the "Bonds") are hereby authorized to be issued in the aggregate principal amount of \$100,000 for the purpose of permanently financing a portion of Costs of the Project.

Section 3.02. Description of Bonds. The Bonds shall be issued as fully registered Bonds with a record of advances and payments attached, numbered AR-1 upward, and shall be dated the date of delivery thereof. The Bonds shall bear interest from date of delivery of the Bonds on the amount outstanding as evidenced on the record of advances and payments, payable monthly, commencing on the first day of the month following the month of delivery of the Bond and on the first day of each month thereafter for the first 24 months, and installments of principal and interest, thereafter on the first day of the month at a rate, not exceeding five percent (5%) per annum, as shall be determined by the Supplemental Resolution and shall be sold for the par value thereof.

The Bonds shall be subject to prepayment of scheduled monthly installments, or any portion thereof, at the option of the Issuer, shall be payable as provided in the Bond form hereinafter set forth, and shall have such other terms not inconsistent with this Resolution, as shall be set forth in the Supplemental Resolution and such Bond form.

The Series designation shall be as set forth in the Supplemental Resolution.

Section 3.03. Execution of Bonds. The Bonds shall be executed in the name of the Issuer by the manual or facsimile signature of the Chairman, and the seal of the Issuer shall be impressed thereon and attested by the manual or facsimile signature of the Secretary. In case any one or more of the officers who shall have signed or sealed any of the Bonds shall cease to be such officer of the Issuer before the Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Resolution unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.09, shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Resolution. The Certificate of Authentication and Registration on any Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder, in accepting any of said Bonds, shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as any of the Bonds remain outstanding, the Issuer, through the Bond Registrar, shall keep and maintain books for the registration and transfer of the Bonds.

The Bonds shall be transferable only upon the books of the Bond Registrar, by the Registered Owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the Registered Owner or his duly authorized attorney.

In all cases in which the privilege of exchanging or transferring the Bonds are exercised, Bonds shall be delivered in accordance with the provisions of this Resolution. All Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obligated to make any such exchange or transfer of Bonds during the period commencing on the 15th day of the month preceding an interest payment date on the Bonds or, in the case of any proposed redemption of Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided and amounts, if any, in the Reserve Account. No Holder or Holders of any of the Bonds shall ever have the right to

compel the exercise of the taxing power, if any, of the Issuer to pay the Bonds or the interest thereon.

Section 3.08. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Bonds shall be secured forthwith equally and ratably with each other, by a first lien on the Net Revenues derived from the System, such lien being on a parity as to security and source of repayment with the lien of the Prior Bonds. Such Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds 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 Bonds and the Prior Bonds as the same become due.

Section 3.09. Form of Bonds. The text of the Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

[Form of Bond]

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
WEST DUNBAR PUBLIC SERVICE DISTRICT  
SEWER REVENUE BONDS  
SERIES 19 \_\_\_\_\_

No. \_\_\_\_\_

\$ \_\_\_\_\_  
(Principal Amount)

(Date)

United States Department of Agriculture  
Farmers Home Administration  
Morgantown, West Virginia 26505

FOR VALUE RECEIVED, West Dunbar Public Service District, Kanawha County, West Virginia (herein called the "Borrower"), promises to pay to the order of the United States Department of Agriculture, Farmers Home Administration (herein called the "Government"), at its National Finance Office, St. Louis, Missouri, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of One Hundred Thousand Dollars (\$100,000) or such lesser amount as shall then be reflected on the Record of Advances and Payments attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of 5% per annum. Notwithstanding any provision of this Bond to the contrary, this Bond shall evidence only the indebtedness reflected as outstanding on the Record of Advances and Payments attached hereto. Interest shall accrue only on the amount of each advance from its actual date as listed on said Record of Advances and Payments and shall cease to accrue on the amount outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments.

The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing the first day of the month following the month of delivery of this Bond and on the first day of each month thereafter for the first 24 months after the date hereof, and installments of \$491.00, covering principal and interest, thereafter on the first day of each month, except the final installment shall be paid at the end of forty years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof and prepayments may be made as provided below. This consideration shall support any agreement modifying the foregoing schedule of payments.

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.

Payments of scheduled installments, or any portion thereof, may be made at any time at the option of the Borrower. Extra payments, as defined in the regulations of the Government, shall, after payment of interest, be applied to the installment last to come due under this Bond and shall not affect the obligation of Borrower to pay the remaining installments as scheduled herein.

Any amount advanced or expended by the Government for the collection hereof, or to preserve or to protect 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 has granted to the Government a lien on the proceeds of this Bond until such proceeds are expended for authorized purposes.

THIS BOND SHARES A FIRST LIEN PARITY POSITION WITH RESPECT TO SOURCES OF AND SECURITY FOR PAYMENT TO THE OUTSTANDING WEST DUNBAR PUBLIC SERVICE DISTRICT, \$426,000 SERIES A SEWER REVENUE BONDS DATED JULY 1, 1977 (THE "PRIOR BONDS").

This Bond is issued to permanently finance a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the Issuer's existing sewerage collection system (the "Project"); (the Project, together with the existing sewerage system of the Issuer and any further extensions, additions, betterments and improvements thereto, herein called the "System"); to pay interest on the Bonds during acquisition and construction and for up to six months after completion of the Project; and to pay certain issuance and related costs in connection therewith. This Bond is authorized and issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Article 13A of Chapter 16 of the Code of West Virginia, 1931, as amended (the "Act"), and a resolution duly adopted by the Board of the Borrower on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and supplemented by a Supplemental Resolution duly adopted by said Board on the \_\_\_\_ day of \_\_\_\_\_, 19\_\_ (collectively, the "Resolution"), and is subject to all the terms and conditions of said Resolution. The Resolution provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Resolution.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues on a parity as to security and source of payment with the Prior Bonds (as defined in the Resolution) to be derived from the operation of the System, moneys in the Reserve Account created under the Resolution (the "Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on this Bond, the Prior Bonds, and all bonds which may be issued for the construction, acquisition, improvement, extension or betterment of such System as and when the same become due and payable, and which shall be set aside and remitted as provided in the Prior Resolution and to the Government as provided herein and in this Resolution. This Bond does not constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provisions or limitations, nor shall said Borrower be obligated to pay the same or the interest hereon except from the Net Revenues derived from the operation of said System, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Resolution, the Borrower has covenanted and agreed to establish and maintain just and equitable rates or charges for the use of such System and the services rendered thereby, which shall be sufficient to provide for the proper and reasonable expenses of operation, repair and maintenance of said System, including certain reserves required by the Public Service Commission of West Virginia, and to leave a balance each year equal to at least 110% of the amount required to pay the maximum amount due in any ensuing year of principal of and interest on the Bonds and on all obligations secured by or payable from such revenues prior to or on a parity with the Bonds, including the Prior Bonds. The Borrower has entered into certain further covenants with the owner of this Bond for the terms of which reference is made to said Resolution. Remedies provided the owner of this Bond are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Resolution, only upon the books of the Registrar which shall be kept for that purpose at the office of the United National Bank - Dunbar (the "Registrar"), by the owner or by its attorney or legal representative duly authorized in writing, upon surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar duly executed by the owner or its duly authorized attorney or legal representative duly authorized in writing.

Subject to registration requirements, this Bond under the provision 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.

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 such purposes and periods of time.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts connected with the issuance hereof, as provided by law and the Resolution, shall be applied solely to the costs of acquisition and construction of the Project, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond.

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, and that the amount of this Bond, together with all other obligations of said Borrower, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System of the Borrower has been pledged to and will be set aside into said special fund by the Borrower for the prompt payment of the principal of and interest on this Bond.

All provisions of the Resolution, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Rural Development Act of 1972. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

IN WITNESS WHEREOF, WEST DUNBAR PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its seal to be hereunto impressed and attested by its Secretary, all as of date first written above.

WEST DUNBAR PUBLIC SERVICE DISTRICT  
(Name of Borrower)

\_\_\_\_\_  
(Signature of Execution Official)

Chairman  
(Title of Execution Official)

P. O. Box 582  
(Post Office Box No. or Street  
Address)

Institute, West Virginia 25112  
(City, State and Zip Code)

[CORPORATE SEAL]

ATTEST:

\_\_\_\_\_  
(Signature of Attesting  
Official)

Secretary  
(Title of Attesting  
Official)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Sewer Revenue Bonds, Series 19\_\_, described in the within-mentioned Resolution and has been duly registered in the name of the United States Department of Agriculture, Farmers Home Administration as of the date set forth below.

Date: \_\_\_\_\_

UNITED NATIONAL BANK - DUNBAR,  
as Registrar

By \_\_\_\_\_  
Authorized Officer

RECORD OF ADVANCES AND PAYMENTS

Advances

Date	Amount	Initialed By
(1)	\$	
(2)	\$	
(3)	\$	
(4)	\$	
(5)	\$	
(6)	\$	
(7)	\$	
(8)	\$	
(9)	\$	
(10)	\$	

TOTAL: \$ \_\_\_\_\_

UNITED STATES DEPARTMENT OF  
 AGRICULTURE, FARMERS HOME  
 ADMINISTRATION

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

\_\_\_\_\_  
 (Title)

Payments

Date	Amount	Initialed By
(1)	\$	
(2)	\$	
(3)	\$	
(4)	\$	
(5)	\$	
(6)	\$	
(7)	\$	
(8)	\$	
(9)	\$	
(10)	\$	

TOTAL:     \$ \_\_\_\_\_

UNITED STATES DEPARTMENT OF  
AGRICULTURE, FARMERS HOME  
ADMINISTRATION

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

\_\_\_\_\_  
(Title)

[Form of 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 thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.10. Sale of Bonds. The Bonds shall be sold to FmHA pursuant to the terms and conditions of the Letter of Conditions. The provisions of the Letter of Conditions are specifically incorporated in this Resolution.

## ARTICLE IV

### SYSTEM REVENUES AND APPLICATION THEREOF

Section 4.01. System Revenues and Application Thereof.  
So long as the Bonds shall be Outstanding and unpaid, the Issuer covenants with the Bondholders as follows:

(A) As long as the Prior Bonds are outstanding, the Issuer shall first deposit the Gross Revenues and make such deposits and disbursements as are required by the Prior Resolution simultaneously with the payments required in this Section 4.01. The remainder shall be deposited in the Revenue Fund. When the Prior Bonds are no longer outstanding, the entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited by the Issuer in the Revenue Fund created hereby. 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 Issuer and the Depository Bank and used only for the purposes and in the manner herein provided. Funds in the Revenue Fund shall be disposed of only in the following manner and order of priorities:

(1) From the Revenue Fund, the Issuer shall first each month pay the current Operating Expenses of the System.

(2) Next from the moneys in the Revenue Fund, the Issuer shall make the sinking fund payment required by Section 3.05 of the Prior Resolution and simultaneously shall on the first day of each month commencing on the first day of the month following the month of delivery of the Bonds, apportion and set apart out of the Revenue Fund and remit to the office and place designated by the Bonds (herein called the "Sinking Fund") the monthly payment of interest set forth in the Supplemental Resolution or such lesser amount as is required to pay the interest on the Bonds as evidenced by the Record of Advances and Payments attached to the Bonds as set forth in the Bond form in Section 3.09.

(3) Next from the moneys in the Revenue Fund, the Issuer shall on the first day of each month provided by the Supplemental Resolution, apportion and set apart from the Revenue Fund and remit to the Sinking Fund the monthly payment of interest and principal set forth in the Supplemental Resolution or such lesser amount as is evidenced by the Record of Advances and Payments attached to the Bond as set forth in the Bond form in Section 3.09, such amount or amounts being the amount required to amortize the principal of the Bonds over the life of the Bonds. The deposits to the Sinking Fund provided in this paragraph and in (2), above, constitute actual payments of principal and interest on the Bonds issued to the Government. The amounts required for principal and interest payments on the Bonds issued hereunder other than to the Government

shall be deposited in a sinking fund created by a Supplemental Resolution.

(4) The Issuer shall next transfer from the Revenue Fund and, deposit in a Reserve Account for the Bonds at the Commission (herein the "1993 Bonds Reserve Account"), or in the case of Bonds other than the Bonds originally authorized hereby in the reserve account in the sinking fund or otherwise as designated by a Supplemental Resolution, on the first day of each month of each year beginning with and including the month in which payments from the Revenue Fund for interest on the Bonds are commenced, an amount equal to one tenth (1/10) of the amount deposited into the Sinking Fund, as set forth above.

No further payments shall be made into the 1993 Bond Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Reserve Requirement. Moneys in the 1993 Bond Reserve Account shall be used only for the purpose of payment of maturing principal of or interest on the Bonds when moneys in the Revenue Fund or, in the case of bonds other than the Bonds originally authorized hereby, the funds in the Sinking Fund created by Supplemental Resolution are insufficient therefor and for no other purposes.

Any withdrawals from the 1993 Bond Reserve Account which result in a reduction in the balance of the 1993 Bond Reserve Account to below the Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payment to the Sinking Fund and 1993 Bond Reserve Account, including any deficiencies for prior payments, have been made in full.

As and when Additional Bonds ranking on a parity with the Bonds are issued, provision shall be made by Supplemental Resolution for additional payments sufficient to pay the interest on such Additional Bonds and to accomplish retirement thereof at or before maturity and to accumulate a balance in the 1993 Bond Reserve Account in an amount equal to the maximum provided and required to be paid in principal and interest in any succeeding year for account of all the Bonds.

(5) Thereafter, from the moneys remaining in said Revenue Fund, the Issuer shall next, on the first day of each month, commencing with the month succeeding the first full calendar month after commencement of operation of the Project, remit to the Depository Bank for deposit in a special account to be designated the "Depreciation Account," which account is hereby established and created, a sum equal to two and one-half percent of the District's Gross Revenues, minus any amount paid into the 1993 Bond Reserve Account. No further payments shall be required to be made into said Depreciation Account when there shall have been deposited

therein, and so long as there shall remain on deposit therein, an amount equal to one year's maximum principal and interest payments.

All funds in said Depreciation Account shall be kept apart from all other funds, and all or any part of said fund may be invested as provided by Article VIII. Withdrawals and disbursements may be made from said Depreciation Account for replacements, emergency repairs, additions, betterments or improvements to the System; deficiencies in the payment of principal and interest on the Bonds, or debt service on obligations not on a parity with the Bonds, the proceeds of which obligations were used to finance such additions, betterments or improvements.

(6) If all of the above required payments are then current, the Issuer may use any moneys remaining in the Revenue Fund for the following purposes: (a) for prepayment of the amount, or any part thereof, of the Bonds Outstanding in accordance with the terms thereof (b) additions, betterments or replacements to the System which the Consulting Engineers certify are needed and/or (c) payments of principal and interest on subordinate sewer revenue bonds, or other obligations which may hereafter be issued by the Issuer on account of the System.

(B) All of the funds and accounts provided for above shall constitute trust funds and shall be used only for the purposes provided herein.

(C) The moneys in excess of the sum insured by the maximum amounts insured by the FDIC in the Revenue Fund, in the 1993 Bond Reserve Account and in the Depreciation Account shall at all times be secured, to the full extent thereof in excess of such insured sum, by Government Obligations or such other obligations as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

(D) If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payments dates; provided, that all deposits, including on account of deficiencies, shall be made in the order of priority set forth in Paragraph (A), above, and no payment of lower priority shall be made if there exists a deficiency in a fund or account of higher priority. No such deficiency shall exist solely because the required payments into the 1993 Bond Reserve Account have not, as of such date, funded such account to the requirement therefor.

(E) All remittances made by the Issuer to the Government or to the Commission shall clearly identify the fund or account into which each amount is to be deposited.

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

Section 4.02. Tap Fees. During construction of the Project, Tap Fees shall be applied to costs of the Project. Following completion of the Project, Tap Fees shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

## ARTICLE V

### APPLICATION OF BOND PROCEEDS

Section 5.01. Application of Bond Proceeds. All the moneys received from time to time from the sale of Bonds shall be deposited in the Construction Trust Fund, hereinafter created.

Section 5.02. Construction Trust Fund. There is hereby created with the Depository Bank a special fund to be known as the "Construction Trust Fund," which fund shall be kept separate and apart from all other funds of the Issuer, and shall be drawn out, used and applied by the Issuer solely for the payment of the Costs of the Project and purposes incidental thereto, including payment of any borrowings by the Issuer made for the purpose of temporarily financing a portion of the Costs of the Project, for the payment of interest on the Bonds during construction and for a period up to six months thereafter and for no other purposes whatsoever. The moneys in said fund shall be secured at all times by the deposit by the Depository Bank, as security, of Government Obligations having a fair market value at least equal to the balance in said fund in excess of the amount insured by the FDIC. Any moneys not needed immediately for said purposes may, with the consent of the Consulting Engineers and the Government, be invested pursuant to Article VIII. If for any reason the amounts on deposit in the Construction Trust Fund are not necessary for, or are not applied to, such purposes, then such unapplied amounts shall be deposited by the Issuer as determined by the rules and regulations of the Government. All such proceeds shall constitute a trust fund for such purposes, and there is hereby created a lien upon such moneys, until so applied, in favor of the Holders of the Bonds hereby authorized.

Expenditures or disbursements by the Depository Bank from said Construction Trust Fund, except for legal, fiscal and engineering expenses and expenses in connection with the issuance and sale of the Bonds, shall be made only after such expenditures or disbursements shall have been approved in writing by the Governing Body, the Consulting Engineers and the Government.

## ARTICLE VI

### LINE OF CREDIT

Section 6.01. Authorization of Line and Credit. As a method of providing funds for the acquisition and construction of the Project to the extent grant proceeds and other funds are not available therefor and pending the receipt of advances from the Government, the Chairman of the Issuer is hereby authorized and directed to arrange for a Line of Credit in an amount not to exceed \$250,000. The amount and terms of the Line of Credit shall be approved by a resolution supplemental hereto.

Section 6.02. Authorization of Credit Line Note. For the purpose of evidencing the Issuer's obligation to repay any draw upon the Line of Credit and thus, of financing a portion of the cost of acquisition and construction of the Project, there shall be issued the Credit Line Note of the Issuer in an amount, not to exceed \$250,000, and upon such terms as set forth in a resolution supplemental hereto. The Credit Line Note shall be issued in single, fully registered form and shall be dated as of the date of delivery thereof. There shall be attached to the Credit Line Note a Record of Advances and Payments, upon which the date and principal amount of any draw upon the Line of Credit, the date and amount of any payment of principal of the Credit Line Note and the amount of the Credit Line Note outstanding after either of said transactions shall be recorded. Anything to the contrary herein, in the Line of Credit Agreement or therein notwithstanding, the Credit Line Note shall evidence only the outstanding indebtedness recorded on the Record of Advances and Payments attached thereto, and interest shall accrue only on the amount of each advance from the actual date thereof as listed on said Record of Advances and Payments. Each such advance shall bear interest, payable on such dates, at a rate set forth in a supplemental resolution but not to exceed 12 percent per annum. Interest shall cease to accrue on the amount of the Credit Line Note outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments. The Credit Line Note shall mature on such date, not later than twenty-four (24) months from the date thereof. The Credit Line Note shall be subject to such further terms as shall be provided by the Line of Credit Agreement. Notwithstanding the foregoing, the terms of the Credit Line Note, other than the principal amount thereof, may be modified by resolution supplemental and amendatory hereto, subject to the limits of the Act.

The Credit Line Note shall be payable as to principal upon surrender at the principal office of a registrar, designated in a resolution supplemental hereto, in any coin or currency which on the date of payment of principal is legal tender for the payment of public and private debts under the laws of the United States of

America; provided, that any partial payment of principal prior to the final maturity of the Credit Line Note shall be recorded on the Record of Advances and Payments attached to the Credit Line Note, and the Credit Line Note shall be returned to the Owner thereof. Interest on the Credit Line Note shall be paid by check or draft mailed to the Owner thereof at the address as it appears on the books of said registrar; provided, that, at the option of the Owner, such payment may be made by wire transfer or such other method as shall be agreeable to the Owner, the Issuer and said registrar.

Section 6.03. Execution of Credit Line Note. The Credit Line Note shall be executed in the name of the Issuer by the signature of its Chairman, and the seal of the Issuer shall be affixed thereto and attested by the signature of the Secretary. Any Credit Line Note may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Credit Line Note shall hold the proper office of the Issuer, although at the date of such Credit Line Note such person may not have held such office or may not have been so authorized.

Section 6.04. Negotiability, Transfer and Registration. Subject to the restrictions on transfer set forth below, the Credit Line Note shall be and have all of the qualities and incidents of a negotiable instrument under the Uniform Commercial Code of the State, and each successive Owner, in accepting the Credit Line Note, shall be conclusively deemed to have agreed that said Credit Line Note shall be incontestable in the hands of a bona fide holder for value.

So long as the Credit Line Note or any portion thereof remains Outstanding, the registrar shall keep and maintain books for the registration and transfer of the Credit Line Note. The Credit Line Note shall be transferable only upon the books of the Issuer which shall be kept for that purpose at the office of the registrar (in such capacity and in the capacities of authenticating agent and paying agent as hereinafter provided, the "Note Registrar") by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereof, together with a written instrument of transfer satisfactory to the Note Registrar duly executed by the registered owner or his duly authorized attorney. Upon the transfer of the Credit Line Note, there shall be issued at the option of the Owner or the transferee another Credit Line Note or Notes or the aggregate stated principal amount equal to the stated principal amount of such transferred Credit Line Note not paid as reflected on the Record of Advances and Payments attached thereto and outstanding in the aggregate principal amount equal to the advanced but unpaid amount of the transferred Note as reflected on the Record of Advances and Payments attached thereto.

In all cases in which the privilege of transferring the Credit Line Note is exercised, Credit Line Notes shall only be issued in accordance with the provisions of this Resolution, as supplemented in connection with the issuance of the Credit Line Note. All Credit Line Notes surrendered in any such transfers shall forthwith be cancelled by the Note Registrar. For every such transfer of Credit Line Notes, the Note Registrar may make a charge sufficient to reimburse its office for any tax, fee or other governmental charge required to be paid with respect to such transfer and the cost of preparing each Credit Line Note upon each transfer, and any other expenses of the Note Registrar incurred in connection therewith, which sum or sums shall be paid by the person requesting such transfer as a condition precedent to the exercise of the privilege of making such transfer. The Note Registrar shall not be obliged to make any such transfer of Credit Line Notes during the ten (10) days preceding an interest payment date on the Credit Line Notes or after notice of any prepayment of the Credit Line Notes has been given.

Section 6.05. Form of Credit Line Note. The text of the Credit Line Note shall be in substantially the form provided by the Line of Credit Agreement, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted by this Resolution or any supplemental resolution or resolution adopted or enacted prior to the issuance thereof. The Credit Line Note shall not become valid until authenticated by the Note Registrar.

Section 6.06. Proceeds of Draw Under Line of Credit Agreement. The proceeds of any draw made by the Issuer under the Line of Credit Agreement shall be immediately deposited in the Construction Trust Fund established with the Depository Bank and expended in accordance with Section 5.02 hereof.

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Resolution shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Bonds. In addition to the other covenants, agreements and provisions of this Resolution and the Prior Resolution, the Issuer hereby covenants and agrees with the Holders of the Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of said Bonds or the interest thereon is Outstanding and unpaid.

Section 7.02. Bonds Not to be Indebtedness of the Issuer. The Bonds shall not be or constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Resolution. No Holder or Holders of any Bonds shall ever have the right to compel the exercise of the taxing power, if any, of the Issuer to pay said Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service of the Bonds issued hereunder shall be secured forthwith equally and ratably by a first lien on the Net Revenues derived from the operation of the System which lien is on a parity as to such security and payment with the lien of Prior Bonds. The Net Revenues derived from the System, in an amount sufficient to pay the principal of and interest on the Prior Bonds and the Bonds herein authorized and to make the payments into the Sinking Fund and the Reserve Account and all other payments provided for in this Resolution and the Prior Resolution are hereby irrevocably pledged, in the manner provided herein and therein, to the payment of the principal of and interest on the Bonds and the Prior Bonds as the same become due, and for the other purposes provided in this Resolution and the Prior Resolution.

Section 7.04. Rates. Prior to the issuance of the Bonds, equitable rates or charges for the use of and service rendered by the System will be established all in the manner and form required by law, and copies of such rates and charges so established will be continuously on file in the office of the Governing Body, each of which copies will be open to inspection by all interested parties. The schedule of rates and charges shall be sufficient to pay the Operating Expenses of the System, provide an adequate Reserve Account and adequate Depreciation Account and pay the principal of and interest on all Bonds issued hereunder and to make all payments under the Prior Resolution. Such schedule of

rates and charges shall be changed and readjusted whenever necessary so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant, with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule of rates or charges from time to time in effect shall be sufficient (i) to provide for all reasonable Operating Expenses of the System, and to fund any reserves required by the PSC Order or any supplement or amendment thereto, and (ii) to leave a balance each year equal to the maximum amount required in any succeeding fiscal year to pay the principal of and interest on the Bonds and the Prior Bonds and to leave a balance each fiscal year equal to at least 110% of the average annual debt service on the Bonds outstanding and of the average annual debt service of any other obligations of the Issuer.

Section 7.05. Sale of the System. So long as the Bonds are Outstanding, the System may be sold, transferred, mortgaged, leased or otherwise disposed of or encumbered (other than any statutory mortgage lien created under the Act on account of obligations issued within the restrictions hereof) only with the written consent of FmHA, and such consent will specify the disposition of any such sale or transfer. So long as the Prior Bonds are Outstanding, the System may be sold, transferred, mortgaged, leased or otherwise disposed of only in accordance with the terms of the Prior Resolution and with the written consent of the Government.

Section 7.06. Issuance of Additional Bonds. No Additional Bonds, as in this section defined, payable out of the revenues of the System shall be issued after the issuance of the Bonds pursuant hereto, except under the conditions and in the manner herein provided.

(A) No such Additional Bonds shall be issued without the written consent in advance of FmHA. No such Additional Bonds shall be issued except for the purpose of financing the costs of the construction or acquisition of extensions, additions, betterments and improvements to the System or refunding one or more series of Bonds issued hereunder, except as provided in subsection (F) of this section.

(B) No such Additional Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Secretary a written certification by an Independent Certified Public Accountant, based upon the necessary investigation, reciting the conclusion that the Net Revenues actually derived from the System during the Fiscal Year immediately preceding the date of the issuance of such Additional Bonds shall have been not less than one hundred twenty percent (120%) of the average aggregate amount which will mature or become due in any

succeeding Fiscal Year for principal of and interest on the Prior Bonds, if outstanding, on the Bonds and on all bonds of all other outstanding series on a parity with the Bonds and on the Additional Bonds then proposed to be issued. This limitation may be waived or modified by the written consent of Bondholders representing 75% of each series of the then Outstanding Bonds issued pursuant hereto.

(C) Prior to or concurrently with the issuance of any such Additional Bonds, the Issuer shall have entered into written contracts for the immediate acquisition or construction of such extensions, additions, betterments or improvements to the System which are to be financed by such Additional Bonds.

(D) The term "Additional 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 Bonds, and all the covenants and other provisions of this Resolution (except as to details of such Additional Bonds inconsistent therewith) shall be for the equal benefit, protection and security of the Holders of any Additional 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 Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any bond over any other. The Issuer shall comply fully with all the increased payments into the various funds, either new or created herein, required for such Additional Bonds, in addition to the payments required for the Prior Bonds and the Bonds originally issued hereunder. Redemption of Bonds prior to maturity, in the event that the Bonds and Additional Bonds hereby authorized are Outstanding, shall as nearly as practical be on an equal pro rata basis reflecting the original amounts of each issue.

(E) No Additional Bonds shall be issued at any time unless all the payments into the respective funds provided for herein on Bonds then Outstanding and all other payments provided for herein shall have been made or paid up as required to the date of issuance of the Additional Bonds and the Issuer shall have fully complied with all the covenants, agreements and terms hereof or shall have remedied any deficiency in such compliance.

(F) With the written consent in advance of FmHA, and anything to the contrary in subsections (A), (B) and (C) of this section notwithstanding, Additional Bonds may be authorized and issued by the Issuer pursuant to a supplemental resolution in the event that the Bonds should be insufficient, together with other funds lawfully available therefor, to pay or provide for all costs of construction of the Project. Any such Additional 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 Bonds shall be in years and amounts suggested by FmHA.

Section 7.07. 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 any Holder of a Bond or Bonds issued pursuant to this Resolution shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

The accounting system for the System shall follow current generally accepted accounting principles and safeguards to the extent allowed and as prescribed by the PSC. Separate control accounting records shall be maintained by the Issuer. Subsidiary records as may be required shall be kept in the manner and on the forms, books and other bookkeeping records as prescribed by FmHA. FmHA shall prescribe and institute the manner by which subsidiary records of the accounting system which may be installed remote from the direct supervision of FmHA shall be reported to such agent of the Issuer as FmHA shall direct.

The Issuer shall file with the Consulting Engineers, and FmHA, or any other original purchaser of the Bonds, and shall mail in each year to any Holder or Holders of Bonds requesting the same, an annual report containing the following:

(A) A statement of Gross Revenues, Operating Expenses and Net Revenues derived from and relating to the System.

(B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Resolution and the status of all said funds and accounts.

(C) The amount of any Prior Bonds, Bonds or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants and shall mail upon request, and make available generally, the report of said Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of Bonds and shall submit said report to FmHA, or any other original purchaser of the Bonds. Such audit report submitted to FmHA shall include a statement that the Issuer is in compliance with the terms and provisions of this Resolution.

The Issuer shall keep and preserve all financial records for a period of ten (10) years, and such material, upon request, will be made available for public inspection.

Section 7.08. Fiscal Year; Budget. While the 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 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 such annual budget shall be made during such Fiscal Year unless unanimously authorized and directed by the Board. Copies of each annual budget shall be delivered to FmHA 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 year next preceding 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 the Issuer's failure to submit an annual budget shall be for a reason beyond the control of the Issuer. Each such budget of current expenses shall be delivered and mailed immediately as in the case of the annual budget.

Section 7.09. Services Rendered by the System. The Issuer will not render or cause to be rendered any free services of any nature by its System; and, in the event the Issuer or any department, agency, instrumentality, officer or employee of the Issuer shall avail itself or themselves of the facilities or services provided by the System or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. Such charges shall be paid as they accrue, and the Issuer shall transfer from its general funds sufficient sums to pay such charges for service to any of its departments or properties. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.10. Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals, or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent, to the full extent permitted or authorized by the laws of the State and the rules and regulations of the Public Service

Commission. All such rates and charges, if not paid when due, shall become a lien on the premises served by the System.

Whenever any rates, rentals or charges for the services and facilities of the System, shall remain unpaid for a period of thirty (30) days after the same shall become due and payable, the property and owner thereof, as well as the user of the services and facilities, shall be delinquent and the owner, user and property shall be held liable at law until such time as all such rates and charges are fully paid.

The Issuer further covenants and agrees that it will, to the full extent permitted by law, and the rules and regulations promulgated by the PSC, for any account not paid within sixty (60) days, discontinue and shut off the services and facilities of the System and, in the event the Issuer owns a water facility (the "Water System"), the Water System to all users of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System have been paid in full and all accrued penalties plus a reconnection charge have been paid and shall take all further actions to enforce collections to the maximum extent permitted by law. The Issuer further covenants to use its best efforts to enter into agreements with any other entities providing water to its users, providing for discontinuing and shutting off the services and facilities of the water system to users of the System delinquent in payment.

Section 7.11. Insurance and Bonds. The Issuer hereby covenants and agrees that, so long as 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 prior to acceptance of any part of the Project from the contractor, on all above-ground insurable portions of the System, including machinery and equipment housed therein, in an amount equal to the 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 personal liability to protect the Issuer from claims for bodily injury and/or death and not less than \$200,000 from claims for damage to property of others which may arise from

the operation of the System, such insurance to be procured at the commencement of construction of the Project.

(C) Veicular 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 for the benefit of the Issuer, with limits of not less than \$500,000 for personal liability to protect the Issuer from claims for bodily injury and/or death and not less than \$200,000 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) Workers' Compensation Coverage for All Employees of the System 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 dealing directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of Kanawha County prior to commencement of construction of the Project in compliance with Chapter 38, Article 2, Section 39 of the Code of West Virginia, 1931, as amended.

(E) Fidelity Bonds will be provided as to every officer and employee of the Issuer having custody of the Revenue Fund or of any other funds or valuable property of the System 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 required by FmHA and to be increased thereafter as necessary to cover the maximum amount of funds under control of that position at any one time.

(F) Flood Insurance will be obtained by the Issuer if available.

(G) Provided, however, and in lieu of and notwithstanding the foregoing provisions of this section, during construction of the Project and so long as FmHA holds any of the Bonds, 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 prime contractor to carry insurance, of such types and in such amounts as FmHA may specify, as long as such amounts are not less than any amounts acquired by the Prior Resolution of the Prior Bonds are outstanding, and with insurance carriers or bonding companies acceptable to FmHA.

Section 7.12. No Competing Franchise. To the extent allowable by law, the Issuer will not grant or cause, consent to or allow the granting of any franchise or permit to any person, firm, corporation or body, or agency or instrumentality for the providing of any services which would compete with services provided by the System.

Section 7.13. Consulting Engineer. The Issuer will retain recognized, qualified independent Consulting Engineers on an annual basis to supervise generally the operation, maintenance and renewal of the System and report annually to the Issuer in writing their recommendations and comments as to the System. Such annual report of the Consulting Engineers or a summary thereof shall be made available at reasonable times to FmHA and to any Bondholder requesting the same.

Section 7.14. Connections. To the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto.

Section 7.15. Statutory Mortgage Lien. For the further protection of the Holders of Bonds, 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, shall take effect immediately upon delivery of the Bonds and shall be for the equal benefit of all Holders of each respective series of Bonds; provided however, that the statutory mortgage lien in favor of the Holders of the Bonds issued hereunder shall be on a parity with that in favor of the owners of the Prior Bonds.

Section 7.16. Covenant to Amend Resolution. The Issuer retains the right to make any amendments, insertions or deletions by Supplemental Resolutions of this Resolution as the Issuer deems desirable or necessary prior to the issuance of the Bonds, including but not limited to amendments, insertions or deletions to comply with the Code. Notwithstanding the provisions of Section 11.01 hereof, the Issuer shall without consent of the Registered Owners of the Bonds amend or supplement this Resolution to comply with the Code if such amendment or supplement is necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds. The Board of the Issuer hereby retains the specific authority to amend or supplement this Resolution to comply with the Code. In determining to amend or supplement this Resolution, the Board of the Issuer may rely on the opinion of a nationally recognized bond counsel.

The Issuer retains the right to make any amendments, insertions or deletions by Supplemental Resolution of this Resolution as the Issuer deems necessary prior to the issuance of the Bonds to meet the requirements of FmHA.

Section 7.17. PSC Order. The Issuer shall comply with the conditions of the PSC Order and any supplement or amendment thereto.

Section 7.18. Board Members. As long as the Issuer has not made the payments required hereunder it may not pay the fees or compensation of the Public Service Board.

## ARTICLE VIII

### DEFAULTS AND REMEDIES

Section 8.01. Events of Default. A. Each of the following events shall constitute an "Event of Default" with respect to the Bonds.

(A) If default occurs in the due and punctual payment of the principal of or interest on any Bonds;

(B) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Bonds set forth in this Resolution, any Supplemental Resolution or the Bonds and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Bond Registrar, any Paying Agent or a Registered Owner of a Bond; or

(C) If the Issuer files a petition seeking reorganization or arrangement under the federal bankruptcy laws or any other applicable law of the United States of America.

Section 8.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and this Resolution relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds, (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action at law or bill in equity enjoin any acts in violation of the resolution with respect to the Bonds, or the rights of such Registered Owners. Any remedies taken hereunder are subject to the rights of the Prior Bond holders.

Section 8.03. Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under this Resolution and the Act, including, after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default, with respect to the Bonds, the Registered Owner shall, in addition

to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project, or both, on behalf of the Issuer, with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and any interest thereon and the deposits into the funds and accounts herein provided and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Resolution and the Act.

The receiver so appointed shall forthwith, directly or by his agents and attorneys, enter into and upon and take possession of all facilities of the System and shall hold, operate and maintain, manage and control such facilities, and each and every part thereof, and in the name of the Issuer exercise all the rights and powers of the Issuer with respect to said facilities as the Issuer itself might do.

Whenever all that is due upon the Bonds and interest thereon and under any covenants of this Resolution for Reserve, Sinking or other funds and upon any other obligations and interest thereon having a charge, lien or encumbrance upon the revenues of the System shall have been paid and made good, and all defaults under the provisions of this Resolution shall have been cured and made good, possession of the System shall be surrendered to the Issuer upon the entry of an order of the court to that effect. Upon any subsequent Event of Default, any Registered Owner of Bonds issued pursuant to this Resolution shall have the same right to secure the further appointment of a receiver upon any such subsequent default.

Such receiver, in the performance of the powers hereinabove conferred upon him, shall be under the direction and supervision of the court making such appointment, shall at all times be subject to the orders and decrees of such court and may be removed thereby, and a successor receiver may be appointed in the discretion of such court. Nothing herein contained shall limit or restrict the jurisdiction of such court to enter such other and further orders and decrees as such court may deem necessary or appropriate for the exercise by the receiver of any function not specifically set forth herein.

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of Bonds issued pursuant to this Resolution. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the possession, operation and maintenance of the System, for the sole purpose of the protection of both the Issuer and Registered Owners, and the

curing and making good of any default under the provisions of this Resolution, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, mortgage, or otherwise dispose of any assets of the System.

Section 8.04. Remedies on Parity with Prior Bonds. The exercise of any remedy set forth above shall recognize and protect the parity rights of the owners of the Prior Bonds, as the case may be.

## ARTICLE IX

### INVESTMENTS

Section 9.01. Investments. Any moneys held as a part of the funds and accounts created by this Resolution, other than the Revenue Fund, shall be invested and reinvested by the Commission or the Depository Bank, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Resolution, the need for such moneys for the purposes set forth herein and the specific restrictions and provisions set forth in this Section.

Except as specifically provided herein, 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, including but not limited to those in the Construction Trust Fund, and used for the purpose of such fund or account. The interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the owner, including the value of accrued interest and giving effect to the amortization of discount and investments in the "consolidated fund" of the West Virginia Board of Investments shall be valued at par. The Commission or the Depository Bank, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. Such Depository Bank may make any and all investments permitted by this Section through its own bond department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The following specific provisions shall apply with respect to any investments made under the section:

A. Qualified Investments acquired from the Reserve Account shall have maturities or be subject to redemption at the option of the holder within five (5) years from the date of acquisition.

B. Qualified Investments acquired for the Depreciation Fund shall have maturities or be subject to redemption at the option of the holder within ten (10) years from the date of acquisition.

C. Qualified Investments may be purchased for the Reserve Account either in the open market or from the Construction

Trust Fund. If so purchased from the Construction Trust Fund, such Qualified Investments shall be purchased at a price equal to their original purchase price plus accrued interest.

## ARTICLE X

### MISCELLANEOUS

Section 10.01. Modification or Amendment. No material modification or amendment of this Resolution, or of any resolution amendatory or supplemental hereto that would materially and adversely affect the respective rights of Owners of the Bonds shall be made without the consent in writing of the Owners of 66-2/3 percent or more in principal amount of the Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of any Bond or Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the Net Revenues of the System without the consent of the respective Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of Bonds respectively, required for consent to the above-permitted amendments or modifications.

Section 10.02. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Resolution shall be held invalid, such invalidity shall not affect any of the remaining provisions of this Resolution, any Supplemental Resolution or the Bonds.

Section 10.03. 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 10.04. Repeal of Conflicting Resolutions. All resolutions and orders, or parts thereof, in conflict with this Resolution are, to the extent of such conflict, repealed; provided, that no provision of the Prior Resolution or FmHA Form 1942-47 shall be repealed hereby.

Section 10.05. Covenant of Due Procedure. 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 of West Virginia 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 10.06. Satisfaction and Discharge. If the Issuer shall pay or cause to be paid, or there shall otherwise be paid, to the Holders of all Bonds, 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 the respective pledges of Net Revenues, and other and securities pledged under this Resolution, and all covenants, agreements and other obligations of the Issuer to the Bondholders shall thereupon cease, terminate and become void and be discharged and satisfied. Any payment must comply with the terms of the Letter of Conditions and any FmHA regulations.

Section 10.07. Effective Date. This Resolution shall take effect immediately upon its adoption.

Adopted this 10th day of March, 1993.

WEST DUNBAR PUBLIC SERVICE DISTRICT

[SEAL]

William E. Wiggins  
Chairman, Public Service Board

Clarence C Brown  
Member, Public Service Board

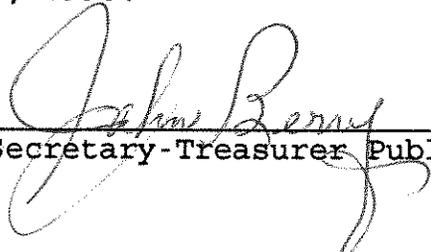
John Beery  
Member, Public Service Board

CERTIFICATION

Certified as a true copy of a Resolution adopted by the Public Service Board of West Dunbar Public Service District on the 10th day of March, 1993.

Dated: March 18, 1993.

[SEAL]

  
Secretary-Treasurer Public Service Board

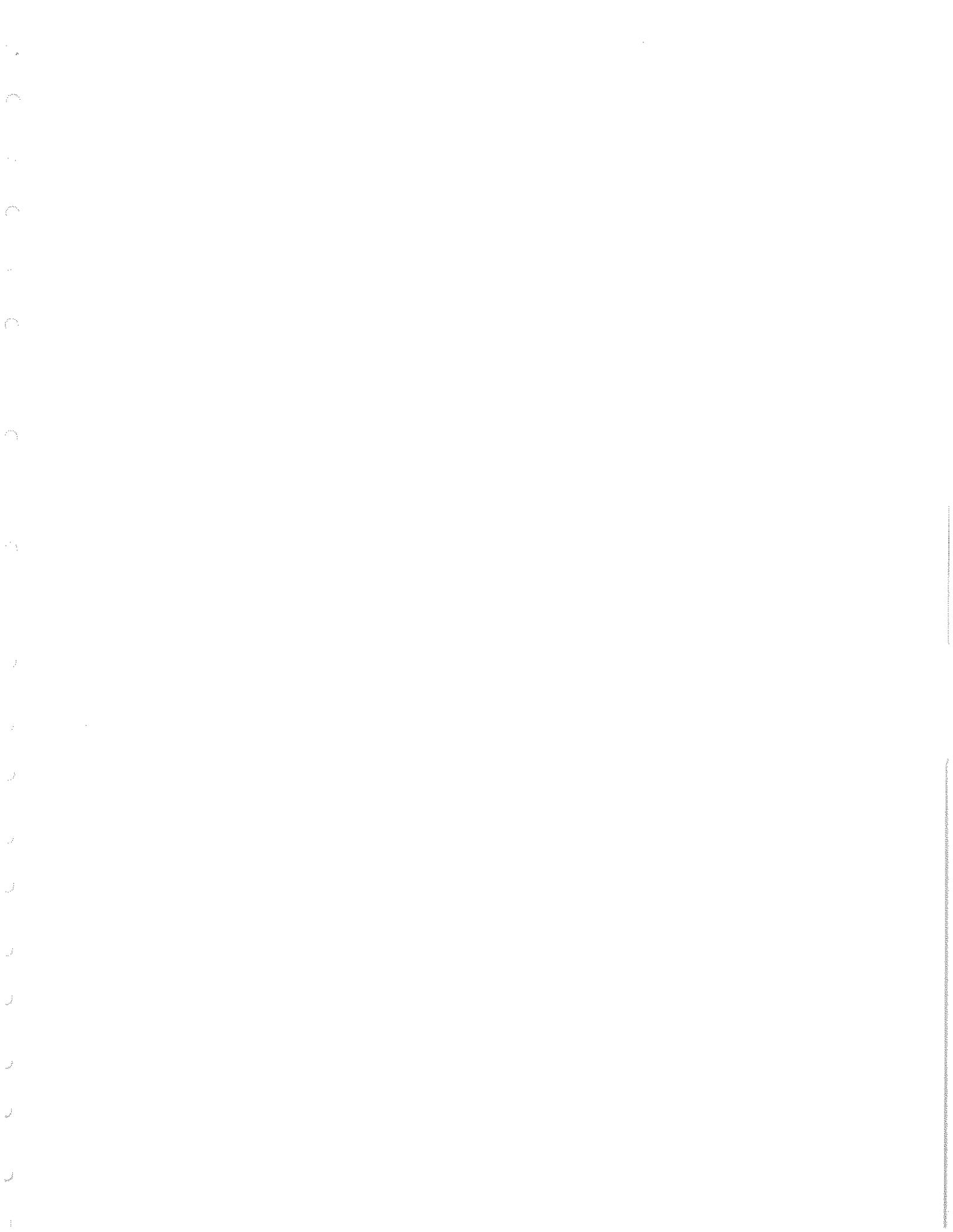
## EXHIBIT A

### PROJECT DESCRIPTION

The project is an expansion of the West Dunbar Public Service District to serve approximately 60 unsewered residential and light commercial structures in the Barron Drive area of Institute located between West Virginia State College and Rhone Poulenc Chemical Company as well as along Route 25 between West Virginia State College and Interstate 64; and approximately 10 residential customers on West Academy Drive just north of Interstate 64.

Specifically, the construction of the project is comprised of approximately 4,700 L.F. of 8 inch PVC gravity sewer; 4,000 L.F. of 3 inch PVC force main; 1,050 L.F. of 6 inch PVC gravity sewer; 30 manholes; 150 L.F. of 16 inch steel casing pipe; 140 L.F. of 6 inch steel casing pipe; 3 pump stations, connections, surface restoration and all appurtenances and incidentals necessary for a complete system.

ABB003B7



SUPPLEMENTAL RESOLUTION AWARDING THE WEST  
DUNBAR PUBLIC SERVICE DISTRICT SEWER REVENUE  
BONDS, SERIES 1993 IN THE PRINCIPAL AMOUNT OF  
\$100,000 AND FIXING THE RATE OF INTEREST  
THEREON AND PAYMENT TERMS THEREOF

WHEREAS, the Public Service Board (the "Board") of West Dunbar Public Service District (the "District"), by Bond Resolution heretofore duly adopted on the 10th day of March, 1993, authorized, among other things, the issuance of fully registered Water Revenue Bonds, Series 1993, of the District in the principal amount of \$100,000; and

WHEREAS, the Farmers Home Administration ("Farmers Home") has offered to purchase the Bond of the District, in the principal amount of \$100,000, to be issued at an interest rate of five percent (5%) per annum, and it is in the best interests of the District to accept such offer;

NOW, THEREFORE, Be It Resolved by the Public Service Board of West Dunbar Public Service District, as follows:

(1) Pursuant to the Bond Resolution and the Act, this Supplemental Resolution is adopted and there is hereby authorized and ordered to be issued the \$100,000 Sewer Revenue Bonds, Series 1993 (the "Bond"), to be dated the date of closing and numbered AR-1, of the District, all in the form and having the provisions set forth below and in the Bond Resolution.

The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced thereunder, commencing the first day of the month following the month of delivery of this Bond and on the first day of each month thereafter for the first 24 months after the date thereof, and installments of \$491.00, covering principal and interest, thereafter on the first day of each month, except the final installment shall be paid at the end of forty years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof. The Bond shall bear interest at the rate of five percent (5%) per annum. Interest on each installment shall run from the date the proceeds are advanced until payment of such installment. The Bond shall be subject to prepayment of scheduled installments, or any portion thereof, at the option of the District.

(2) All other provisions relating to the Bond shall be as provided in the Bond Resolution, and the Bond shall be substantially in the form provided in the Bond Resolution, with such changes, insertions and omissions that may be approved by the Chairman of the District. The execution of the Bond by the Chairman shall be conclusive evidence of such approval.

(3) The District hereby approves and accepts the offer of Farmers Home Administration to purchase the Bond. The execution and delivery by the Chairman and Secretary-Treasurer of the Bond and the performance of the obligations contained therein on behalf of the District are hereby authorized, approved and directed. The Farmers Home Administration shall loan the proceeds of the Bond, One Hundred Thousand and no/100 Dollars (\$100,000) (100% of par value), to the District.

(4) The District hereby appoints and designates the United National Bank, Dunbar, West Virginia, as Depository Bank, as provided in the Bond Resolution.

(5) The District hereby appoints and designates the United National Bank, Dunbar, West Virginia, as Registrar for the Bond, as provided in the Bond Resolution.

(6) The Chairman and Secretary-Treasurer and other appropriate officers and employees of the District are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the issuance of the Bond hereby and by the Bond Resolution approved and provided for, to the end that the Bond may be delivered on or about March 18, 1993, to the Farmers Home Administration as the Original Bond Purchaser.

(7) The District and all subordinate entities do not reasonably expect to issue more than \$10,000,000 of tax-exempt obligations during the calendar year 1993 and hereby designate the Bond as "qualified tax-exempt obligations," as defined in Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended (the "Code").

(8) The District hereby directs the Depository Bank to initially invest all monies in the funds and accounts established under the Bond Resolution in Qualified Investments further directed by the District.

(9) The financing of the Project in part with the proceeds of the Bond is in the public interest, serves a public purpose of the District and will promote the health, welfare and safety of the residents of the District.

(10) This Supplemental Resolution shall be effective immediately upon adoption.

Resolution adopted March 10, 1993.

WEST DUNBAR PUBLIC SERVICE  
DISTRICT

By William E. Wiggins  
Chairman

[SEAL]

Clarence C Brown  
Member

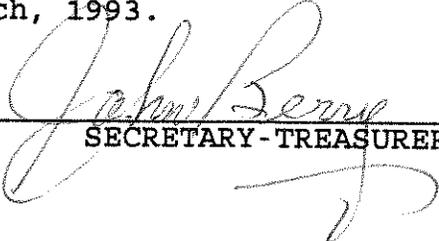
John Berry  
Member

ABB026C9

CERTIFICATE

I, the undersigned, Secretary for the West Dunbar Public Service District (the "District"), do hereby certify that the foregoing document is a true and accurate copy of the Supplemental Resolution adopted by the Board of the District at a duly called meeting on March 10, 1993.

Dated the 18th day of March, 1993.

  
\_\_\_\_\_  
SECRETARY - TREASURER

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
AT CHARLESTON

Entered: March 1, 1991

CASE NO. 90-387-PSD-CN

WEST DUNBAR PUBLIC SERVICE DISTRICT,  
a public utility, Institute, Kanawha  
County.

Application for a certificate of  
convenience and necessity to  
construct collecting sewers, two  
sewage pumping stations, one grinder  
pumping station, force main and  
appurtenances in the Barron Drive  
area, Institute, and for approval of  
rates and charges.

FURTHER ORDER

On February 8, 1991, this Administrative Law Judge (ALJ) entered a  
Recommended Decision in this matter.

It has come to the ALJ's attention that an effective date for the  
rates and charges was inadvertently omitted from the Recommended  
Decision.

ORDER

IT IS, THEREFORE, ORDERED that the rates and charges, as recommended  
by Staff, attached hereto, are approved, to become effective upon  
certification by the District's engineer to the Commission that the  
proposed project should be completed and operational within thirty (30)  
days.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission  
serve a copy of this order upon all parties of record by United States  
First Class Mail and upon Commission Staff by hand delivery.

  
Susan A. Murensky  
Administrative Law Judge

SAM:cjf

WEST DUNBAR PUBLIC SERVICE DISTRICT  
CASE NO. 90-387-PSD-CN

APPROVED RATES

Applicable within and adjacent to the limits of the District.

AVAILABILITY OF SERVICE

Available for sanitary sewer service in the District.

(A) RATE (Based on water consumption)

First	2,000 gallons used per month	\$3.66 per 1,000 gallons
Next	28,000 gallons used per month	\$1.55 per 1,000 gallons
All Over	30,000 gallons used per month	\$1.33 per 1,000 gallons

(A) MINIMUM RATE

No bill will be rendered for less than \$7.32 per month.

DELAYED PAYMENT PENALTY

On all accounts not paid in full within twenty (20) days of the billing, ten percent (10%) penalty may be added to the net amount shown. This delayed payment penalty is not interest and is only to be collected once for each bill where it is appropriate.

(A) UNMETERED USERS

These customers will receive a minimum bill.

(A) SERVICE CONNECTION (TAP) FEE

All tap fees -- \$300.00

(A) Indicates advance

RECEIVED

MAR 1 '91

KELLEY GIDLEY BLAIR  
AND WOLFE, INC.  
CONSULTING ENGINEERSPUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
AT CHARLESTON

FINAL

2-28-91Entered: February 8, 1991

CASE NO. 90-387-PSD-CN

WEST DUNBAR PUBLIC SERVICE DISTRICT,  
a public utility, Institute, Kanawha  
County.

Application for a certificate of convenience and necessity to construct collecting sewers, two sewage pumping stations, one grinder pumping station, force main and appurtenances in the Barron Drive area, Institute, and for approval of rates and charges.

RECOMMENDED DECISION

On August 13, 1990, West Dunbar Public Service District, a public utility, Institute, Kanawha County, filed an application, duly verified, for a certificate of convenience and necessity to construct collecting sewers, two sewage pumping stations, one grinder pumping station, force main and appurtenances in the Barron Drive area of Institute, to serve approximately 70 homes in Kanawha County. An increase in rates and charges is also being sought by the application.

By Order entered November 15, 1990, this proceeding was referred to the Division of Administrative Law Judges for a decision to be rendered on or before March 11, 1991.

By Procedural Order issued November 27, 1990, a procedural schedule was established in this matter.

On January 7, 1991, Staff filed its Final Joint Staff Memorandum recommending approval of the project per its recommendations. On January 16, 1991, the Commission received correspondence from the Applicant indicating that the District did not wish to proceed with a hearing, indicating that the matter could be submitted as indicated.

The District's estimated construction cost of the project is \$770,010. Staff's estimated construction cost of the project is \$740,000. The project will be financed through an Environmental Protection Agency (EPA) grant of \$367,000; a Sub-Area Committee grant of \$75,000; a Farmers' Home Administration (FmHA) grant of \$198,000; and an FmHA loan of \$100,000. The loan is scheduled for repayment over 38 years

at an annual interest rate of 5%, resulting in an annual debt service requirement of \$5,892, and required 10% reserve of \$589.

Staff's analysis shows that an 1% across-the-board increase in rates and charges will be needed as a result of the project. Upon review, Staff made several adjustments which would result in the District realizing revenues of \$115,708 and 3.845%, or \$4,449, in penalty income, for total revenues of \$120,157, resulting in \$2,027 in surplus with a coverage ratio of 1.15%.

Staff's review of the plans and specifications for the project reveal no obvious conflict with Public Service Commission rules and regulations and the submitted documents reveal that there is adequate need for the project.

According to the engineering study performed by Kelly, Gidley, Blair and Wolfe, revised August of 1988, there are scattered existing storm sewers along Barron Drive that are privately-owned and discharge directly into the river. Some of the homes on Barron Drive are connected to the storm sewer and other homes utilize septic tanks.

Staff indicates that it has reviewed all confirmations of funding and that the District has complied with all funding conditions and stipulations. The District has made preliminary arrangements for interim funding with the United National Bank, Dunbar Branch. However, this funding has not been confirmed.

By Commission Order entered August 13, 1990, the District was directed to publish notice of the filing as required by West Virginia Code §24-2-11, indicating the project information and the proposed rates and charges. A certificate of publication from The Charleston Gazette was received indicating proper publication of the notice. The notice indicates that anyone desiring to make objection to the said application must do so, in writing, within 30 days after publication of the notice. Further, the notice stated that, if no protest was received, the Commission can waive the hearing and grant the application based upon the evidence submitted in the application. No protest was received to the application.

Staff has reviewed the proposed project and recommends approval of the project. (Joint Staff Memorandum of Drexel M. Vealey, Staff Attorney, received January 7, 1991, with attachments). Staff stated that the District complied with all funding conditions and stipulations, but that it had not included an amount for discounts and penalties in its total revenue or cash available calculations. Staff indicated that the District's Annual Report for the year ended June 30, 1989, showed an amount equal to 3.845% of total revenue for customer forfeited discounts and penalties. Therefore, Staff included 3.845% in the District's proposed and Staff-recommended total revenue amounts, as penalty income.

Staff recommended one-half of one percent as uncollectible expense and an 1% increase across-the-board, resulting in a surplus of \$2,027, with a coverage ratio of 1.15%. Staff recommended that the Staff tariff be approved and that an increase in rates in charges in the amount of

11%, instead of the District's proposed 15.2%, be approved. Staff also recommended approval of the project and approval of the permanent financing from Farmers' Home Administration.

Upon consideration of all of the foregoing, the Administrative Law Judge (ALJ) is of the opinion and finds that the project is needed; the project will provide adequate service; the project is economically feasible; and it is adequately financed. The District's existing tariff rates need to be increased as a result of the project. Staff's recommended rates are sufficient, but not more than sufficient, to cover the additional debt service requirements generated by the project. Therefore, the ALJ approves West Dunbar Public Service District's application for a certificate of convenience and necessity filed on August 13, 1990, as per Staff's recommendation, as well as Staff's recommended rates.

#### FINDINGS OF FACT

1. On August 13, 1990, West Dunbar Public Service District, a public utility, Institute, Kanawha County, filed an application, duly verified, for a certificate of convenience and necessity to construct collecting sewers, two sewage pumping stations, one grinder pumping station, force main and appurtenances in the Barron Drive area of Institute, to serve approximately 70 homes in Kanawha County. (See, application).
2. The District's estimated construction cost of the project is \$770,010. (See, application).
3. The District's rates will increase as a result of this application, in accordance with Staff's recommendation, and the District's tariff shall be amended to reflect Staff's recommendations. (Joint Staff Memorandum received January 7, 1991, with attachments).
4. The District published notice of the proposed project in accordance with West Virginia Code §24-2-11. (Affidavit of Publication).
5. The Commission has received no protest to the application for a certificate of convenience and necessity. (Commission case file).
6. The proposed project is to be funded through an Environmental Protection Agency grant of \$367,000; a Sub-Area Committee grant of \$70,000; an FmHA grant of \$198,000; and an FmHA loan of \$100,000, at an interest rate of 5% to be repaid over 38 years. (See, Joint Staff Memorandum received January 7, 1991, with attachments).
7. On January 16, 1991, the Commission received correspondence from James E. Williams, Esq., Counsel for the District, indicating that it did not wish a hearing on the merits of its application.

#### CONCLUSIONS OF LAW

1. The public convenience and necessity require the proposed project.

2. The proposed project will provide adequate service.
3. The project is adequately financed and economically feasible.
4. The existing rates and charges should be increased in the amount recommended by Staff to generate sufficient revenues, but not more than sufficient revenues, to cover the additional debt service and other costs generated by the project.
5. It is reasonable for the District to file a new tariff to include the Staff-recommended changes.

ORDER

IT IS, THEREFORE, ORDERED that the application of West Dunbar Public Service District, a public utility, Institute, Kanawha County, received August 13, 1990, for a certificate of convenience and necessity to construct collecting sewers, two sewage pumping stations, one grinder pumping station, force main and appurtenances in the Barron Drive area of Institute, and to increase its rates and charges, be, and it hereby is, approved, as amended by Staff's recommendations.

IT IS FURTHER ORDERED that the financing for the project, being an Environmental Protection Agency grant of \$367,000; a Sub-Area Committee grant of \$75,000; an FmHA grant of \$198,000; and an FmHA loan of \$100,000, to be repaid over 38 years at an annual interest rate of 5%, be, and it hereby is, approved.

IT IS FURTHER ORDERED that the District submit to the Commission's Tariff Office a proper tariff reflecting the herein approved rates and charges within the next thirty (30) days.

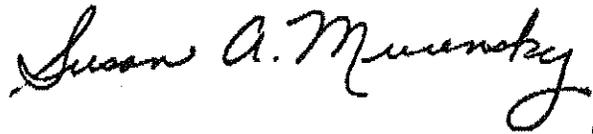
IT IS FURTHER ORDERED that, if there is a change in any of the terms, conditions or scope of the project, or the financing, then the West Dunbar Public Service District shall notify the Commission immediately and it shall file for Commission approval of the revised project financing.

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 waiver by the Commission.



Susan A. Murensky  
Administrative Law Judge

SAM:cjf

PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
AT CHARLESTON

Entered: March 1, 1991

CASE NO. 90-387-PSD-CN

WEST DUNBAR PUBLIC SERVICE DISTRICT,  
a public utility, Institute, Kanawha  
County.

Application for a certificate of  
convenience and necessity to  
construct collecting sewers, two  
sewage pumping stations, one grinder  
pumping station, force main and  
appurtenances in the Barron Drive  
area, Institute, and for approval of  
rates and charges.

FURTHER ORDER

On February 8, 1991, this Administrative Law Judge (ALJ) entered a  
Recommended Decision in this matter.

It has come to the ALJ's attention that an effective date for the  
rates and charges was inadvertently omitted from the Recommended  
Decision.

ORDER

IT IS, THEREFORE, ORDERED that the rates and charges, as recommended  
by Staff, attached hereto, are approved, to become effective upon  
certification by the District's engineer to the Commission that the  
proposed project should be completed and operational within thirty (30)  
days.

IT IS FURTHER ORDERED that the Executive Secretary of the Commission  
serve a copy of this order upon all parties of record by United States  
First Class Mail and upon Commission Staff by hand delivery.

*Susan A. Murensky*

Susan A. Murensky  
Administrative Law Judge

SAM:cjf

WEST DUNBAR PUBLIC SERVICE DISTRICT  
CASE NO. 90-387-PSD-CN

APPROVED RATES

Applicable within and adjacent to the limits of the District.

AVAILABILITY OF SERVICE

Available for sanitary sewer service in the District.

(A) RATE (Based on water consumption)

First	2,000 gallons used per month	\$3.66 per 1,000 gallons
Next	28,000 gallons used per month	\$1.55 per 1,000 gallons
All Over	30,000 gallons used per month	\$1.33 per 1,000 gallons

(A) MINIMUM RATE

No bill will be rendered for less than \$7.32 per month.

DELAYED PAYMENT PENALTY

On all accounts not paid in full within twenty (20) days of the billing, ten percent (10%) penalty may be added to the net amount shown. This delayed payment penalty is not interest and is only to be collected once for each bill where it is appropriate.

(A) UNMETERED USERS

These customers will receive a minimum bill.

(A) SERVICE CONNECTION (TAP) FEE

All tap fees -- \$300.00

(A) Indicates advance

WEST DUNBAR PUBLIC SERVICE DISTRICT

\$100,000 Sewer Revenue Bond, Series 1993

GENERAL CERTIFICATE

CERTIFICATE OF:

1. AWARD OF BOND
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS; GRANTS
5. SIGNATURES
6. PUBLIC SERVICE COMMISSION ORDER
7. INCUMBENCY AND OFFICIAL NAME
8. LAND AND RIGHTS-OF-WAY
9. MEETINGS
10. INSURANCE
11. CUSTOMER CERTIFICATION
12. MANAGEMENT
13. DELIVERY, PAYMENT AND TERMS OF BOND
14. CONFLICTS OF INTEREST

We, the undersigned CHAIRMAN and member and the undersigned SECRETARY-TREASURER and member of the Public Service Board of West Dunbar Public Service District in Kanawha County, West Virginia (herein called the "District"), and the undersigned ATTORNEY for the District, hereby certify in connection with the District's Sewer Revenue Bonds, Series 1993, numbered AR-1, to be dated on the date of delivery to the initial purchaser thereof, in the principal amount of \$100,000, and bearing interest at the rate of five percent (5%) per annum (herein called the "Bond"), as follows:

1. AWARD OF BOND: The entire issue of the Bond has been duly awarded to the United States Department of Agriculture, Farmers Home Administration (herein called "FmHA"), pursuant to a Letter of Commitment from FmHA.

2. 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 Public Service Board of the District 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 District or the Public Service Board or the title of the members and officers

thereof to their respective offices; nor questioning the construction and acquisition of the extensions, additions, betterments and improvements to the existing sewer system facilities of the District (herein called the "Project"), to be financed in part by the proceeds of the sale of the Bond, or the operation by the District of such sewer system as expanded by the Project (such sewer system as so expanded, and any further extensions, additions, improvements or betterments thereto herein collectively called the "System").

3. GOVERNMENTAL APPROVALS: All applicable approvals and certificates required by law for construction and operation of the Project have been duly and timely obtained and remain in full force and effect.

4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS; GRANTS: There has been no adverse change in the financial condition of the District or the System since the approval by FmHA of a loan to assist in acquisition and construction of the Project. Further, there has been no adverse change in the status of any grant necessary to finance the acquisition and construction of the Project.

The Bond is issued on a parity as to lien on and source of payment and security from the revenues of the System with the District's \$426,000 Sewer Revenue Bonds (the "Prior Bonds"), currently outstanding in the amount of \$363,000.

The District has received grants from the Environmental Protection Agency, the Farmers Home Administration and a Sub-Area grant in the amounts of \$297,820, \$198,000, and \$75,000, respectively, and said grants are in full force and effect.

5. SIGNATURES: The undersigned Chairman and Secretary/Treasurer are the duly elected, qualified and serving officers of the District as indicated by the official titles opposite their signatures below, and are duly authorized to execute and seal the Bond for the District. The seal impressed upon the Bond and this Certificate is the duly authorized, proper and only seal of the District.

6. PUBLIC SERVICE COMMISSION ORDER: A copy of the order dated February 28, 1991, of the Public Service Commission of West Virginia, and a copy of the tariff filed with said Public Service Commission pursuant to such order delivered herewith, are true, correct and complete copies of the original 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.

7. INCUMBENCY AND OFFICIAL NAME: The proper corporate title of the District is "West Dunbar Public Service District," and

it is a public corporation and political subdivision of the State of West Virginia in Kanawha County of said State. The governing body of the District is its Public Service Board consisting of three members, whose names, titles and dates of commencement and termination of terms of office as members of the Public Service Board for all members during these Bond proceedings, including current terms, are as follows:

<u>NAME</u>	<u>TITLE</u>	<u>COMMENCEMENT DATE</u>	<u>TERMINATION DATE</u>
William E. Wiggins	Chairman	1/7/93	8/1/97
Clarence Brown	Member	1/7/93	8/1/95
John D. Berry	Member	1/7/93	8/1/93

The duly appointed and acting attorney for the District is James E. Williams, Lonesome & Williams, Charleston, West Virginia.

8. LAND AND RIGHTS-OF-WAY: All land in fee simple and all rights-of-way and easements necessary for the construction of the Project and the operation and maintenance of the System have been acquired or can and will be acquired by purchase or, if necessary, by condemnation by the District and are adequate for such purposes and are not or will not be subject to any liens, encumbrances, reservations or exceptions that would adversely affect or interfere in any way with the use thereof for such purposes. The costs thereof, including costs of any properties that may have to be acquired by condemnation are, in the opinion of all the undersigned, within the ability of the District to pay for the same without jeopardizing the security of or payments on the Bond.

9. MEETINGS: All actions, resolutions, orders and agreements taken, adopted and entered into by or on behalf of the District in any way connected with the construction, acquisition, operation and financing of the Project were authorized or adopted at meetings of the Public Service Board of the District duly and regularly or specially called and held pursuant to the rules of procedure of the Public Service Board and all applicable statutes, and a quorum of duly appointed, qualified and acting members of the Public Service Board was present and acting at all times during all such meetings.

10. INSURANCE: The District has maintained and will, or, as appropriate, has required and will require all contractors to, maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the letters of conditions and commitment of FmHA and the resolution adopted by the Public Service Board of the District on the 10th day of March, 1993, authorizing the issuance of the Bond (herein called the "Bond Resolution").

11. CUSTOMER CERTIFICATION: It is hereby certified that as of this date there are not less than 675 bona fide users of the services of the Project.

12. MANAGEMENT: The District has heretofore delivered to FmHA, as the original purchaser of the Bond, a plan concerning the construction, operation and maintenance of the Project, which plan was found to be acceptable by such original purchaser.

13. DELIVERY, PAYMENT AND TERMS OF BOND: On the date hereof, the Bond was delivered to FmHA in Charleston, West Virginia, by the undersigned Chairman of the Public Service Board. At the time of such delivery, the Bond had been duly and fully executed and sealed on behalf of the District in accordance with the Bond Resolution. At the time of such delivery, the District received \$5,000 from FmHA and the remainder of the proceeds will be received from time to time to pay costs of the Project.

The Bond is dated as of the date hereof, and interest thereon at the rate of five percent (5%) per annum is payable from such date on the amounts advanced under the Bond. The Bond shall be subject to prepayment of scheduled installments, or any portion thereof at the option of the District, and shall be payable as to both principal and interest as provided in the Bond.

14. CONFLICTS OF INTEREST: The Public Service Board members have no direct or indirect interest in the Bonds or the Project.

WITNESS our signatures and the official corporate seal of the District on this 18th day of March, 1993.

[SEAL]

Signature

Official Title

William E. Wiggins  
John Burns  
Jan E. Wiggins

Chairman

Secretary/Treasurer

Attorney

ABB003B8



WEST DUNBAR PUBLIC SERVICE DISTRICT

\$100,000 Sewer Revenue Bond, Series 1993

CERTIFICATE OF SECRETARY OF DISTRICT AS  
TO TRUTH AND ACCURACY OF DOCUMENTS DELIVERED

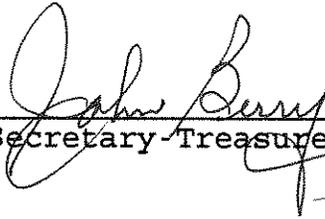
The undersigned John D. Berry, as Secretary of the Public Service Board (the "Board") of the West Dunbar Public Service District (the "District"), hereby certifies that the following documents delivered with this Certificate in connection with the issuance of the above-referenced bond (the "Bond") are true and accurate copies of the originals of such documents on file in the official records of the District and such documents are in full force and effect and have not been amended, supplemented, repealed or rescinded unless such amendment, supplement, repeal or rescission appears in later documents also listed below:

1. Rules of Procedure adopted by the Board on December 21, 1992.
2. Minutes of the Board meeting on December 21, 1992, regarding adoption of the Rules of Procedure.
3. Minutes of the Board meeting electing officers of the Board on January 28, 1993.
4. Minutes of the Board meeting regarding the acceptance of various grant offers and approval of the United States Department of Agriculture, Farmers Home Administration ("FmHA") loan.
5. Minutes of the Board meeting regarding adoption of Bond Resolution and adoption of resolution awarding Bond.
6. EPA grant agreement dated September 20, 1988 and Part B Letter dated January 22, 1993.
7. Loan Resolution (Form FmHA 1942-47).
8. Letter of Commitment for \$75,000 Sub-Area Grant.
9. Bond Resolution.
10. Resolution awarding Bond.
11. Final Order of the Public Service Commission of West Virginia granting the District a Certificate of Convenience and Necessity and approving the financing and rates.

12. FmHA Letter of Conditions dated June 28, 1990, and supplemental letter dated September 12, 1990.

13. FmHA Grant Commitment.

[SEAL]

  
Secretary-Treasurer to the Board

Dated: March 18, 1993

ABB00160



WEST DUNBAR PUBLIC SERVICE DISTRICT

\$100,000 Sewer Revenue Bond,  
Series 1993

ENGINEER'S CERTIFICATE

I, Thomas J. Blair, III, Registered Professional Engineer, West Virginia License No. 3743, of Kelley, Gidley, Blair & Wolfe, Inc., Consulting Engineers, Charleston, West Virginia, hereby certify that my firm is engineer for the construction and acquisition of the extensions, additions, betterments and improvements to the existing public sewer system facilities (herein called the "Project") of West Dunbar Public Service District (the "District") to be constructed in Kanawha County, West Virginia, which construction and acquisition will be permanently financed in part by the above-captioned Bond of the District.

The Project is estimated to cost \$670,820 and will be permanently funded by a grant from the United States Department of Agriculture, Farmers Home Administration in the amount of \$198,000, an Environmental Protection Agency grant in the amount of \$297,820, a Sub-Area grant in the amount of \$75,000 and a loan from the United States Department of Agriculture, Farmers Home Administration (the "FmHA Loan") in the amount of \$100,000.

I further certify that all requirements of the Letter of Conditions for the FmHA Loan and the FmHA Loan Agreement have been reviewed and that the District has complied or will be in compliance with all requirements thereof consistent with the Project's funding and construction schedule presented to and agreed upon by the United States Department of Agriculture, Farmers Home Administration as of the date hereof.

I further certify that (i) the Project will be constructed in accordance with plans and specifications prepared by my firm and is situate wholly or chiefly within the boundaries of the District; (ii) the Project is adequate for the purpose for which it was designed and all necessary governmental approvals and permits for the construction thereof have been obtained or can and will be timely obtained; (iii) I have examined and reviewed all plans, specifications, bid documents and construction contracts relating to the Project and have ascertained that all contractors have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy and completeness; (iv) the construction and funding for the Project should proceed to a successful conclusion within the time schedules proposed; and (v) adequate funding is available to complete the Project in accordance with the plans and specifications.

WITNESS my signature on this 18th day of March, 1993.

KELLEY, GIDLEY, BLAIR & WOLFE, INC.

By: 

[SEAL]





WEST DUNBAR PUBLIC SERVICE DISTRICT

\$100,000 Sewer Revenue Bond, Series 1993

JOINT CERTIFICATE OF ISSUER AND DEPOSITORY BANK

The undersigned, William E. Wiggins, Chairman of the Public Service Board of West Dunbar Public Service District (the "Issuer") and the undersigned authorized officer of United National Bank, a national banking corporation in its capacity as depository bank (the "Depository Bank") under a Bond Resolution adopted by the Public Service Board of the Issuer on March 10, 1993 and a Supplemental Resolution adopted by the Public Service Board of the Issuer on March 10, 1993 (collectively, the "Resolution"), hereby jointly certify as follows in connection with the above-captioned Bond issue:

The Issuer has duly enacted the Resolution appointing the Depository Bank and has delivered a copy of the Resolution to the Depository Bank, and the Depository Bank has duly accepted the duties of Depository Bank as set forth in the Resolution.

WITNESS our signatures this 18th day of March, 1993.

WEST DUNBAR PUBLIC SERVICE DISTRICT

By: William E. Wiggins  
Its: Chairman

UNITED NATIONAL BANK

By: Angela J. Melton  
Its: Commercial Loan Officer



WEST DUNBAR PUBLIC SERVICE DISTRICT

\$100,000 Sewer Revenue Bond, Series 1993

ACCEPTANCE OF DUTIES OF REGISTRAR

United National Bank, a national banking association with its principal office in Parkersburg, West Virginia, hereby accepts appointment as Registrar under a Bond Resolution adopted by the Public Service Board of West Dunbar Public Service District (the "Issuer") on March 10, 1993, and the Supplemental Resolution adopted by the Public Service Board of the Issuer on March 10, 1993 (collectively, the "Resolution") authorizing issuance of the Issuer's Sewer Revenue Bond, Series 1993, dated March 18, 1993, in the aggregate principal amount of \$100,000 (the "Bond") and agrees to perform all duties of Registrar in connection with such Bond, all as set forth in the Resolution.

Witness my signature as of the 18th day of March, 1993.

UNITED NATIONAL BANK

By: Angela J. Melton  
Its: Commercial Loan Officer



WEST DUNBAR PUBLIC SERVICE DISTRICT

\$100,000 Sewer Revenue Bond, Series 1993

CERTIFICATE OF REGISTRATION OF BOND

The undersigned, an authorized officer of United National Bank, as Registrar under the Bond Resolution providing for the \$100,000 in aggregate principal amount of West Dunbar Public Service District's (the "Issuer") Sewer Revenue Bond, Series 1993, hereby certify that on the 18th day of March, 1993, the single, fully registered Sewer Revenue Bond, Series 1993 of the Issuer in the stated principal amount of \$100,000, designated "Sewer Revenue Bond, Series 1993," numbered AR-1, and dated the date hereof was registered as to principal and interest in the name of "United States Department of Agriculture, Farmers Home Administration" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of United National Bank, as Registrar.

WITNESS my signature as of this 18th day of March, 1993.

UNITED NATIONAL BANK

By:

Angela Jo Melton

Its:

Commercial Loan Officer



WEST DUNBAR PUBLIC SERVICE DISTRICT

\$100,000 Sewer Revenue Bond, Series 1993

RECEIPT FOR BOND NO. AR-1

The undersigned, on behalf of Farmers Home Administration of the United States Department of Agriculture, hereby certifies as follows:

1. On the 18th day of March, 1993, in Charleston, West Virginia, the undersigned received for and on behalf of Farmers Home Administration the entire amount of Sewer Revenue Bond, Series 1993 (the "Bond"), of West Dunbar Public Service District (the "District"), numbered AR-1, dated the date hereof, in the stated principal amount of \$100,000. Bond No. AR-1 was delivered on the basis of and in exchange for an advancement of the proceeds of the Bond to the District in the amount of \$5,000. The remaining portion of the stated principal amount of the Bond will be hereafter advanced to the District as requested by the District and approved by said Farmers Home Administration upon completion of the Project. The amount of each advancement will be recorded in the Record of Advances and Payments incorporated in the Bond, and the Bond shall evidence only the indebtedness recorded in such Record of Advances and Payments. Interest at the rate of five percent (5%) per annum is payable on the amount of each advancement, including the advancement made on the date hereof, from the date such advancements are listed in said Record of Advances and Payments.

2. At the time of such receipt of Bond No. AR-1, the Bond had been executed, sealed and attested by the designated officials of the Public Service Board of the District and had been authenticated by United National Bank, as Registrar.

WITNESS my signature on this 18th day of March, 1993.

FARMERS HOME ADMINISTRATION

By: James G. Anderson  
Its: District Loan Specialist



AR-1

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
WEST DUNBAR PUBLIC SERVICE DISTRICT  
SEWER REVENUE BONDS  
SERIES 1993

No. AR-1

\$100,000

March 18, 1993

United States Department of Agriculture  
Farmers Home Administration  
Morgantown, West Virginia 26505

FOR VALUE RECEIVED, West Dunbar Public Service District, Kanawha County, West Virginia (herein called the "Borrower"), promises to pay to the order of the United States Department of Agriculture, Farmers Home Administration (herein called the "Government"), at its National Finance Office, St. Louis, Missouri, or at such other place as the Government may hereafter designate in writing, and in the manner provided below, the principal sum of One Hundred Thousand Dollars (\$100,000) or such lesser amount as shall then be reflected on the Record of Advances and Payments attached hereto and incorporated herein by reference, plus interest on the unpaid principal balance at the rate of 5% per annum. Notwithstanding any provision of this Bond to the contrary, this Bond shall evidence only the indebtedness reflected as outstanding on the Record of Advances and Payments attached hereto. Interest shall accrue only on the amount of each advance from its actual date as listed on said Record of Advances and Payments and shall cease to accrue on the amount outstanding, or portions thereof, as the same are paid, as reflected by said Record of Advances and Payments.

The said principal and interest shall be paid in the following installments on the following dates: Monthly installments of interest only on the amounts advanced hereunder, commencing the first day of the month following the month of delivery of this Bond and on the first day of each month thereafter for the first 24 months after the date hereof, and installments of \$491.00, covering principal and interest, thereafter on the first day of each month, except the final installment shall be paid at the end of forty years from the date of this Bond in the sum of the unpaid principal and interest due on the date thereof and prepayments may be made as provided below. This consideration shall support any agreement modifying the foregoing schedule of payments.

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.

Payments of scheduled installments, or any portion thereof, may be made at any time at the option of the Borrower. Extra payments, as defined in the regulations of the Government, shall, after payment of interest, be applied to the installment last to come due under this Bond and shall not affect the

obligation of Borrower to pay the remaining installments as scheduled herein.

Any amount advanced or expended by the Government for the collection hereof, or to preserve or to protect 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 has granted to the Government a lien on the proceeds of this Bond until such proceeds are expended for authorized purposes.

THIS BOND SHARES A FIRST LIEN PARITY POSITION WITH RESPECT TO SOURCES OF AND SECURITY FOR PAYMENT TO THE OUTSTANDING WEST DUNBAR PUBLIC SERVICE DISTRICT \$426,000 SERIES A SEWER REVENUE BONDS DATED JULY 1, 1977 (THE "PRIOR BONDS").

This Bond is issued to permanently finance a portion of the costs of acquisition and construction of certain extensions, additions, betterments and improvements to the Issuer's existing sewerage collection system (the "Project"); (the Project, together with the existing sewerage system of the Issuer and any further extensions, additions, betterments and improvements thereto, herein called the "System"); to pay interest on the Bonds during acquisition and construction and for up to six months after completion of the Project; and to pay certain issuance and related costs in connection therewith. This Bond is authorized and issued under and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Article 13A of Chapter 16 of the Code of West Virginia, 1931, as amended (the "Act"), and a resolution duly adopted by the Board of the Borrower on the 10th day of March, 1993, and supplemented by a Supplemental Resolution duly adopted by said Board on the 10th day of March, 1993 (collectively, the "Resolution"), and is subject to all the terms and conditions of said Resolution. The Resolution provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Resolution.

This Bond is payable only from and secured by a pledge of a first lien on the Net Revenues on a parity as to security and source of payment with the Prior Bonds (as defined in the Resolution) to be derived from the operation of the System, moneys in the Reserve Account created under the Resolution (the "Reserve Account") and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on this Bond, the Prior Bonds, and all bonds which may be issued for the construction, acquisition, improvement, extension or betterment of such System as and when the same become due and payable, and which shall be set aside and remitted as provided in the Prior Resolution and to the Government as provided herein and in this Resolution. This Bond does not constitute an indebtedness of the Borrower within the meaning of any constitutional or statutory provisions or limitations, nor shall said Borrower be obligated to pay the same or the interest hereon except from the Net Revenues derived from the operation of said System, the moneys in the Reserve Account and unexpended Bond proceeds. Pursuant to the Resolution, the Borrower has covenanted and agreed to establish and maintain just and equitable rates or charges for the use of such System and the services rendered thereby, which shall be sufficient to provide for the proper and reasonable expenses of operation, repair and maintenance of said System, including certain reserves required by the Public Service Commission of West Virginia, and to leave a balance each year equal to at least 110% of the amount required to pay the maximum amount due in any ensuing year of principal of and interest on the Bonds and on all obligations secured by or payable from such revenues prior to or on a parity with the Bonds, including the Prior Bonds. The Borrower has entered into certain

further covenants with the owner of this Bond for the terms of which reference is made to said Resolution. Remedies provided the owner of this Bond are exclusively as provided in the Resolution, to which reference is here made for a detailed description thereof.

This Bond is transferable, as provided in the Resolution, only upon the books of the Registrar which shall be kept for that purpose at the office of the United National Bank, Charleston, West Virginia (the "Registrar"), by the owner or by its attorney or legal representative duly authorized in writing, upon surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar duly executed by the owner or its duly authorized attorney or legal representative duly authorized in writing.

Subject to registration requirements, this Bond under the provision 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.

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 such purposes and periods of time.

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

All money received from the sale of this Bond, after reimbursement and repayment of all amounts connected with the issuance hereof, as provided by law and the Resolution, shall be applied solely to the costs of acquisition and construction of the Project, and there shall be and hereby is created and granted a lien upon such moneys, until so applied, in favor of the owner of this Bond.

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, and that the amount of this Bond, together with all other obligations of said Borrower, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the revenues of the System of the Borrower has been pledged to and will be set aside into said special fund by the Borrower for the prompt payment of the principal of and interest on this Bond.

All provisions of the Resolution, resolutions and statutes under which this Bond is issued shall be deemed to be a part of the contract evidenced by this Bond to the same extent as if written fully herein.

This Bond is given as evidence of a loan to Borrower made or insured by the Government pursuant to the Rural Development Act of 1972. This Bond shall be subject to the present regulations of the Government and to its future regulations not inconsistent with the express provisions hereof.

IN WITNESS WHEREOF, WEST DUNBAR PUBLIC SERVICE DISTRICT has caused this Bond to be signed by its Chairman and its seal to be hereunto impressed and attested by its Secretary, all as of date first written above.

WEST DUNBAR PUBLIC SERVICE DISTRICT  
(Name of Borrower)

\_\_\_\_\_  
(Signature of Execution Official)

Chairman  
(Title of Execution Official)

P. O. Box 582  
(Post Office Box No. or Street Address)

Institute, West Virginia 25112  
(City, State and Zip Code)

[CORPORATE SEAL]

**SPECIMEN**

ATTEST:

\_\_\_\_\_  
(Signature of Attesting Official)

Secretary  
(Title of Attesting Official)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Sewer Revenue Bonds, Series 1993, described in the within-mentioned Resolution and has been duly registered in the name of the United States Department of Agriculture, Farmers Home Administration as of the date set forth below.

Date: \_\_\_\_\_

UNITED NATIONAL BANK, as  
Registrar

By \_\_\_\_\_  
Authorized Officer

"SPECIMEN"

RECORD OF ADVANCES AND PAYMENTS

Advances

Date	Amount	Initialed By
(1)	\$	
(2)	\$	
(3)	\$	
(4)	\$	
(5)	\$	
(6)	\$	
(7)	\$	
(8)	\$	
(9)	\$	
(10)	\$	
TOTAL:		\$

UNITED STATES DEPARTMENT OF  
AGRICULTURE, FARMERS HOME  
ADMINISTRATION

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

(Title)

Payments

Date	Amount	Initialed By
(1)	\$	
(2)	\$	
(3)	\$	
(4)	\$	
(5)	\$	
(6)	\$	
(7)	\$	
(8)	\$	
(9)	\$	
(10)	\$	

TOTAL: \$ \_\_\_\_\_

UNITED STATES DEPARTMENT OF  
AGRICULTURE, FARMERS HOME  
ADMINISTRATION

By: \_\_\_\_\_  
\_\_\_\_\_  
(Title)

[Form of 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 thereof with full power of substitution in the premises.

Dated: \_\_\_\_\_, \_\_\_\_\_.

"SPECIMEN"

In the presence of:

\_\_\_\_\_

ABB003BF



WEST DUNBAR PUBLIC SERVICE DISTRICT

\$100,000 Sewer Revenue Bond, Series 1993

ISSUANCE OF PARITY DEBT

The undersigned, as Chairman and Secretary of the Public Service Board (the "Board") of the West Dunbar Public Service District (the "District"), hereby certify with respect to Section 5.04 of the Bond Resolution adopted by the Board on July 13, 1978 (the "Prior Resolution") and with respect to the above proposed bond (the "Bond") as follows:

1. The District has received certified audit reports with respect to Net Operating Income under the Prior Resolution and for the Bond as required by Sections 5.04(A) and (B) of the Prior Resolution.

2. The District is in compliance with all of the covenants, agreements, and terms of the Prior Resolution and has made all payments required to date under the Prior Resolution.

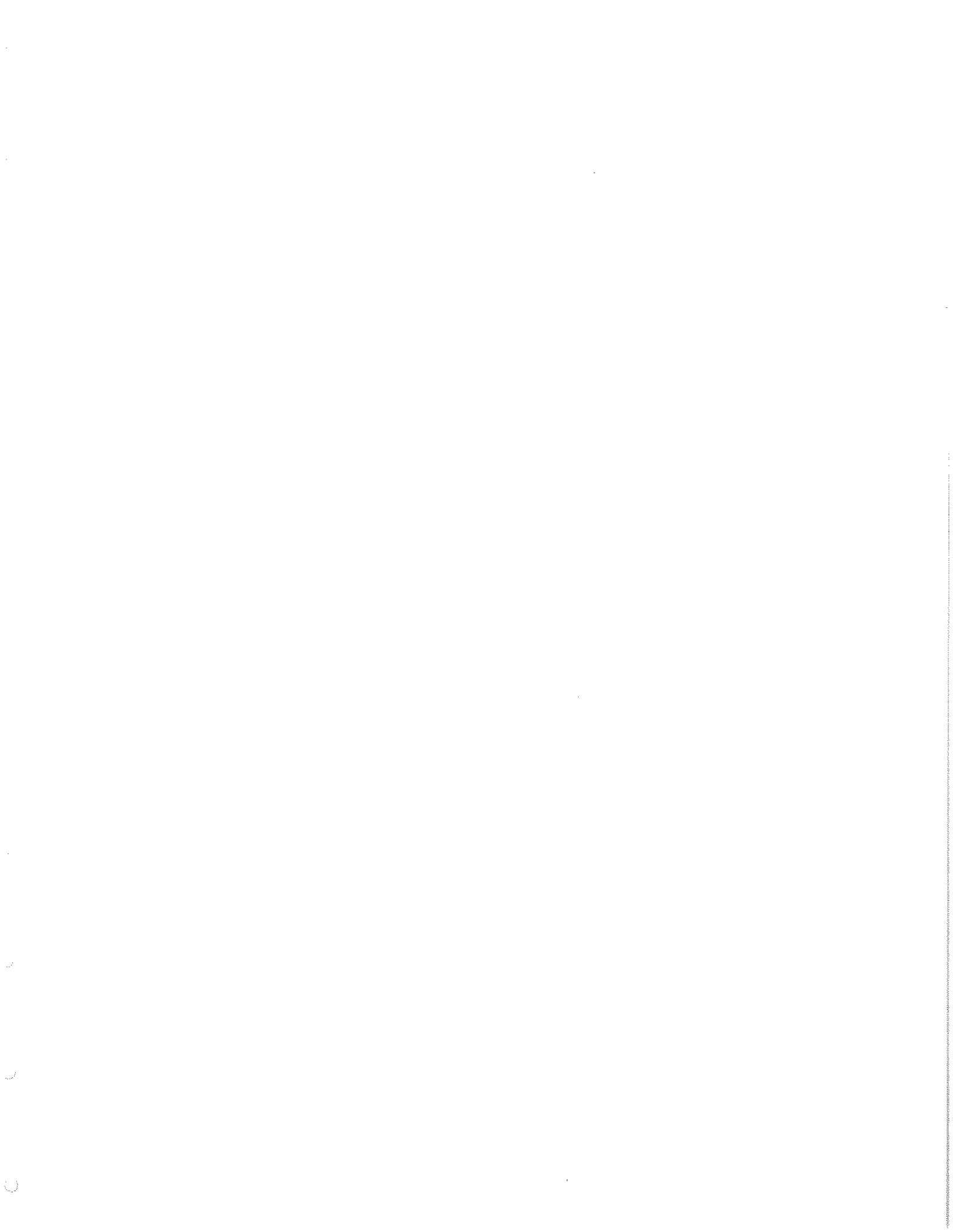
3. The District has received the written consent of the holder of the Prior Bonds issued pursuant to the Prior Resolution to the issuance of the Bonds on a parity with the Prior Bonds.

WITNESS our signatures this 18th day of March, 1993.

WEST DUNBAR PUBLIC SERVICE DISTRICT

By William E. Wiggins  
Chairman

By John Berry  
Secretary-Treasurer







# Blair & Company

CERTIFIED PUBLIC ACCOUNTANTS

721 Peoples Building  
Post Office Box 1991  
Charleston, West Virginia 25327  
(304) 343-4603

John D. Blair, Jr., CPA

February 11, 1993

Ms. Samme L. Gee  
Jackson & Kelly  
1600 Laidley Tower  
P.O. Box 553  
Charleston, West Virginia 25322-0553

Re: **West Dunbar Public Service District**  
**Issuance of Parity Bonds -**  
**Historic and Estimated Revenue Tests**

Dear Ms. Gee:

You have asked that we provide you with information regarding the referenced District's ability to comply with the terms of its 1977 Series A Sewer Revenue Bonds currently held by the U.S. Department of Housing and Urban Development. Specifically, Bond Agreement Section 5.04, Issuance of Parity Bonds, requires that the Net Operating Income of the System has been, and will be, at least 125% of the total of the average annual principal and interest requirements for all series of bonds outstanding and proposed to be issued. Subsections (A) and (B) specify the periods for this determination as twelve (12) consecutive months during the last eighteen (18) months prior to the proposed parity issue for the historic revenue test, and the three (3) succeeding years after the completion of improvements to be financed by any additional parity bonds for the estimated revenue test.

We have issued our Pro Forma Financial Report for the period ending June 30, 1991, which anticipates the construction of the proposed Barron Drive Collection System Expansion Project. Our report was dual dated October 25 and November 5, 1991. Further, we have reviewed the District's financial information for the 18 months ended December 31, 1992. We are in the process of issuing our audited financial report on the District's financial statements for the period ending June 30, 1992. Based upon this financial information, it is our opinion that the District will comply with the provisions of Section 5.04 (A) and (B) as described above. The attached calculation is provided in support of our opinion.

Ms. Samme L. Gee  
February 11, 1993  
Page Two

Please contact me if we can provide you with any additional information or if you have any questions regarding our determination.

Sincerely,

BLAIR & COMPANY, CPA'S

  
John D. Blair, Jr.

JDB/umd  
Enclosure

c: Mr. William E. Wiggins, Chairman  
Mr. James E. Williams, Esquire

WEST DUNBAR PUBLIC SERVICE DISTRICT  
PROPOSED ISSUANCE OF PARITY BONDS  
TO FARMERS HOME ADMINISTRATION

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Compliance with 1977 Series A  
Sewer Revenue Bonds  
Provisions For Parity Bonds Issuance

Section 5.04(A)  
Historic Revenues

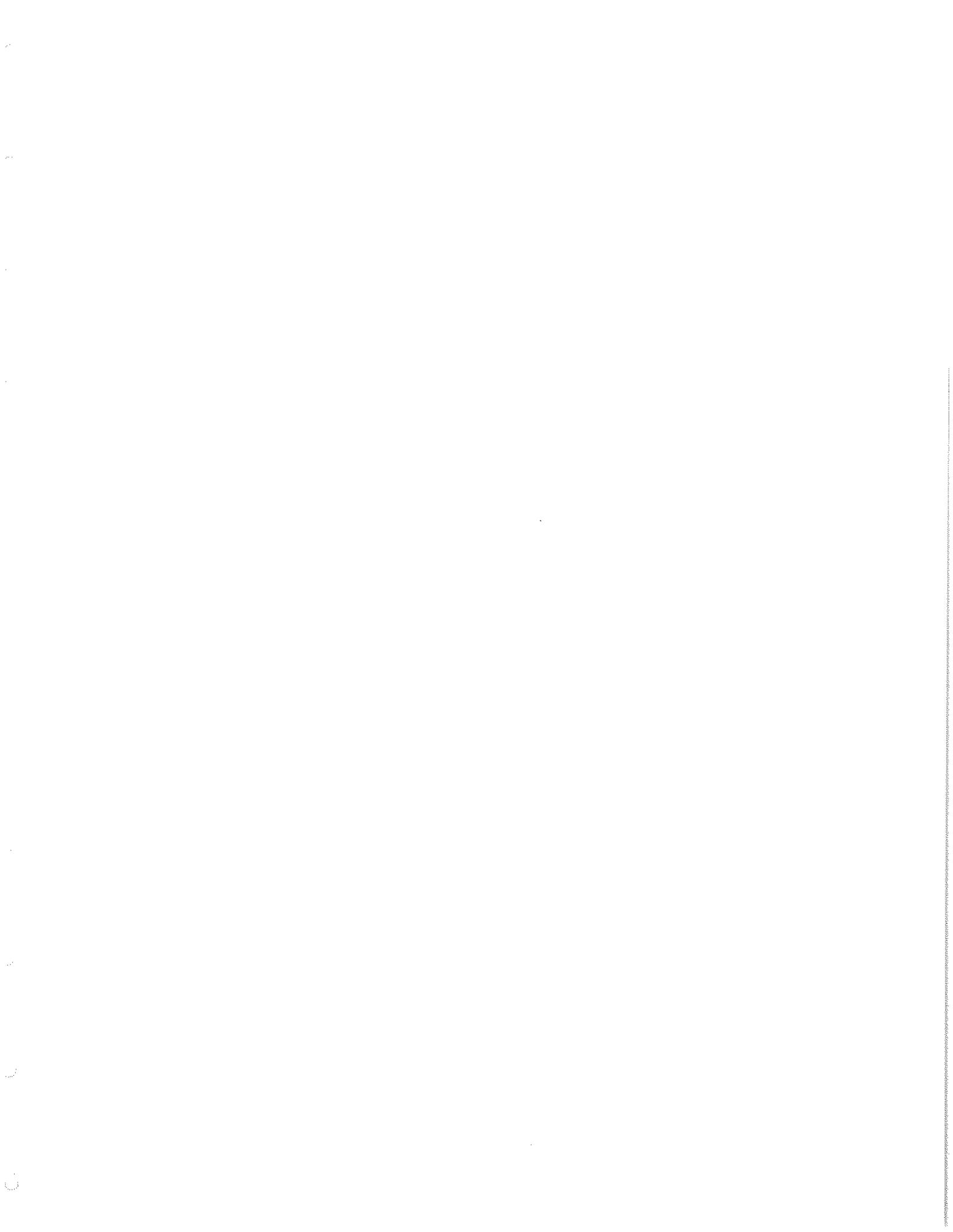
Net operating income <sup>[1]</sup> , historical twelve (12) months ended June 30, 1991	<u>\$ 42,002</u>
Principal payments	\$ 6,000
Interest payments	21,525
	<u>\$ 27,525</u>
Debt service coverage	<u>152.6%</u>

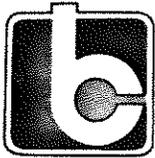
Section 5.04(B)  
Estimated Revenues

Net operating income, pro forma twelve (12) months ended June 30, 1991, anticipating completion of Barron Drive project	<u>\$ 55,513</u>
Principal payments <sup>[2]</sup>	\$ 9,050
Interest payments	26,150
	<u>\$ 35,200</u>
Debt service coverage	<u>157.7%</u>

[1] As defined at Section 1.04 of the 1977 Series A Bonds; the balance of gross revenues remaining after the deduction only of operating expenses.

[2] Principal and interest payments anticipate parity bonds issued to Farmers Home Administration in the amount of \$100,000 at 5% interest per annum, interest only for two years, amortized in monthly installments of principal and interest beginning in year three.





# Blair & Company

CERTIFIED PUBLIC ACCOUNTANTS

721 Peoples Building  
Post Office Box 1991  
Charleston, West Virginia 25327  
(304) 343-4603

John D. Blair, Jr., CPA

March 11, 1993

Farmers Home Administration, USDA  
603 Morris Street  
Charleston, West Virginia 25301

Attn: Mr. James G. Anderson

Re: West Dunbar Public Service District  
SEWER REVENUE BONDS

Gentlemen:

We have reestablished the accounting and financial reporting system of the West Dunbar Public Service District in accordance with the requirements of your bond resolution and the requirements of the West Virginia Public Service Commission, except as stated in the following paragraph.

Section 4.01(4) requires a monthly transfer from the Revenue Fund into a Reserve Account, an amount equal to one tenth (1/10) of the amount deposited into the Sinking Fund (constituting the monthly payment of interest and of principal on the Bonds). The Reserve Account will be established in accordance with the bond resolution prior to such time that the initial transfer thereto is required.

This system is sufficient to allow for the preparation of required financial reports, and to provide for an audit of the District's financial records in accordance with generally accepted governmental auditing standards, the requirements of Farmers Home Administration, OMB Circular A-128, the District's current bond indenture with Housing and Urban Development, and the requirements of the Tax Commissioner of the State of West Virginia.

Sincerely,

BLAIR & COMPANY, CPA'S

  
John D. Blair, Jr.

JDB/umd

c: Mr. William E. Wiggins, Chairman  
Mr. James E. Williams



WEST DUNBAR PUBLIC SERVICE DISTRICT  
\$100,000\* Sewer Revenue Bond, Series 1993

CONSENT TO PARITY DEBT

The United States of America, Secretary of Housing and Urban Development, as the registered owner of the West Dunbar Public Service District \$426,000 Series A, Sewer Revenue Bond, hereby consents to the issuance of the \$100,000\* West Dunbar Public Service District Sewer Revenue Bond, Series 1993 on a parity with the Series A Bond.

WITNESS my signature this 16 day of February, 1993.

UNITED STATES OF AMERICA, SECRETARY  
OF HOUSING AND URBAN DEVELOPMENT

By: John W. Stanton

Its: Director  
Office of Management

\* Estimated, maximum amount.

Gale J. Villas 2/16/93  
Notary Public

My Commission Expires March 01, 1993



\$100,000  
West Dunbar Public Service District  
Sewer Revenue Bond, Series 1993

CERTIFICATE OF NO LITIGATION

NO LITIGATION: As of the date hereof, no controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the issuance, sale or delivery of the Bond, the acquisition and construction of the Project, the operation of the System, the receipt of the Grant Receipts or the Net Revenues, or in any way contesting or affecting the validity of the Bond or the Grants or any proceedings of the Issuer taken with respect to the issuance or sale of the Bond, the pledge or application of the Net Revenues or any other moneys or security provided for the payment of the Bond or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bond, the acquisition and construction of the Project, the operation of the System, the receipt of the Grant Receipts or such pledge or application of moneys and security or the collection of the Net Revenues or pledge thereof.

Capitalized terms have the meaning set forth in the Bond Resolution of the District adopted on March 10, 1993.

Given under my hand this the 18th day of March, 1993.

  
\_\_\_\_\_  
James E. Williams  
Attorney for the West Dunbar  
Public Service District



WV MUNICIPAL BOND COMMISSION  
 Suite 337 Building 3  
 1800 Washington St. E  
 State Capitol Complex  
 Charleston, WV 25305  
 (304) 348-3971

NEW ISSUE REPORT FORM

Date of Report: March 10, 1993

(See Reverse for Instructions)

Series  
1993

ISSUE: \$100,000 West Dunbar Public Service District Sewer Revenue Bonds,  
 ADDRESS: P. O. Box 582, Institute, WV 25112 COUNTY: Kanawha  
 PURPOSE New Money  Refunding   
 OF ISSUE: Refunding Refunds issue(s) dated: \_\_\_\_\_  
 ISSUE DATE: March 10, 1993 CLOSING DATE: \_\_\_\_\_  
 ISSUE AMOUNT: \$ 100,000 RATE: \_\_\_\_\_  
 1st DEBT SERVICE DUE: See Note 1st PRINCIPAL DUE: \_\_\_\_\_  
 1st DEBT SERVICE AMOUNT: \_\_\_\_\_ PAYING AGENT: \_\_\_\_\_

ISSUERS  
 BOND COUNSEL: Jackson & Kelly  
 Contact Person: Samme L. Gee, Esq.  
 Phone: 340-1318  
 CLOSING BANK: United National Bank,  
Dunbar Branch  
 Contact Person: Angie Melton  
 Phone: 766-7111

UNDERWRITERS  
 BOND COUNSEL: N/A  
 Contact Person: \_\_\_\_\_  
 Phone: \_\_\_\_\_  
 ESCROW TRUSTEE: N/A  
 Contact Person: \_\_\_\_\_  
 Phone: \_\_\_\_\_

KNOWLEDGEABLE ISSUER CONTACT  
 Contact Person: James E. Williams, Esq  
 Position: Counsel to West Dunbar PSD  
 Phone: 344-2569

OTHER: N/A  
 Contact Person: \_\_\_\_\_  
 Function: \_\_\_\_\_  
 Phone: \_\_\_\_\_

DEPOSITS TO MBC AT CLOSE:  
 By  Wire  Check  
 Accrued Interest: \$ N/A  
 Capitalized Interest: \$ \_\_\_\_\_  
 Reserve Account: \$ \_\_\_\_\_  
 Other: \$ \_\_\_\_\_

REFUNDS & TRANSFERS BY MBC AT CLOSE:  
 By  Wire  Check  IGT  
 To Escrow Trustee: \$ N/A  
 To Issuer: \$ \_\_\_\_\_  
 To Cons. Invest. Fund: \$ \_\_\_\_\_  
 To Other: \$ \_\_\_\_\_

NOTES: MBC will only hold Reserve Account; Sinking Fund to be paid directly to FmHA.

FOR MUNICIPAL BOND COMMISSION USE ONLY:  
 DOCUMENTS  
 REQUIRED: \_\_\_\_\_  
 TRANSFERS  
 REQUIRED: \_\_\_\_\_



JACKSON & KELLY  
ATTORNEYS AT LAW

1600 LAIDLEY TOWER  
P. O. BOX 553

CHARLESTON, WEST VIRGINIA 25322

TELEPHONE 304-340-1000 TELECOPIER 304-340-1130

300 FOXCROFT AVENUE  
MARTINSBURG, WEST VIRGINIA 25401  
TELEPHONE 304-263-8800

6000 HAMPTON CENTER  
MORGANTOWN, WEST VIRGINIA 26505  
TELEPHONE 304-599-3000

256 RUSSELL AVENUE  
NEW MARTINSVILLE, WEST VIRGINIA 26155  
TELEPHONE 304-455-1751

700 EAST WASHINGTON STREET  
CHARLES TOWN, WEST VIRGINIA 25414  
TELEPHONE 304-728-6088

175 EAST MAIN STREET  
LEXINGTON, KENTUCKY 40595  
TELEPHONE 606-255-9500

202 WEST MAIN STREET  
FRANKFORT, KENTUCKY 40601  
TELEPHONE 502-227-4000

2401 PENNSYLVANIA AVENUE N.W.  
WASHINGTON, D.C. 20037  
TELEPHONE 202-973-0200

WRITER'S DIRECT DIAL NO.

March 18, 1993

West Dunbar Public Service District  
P. O. Box 582  
Institute, West Virginia 25112

United States Department of  
Agriculture  
Farmers Home Administration  
603 Morris Street  
Charleston, West Virginia 25301

Re: \$100,000 West Dunbar Public Service District  
Sewer Revenue Bond, Series 1993

Gentlemen:

We have examined a record of proceedings relating to the issuance of the Sewer Revenue Bond, Series 1993 of West Dunbar Public Service District in Kanawha County, West Virginia (the "District"), to be dated as of the date of delivery thereof, to be numbered AR-1, to be in the stated principal amount of \$100,000, and to bear interest from the date of delivery at the rate of five percent (5%) per annum (the "Bond").

The Bond will be issued pursuant to Chapter 16, Article 13A of the Code of West Virginia, 1931, as amended (the "Act"), and has been authorized by a resolution duly adopted by the Public Service Board of the District on the 10th day of March, 1993, as supplemented on the 10th day of March, 1993 (the "Bond Resolution").

Interest only on the amounts advanced under the Bond will be payable in monthly installments for the first twenty-four months after the date of the Bond, and thereafter monthly installments of interest and principal will be payable in the aggregate sum of \$491 for each installment, the final payment forty years after the date of the Bond to be in the sum of the unpaid principal and interest thereon to the date of such payment. Principal installments upon the Bond will be subject to payment in advance as provided therein and in the Bond Resolution.



*Law Offices*  
*Lomesome & Williams*

*William L. Lomesome (1905-1982)*  
*James E. Williams*

*Suite 407*  
*Hanawha Valley Building*  
*Charleston, West Virginia 25301*  
*Area Code 304*  
344-2569  
344-2933

March 18, 1993

West Dunbar Public Service District  
P. O. Box 582  
Institute, West Virginia 25112

United States Department of  
Agriculture  
Farmers Home Administration  
603 Morris Street  
Charleston, West Virginia 25301

Jackson & Kelly  
P. O. Box 553  
Charleston, West Virginia 25322

Re: \$100,000 West Dunbar Public Service District  
Sewer Revenue Bond, Series 1993

Gentlemen:

I am counsel to the West Dunbar Public Service District (the "Issuer"). As such counsel, I have examined copies of the approving opinion of Jackson & Kelly, as bond counsel, relating to the above-captioned Bond, dated March 18, 1993, a Bond Resolution adopted by the Public Service Board of the Issuer on March 10, 1993, as supplemented by a Supplemental Resolution adopted March 10, 1993 (collectively, the "Resolution") and other documents relating to the above-captioned Bond of the Issuer. Terms used in said opinions and Resolution and not otherwise defined herein have the same meanings herein.

I am of the opinion that:

1. The Issuer was duly and legally created and the members of the Public Service Board were duly and properly elected or appointed and are thereby authorized to act on behalf of the Issuer.

2. The Resolution has been duly adopted by the Issuer and is in full force and effect.

West Dunbar Public Service District  
United States Department of Agriculture  
Farmers Home Administration  
Jackson & Kelly  
March 18, 1993  
Page 2

3. The Issuer has received all the necessary permits, licenses, approvals and authorizations necessary for the creation and existence of the Issuer, the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges, including, without limitation, all requisite orders, consents, certificates and approvals from The County Commission of Kanawha County and the Public Service Commission of West Virginia, and the Issuer has taken any other action required for the imposition of such rates and charges, including, without limitation, the adoption of a resolution prescribing such rates and charges. The time for appeal of the Final Order of the Public Service Commission of West Virginia entered February 8, 1991, in Case No. 90-387-PSD-CN, among other things, granting to the Issuer a certificate of public convenience and necessity for the Project, and the Order of the Public Service Commission of West Virginia entered February 28, 1991, in Case No. 90-387-PSD-CN, among other things, approving the issuance of the Bonds and the rates and charges for the services of the System, and generally clarifying said Final Order of February 8, 1991, have expired prior to the date hereof, without any appeal.

4. The Issuer has duly published a notice of the acquisition and construction of the Project, issuance of the Bonds and related matters, as required under Chapter 16, Article 13A, Section 25 of the West Virginia Code of 1931, as amended, and has duly complied with the provisions thereof.

5. To the best of my knowledge, there is no action, suit, proceeding or investigation at law or in equity before or by any court, public council or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by or the validity of the Bond, the operation of the System or the collection of Revenues or the pledge of Net Revenues to the Bond.

All counsel to this transaction may rely upon this opinion as if specifically addressed to them.

Very truly yours,

