

LOAN RESOLUTION SECURITY AGREEMENT

5-21

A RESOLUTION OF THE Membership  
OF THE Kirksville Water Association, Inc.  
AUTHORIZING AND PROVIDING FOR THE INCURRENCE OF INDEBTEDNESS IN THE  
PRINCIPAL AMOUNT OF \$93,500.00 FOR THE PURPOSE  
OF PROVIDING A PORTION OF THE COST OF ACQUIRING AND CONSTRUCTING A  
water system, PROVIDING FOR THE COLLECTION, HANDLING, AND  
DISPOSITION OF REVENUES THEREFROM, AND AUTHORIZING MAKINGS OF PROMISSORY  
NOTE(S), SECURITY INSTRUMENTS, AND PLEDGES OF REVENUES TO EVIDENCE AND  
SECURE THE PAYMENT OF SAID INDEBTEDNESS AND FOR RELATED PURPOSES.

WHEREAS, the Kirksville Water Association, Inc., (hereinafter  
referred to as the "Organization"), was organized under Kentucky Revised Statutes, Chapter 273  
\_\_\_\_\_ for the purpose of providing a  
rural water distribution system  
\_\_\_\_\_

\_\_\_\_\_ (hereinafter referred to as the  
"Facility") to serve the Members of the said Organization; and

WHEREAS, a meeting of the members of the said organization was held on the 29th day of September, 1993  
pursuant to proper notice thereof to consider plans for the acquisition and construction methods of financing the Facility:  
and, as shown by the minutes of said meeting, of the 1061 members of record of the organization there were  
present and voting 6 members, and by a recorded majority vote, the Facility and its financing authorized; and,

WHEREAS, the proposed Facility is to be constructed and equipment in accordance with plans, and specifications  
prepared by CMW, Inc.

and in order to finance the Facility, the Kirksville Water Association  
(hereinafter referred to as the "Board") is authorized and empowered, in their discretion, for and in the name of the  
organization, to make application to the United States of America, acting through the Farmers Home Administration, United  
States Department of Agriculture, (hereinafter referred to as the "Government"), for financial assistance; to cause the  
execution and delivery of a promissory note or notes or other evidence of indebtedness (hereinafter referred to as the "note"),  
and appropriate security instruments to secure any loan or loans made or insured by the Government; to comply with any  
requirements, terms or conditions prescribed by the Government or by Government regulations; and to execute contracts or  
enter into agreements and, without limitation, to take any and all other action as may be necessary, incidental or appropriate  
to finance, acquire, construct, complete, and/or equip the Facility for and on behalf of the Organization.  
NOW THEREFORE, it is hereby resolved by the Board as follows:

Section 1. (Determination of Board). That it is necessary to defray a portion of the costs of financing the Facility by  
obtaining a loan made or insured by the Government in accordance with applicable provisions of the Consolidated Farm and  
Rural Development Act, it being determined that the Organization is unable to obtain sufficient credit elsewhere to finance  
the Facility, taking into consideration prevailing private and cooperative rates and terms currently available;

Public reporting burden for this collection of information is estimated to average 1 hour 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. 0575-0015), Washington, D.C. 20503.

Section 2. (Terms of Loan). That the Organization borrow \$ 93,500.00 and issue as evidence thereof an installment promissory note in the form prescribed by the Government for the full principal amount of the loan. The note shall be signed by the President, attested by the Secretary and have the corporate seal of the Organization affixed thereto, and shall bear interest from its date, which shall be the date of delivery, at a rate not to exceed 5.75 percent per annum; the principal and interest shall be paid over a period of 40 years in accordance with the payment schedule set forth in the promissory note, until the principal and interest are fully paid except the final payment of the entire indebtedness, if not sooner paid, shall be due and payable 40 years from the date of the note. Each payment shall be applied first to the payment of the accrued interest and second to the payment of the principal. Prepayments of any installment may be made in any amount at any time at the option of the Organization.

Section 3. (Assignment and Pledge of Revenue). The indebtedness hereby authorized to be incurred, together with the interest thereon, shall be payable from the gross income and revenue to be derived from the operation of the Facility, a sufficient portion of which, to pay the principal and interest as and when the same shall become due, is hereby assigned, and pledged and shall be set aside for that purpose and this assignment and pledge shall extend to and include any assessments that may be levied pursuant to Section 5 (d) hereof.

Section 4. (Protection and Disposition of Funds). The treasurer of the Organization shall be the custodian of all funds of the Organization. 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.

The Kirksville Water Association is hereby directed to establish the following accounts into which the current funds of the Organization, note proceeds, the revenues from the Facility and any other income shall be deposited, which accounts shall be continually maintained, except as otherwise provided, so long as the indebtedness hereby authorized remains unpaid:

(a) Construction Account.

The proceeds of the borrowing hereby authorized not disbursed contemporaneously with loan closing for incurred Facility costs, and at least the amount of \$ 34,200.00 to be contributed by the Organization from the collection of initial connection fees, membership fees or contributions shall be deposited in the Construction Account which shall be established as required by the Government. Withdrawals from the construction account shall be made only on checks signed by the

President of the Organization as authorized by the Board from time to time, and with prior concurrence of FmHA. At the option of the Government, the construction account may be established as a "supervised bank account". Amounts in the supervised bank account exceeding \$100,000 shall be secured by the depository bank in advance in accordance with U.S. Treasury Department Circular No. 176. Withdrawals from a supervised bank account

shall be made only on checks signed by the President of the Organization and countersigned by an authorized official of the Farmers Home Administration. The Organization's share of any insurance or liquidated damages and other monies paid by defaulting contractors or their sureties will be deposited in the Construction Account to assure completion of the Facility. When all construction costs have been paid in full, any balance remaining in the Construction Account may be applied on the loan or used for other authorized purposes that have been approved by the Government and the Construction Account shall be closed.

(b) General Account

As soon as the facility becomes revenue producing, all funds received shall be set aside in an account to be designated as the General Account, and disbursements and transfers from this account shall be in the following priority: Debt Service, Operations and Maintenance, transfers to Reserve Account. Monies deposited in the General Account shall be used only in the manner and order as follows:

(1) Borrowers making monthly FmHA Debt Service Payments shall use the General Account for making such payments plus operating and maintenance expenses. Also, funds will be transferred from this account to the Reserve Account in accordance with (d) below.

(2) Borrowers making other than monthly FmHA Debt Service Payments shall use the General Account to pay first operating and maintenance expenses. Other transfers from this account will be made in the following order: (i) Transfers to the Debt Service Account will be made in accordance with (c) below, (ii) Transfers to the Reserve Account will be made in accordance with (d) below.

(c) Debt Service Account

For borrowers on other than monthly debt service payments, transfers, in proportion to income availability, shall be made from the General Account and set aside in an account designated as the Debt Service Account, in sufficient amounts which will accumulate for the next installment on the note.

(d) Reserve Account

From the remaining funds in the General Account, after transfers and payments required in (b) (1) or (b) (2) and (c), there shall be set aside into an account designated as the Reserve Account the sum of \$ 47.00 each

month until there is accumulated in that account the sum of \$ 5,640.00 after which deposits may be suspended, except to replace withdrawals. When necessary, disbursements may be used for payments due on the note if sufficient funds are not available in the General or Debt Service Account. With the prior written approval of the Government, funds may be withdrawn for:

- (1) paying the cost of repairing or replacing any damage to the Facility which may have been caused by catastrophe.
- (2) making extensions or improvements to the Facility.

Whenever disbursements are made from the Reserve Account, monthly deposits shall then be resumed until there is again accumulated the amount \$ 5,640.00 , at which time deposits may be discontinued.

Whenever there shall accumulate in the General Account, amounts in excess of those required in subsections (b)(1) and (2), (c), and (d), such excess will be used by the organization to make prepayments on the loan or retained in the general account. The accounts required in subsections (b) (1) and (2), (c) and (d) may be established and maintained as bookkeeping accounts or as separate bank accounts at the election of the organization, unless otherwise directed by the Government.

Section 5. (Other Covenants and Agreements of the Organization). The Organization covenants and agrees that so long as the indebtedness hereby authorized remains unpaid:

- (a) It will indemnify the Government for any payments made or losses suffered by the Government.
- (b) It will comply with applicable State laws and regulations and continually operate and maintain the Facility in good condition.
- (c) It will impose and collect such rates and charges that gross revenues will be sufficient at all times to provide for the payment of the operation and maintenance thereof and the installment payments on the note and the maintenance of the various funds herein created. All service rendered by or use of the Facility shall be subject to the full rates prescribed in the rules and regulations of the Organization; no free service by or use of the Facility will be permitted.
- (d) It will cause to be levied and collected such assessments as may be necessary to operate and maintain the Facility in good condition and meet installment payments on the note which the same become due if, for any reason, gross revenues are insufficient.
- (e) It will establish and maintain such books and records relating to the operation of the system and its financial affairs and will provide for the annual audit thereof in such manner as may be required by the Government, will provide the Government without its request a copy of each such audit, and will make and forward to the Government such additional information and reports as it may from time to time require.
- (f) It will provide the Government at all reasonable times, access to all books and records relating to the Facility and access to the property of the Facility so that the Government may ascertain that the Organization is complying with the provisions hereof and with the provisions of other instruments incident to the making or insuring of the loan.
- (g) It will maintain at least such insurance and Fidelity bond coverage as may be required by the Government.
- (h) It will not borrow any money from any source or enter into any contract or agreement or incur any other liabilities in connection with making extensions or improvements to the Facility, exclusive of normal maintenance, without obtaining the prior written consent of the Government.
- (i) It will not cause or permit any voluntary dissolution of its organization, merge or consolidate with any other organization, without obtaining the prior written consent of the Government. It will not dispose of or transfer title to the facility or any part thereof, including lands and interest in lands by sale, security instrument, lease or other encumbrance, without obtaining the prior written consent of the Government. Revenue, in excess of the amount required to maintain the accounts described by Section 4 herein, will not be distributed or transferred to any other organization or legal entity.
- (j) It will not modify or amend the Articles of Incorporation or the Bylaws of the Organization without the written consent of the Government.
- (k) It will provide adequate service to all persons within the service area who can feasibly and legally be served and will obtain FmHA's concurrence prior to refusing new or adequate services to such persons. Upon failure to provide services which are feasible and legal, such person shall have a direct right of action against the organization or public body.
- (l) All present and future contract rights, accounts receivable, and general intangibles arising in connection with the facility are pledged as security for the loan.
- (m) It will comply with the 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.

Section 6. (Security Instruments). In order to secure the payment of the principal and interest of the note, the President and Secretary of the Organization are hereby authorized and directed to execute and deliver good and sufficient lien instruments, where necessary, encumbering the properties and assets both real and personal constituting said Facility, as completed or as the same may be thereafter extended, including an assignment and pledge of revenues and such other instruments as may be prescribed by the Government.

Section 7. (Refinancing). If at any time it shall appear to the Government that the Organization is able to refinance the amount of the indebtedness then outstanding, in whole or in part, by obtaining a loan for such purposes from responsible cooperative or private credit sources, at reasonable rates and terms for loans for similar purposes and periods of time, the Organization will, upon request of the Government, apply for and accept such loan in sufficient amount to repay the Government and will take all such actions as may be required in connection with such loan.

Section 8. ("Equal Employment Opportunity under Construction Contracts and Nondiscrimination"). The President and the Secretary be and they are hereby authorized and directed to execute for and on behalf of the Organization, Form FmHA 400-1, "Equal Opportunity Agreement", and Form FmHA 400-4, "Assurance Agreement".

Section 9. In the case of a grant in the sum not to exceed \$ 122,000.00, the Organization hereby accepts the grant under the terms as offered by the Government and that the President and Secretary of the Organization are hereby authorized and empowered to take all action necessary or appropriate in the execution of all written instruments as may be required in regard to or as evidence of such grant and the Organization hereby resolves to operate the facility under the terms as offered in said grant agreement(s).

Section 10. Default under the provisions of this agreement or any instrument incident to the making or issuing 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 Organization, and default under any such instrument may be construed by the Government to constitute default hereunder.

Section 11. (Resolution of Contract). The provisions hereof and the provisions of all instruments incident to the making or the insuring of the loan, unless otherwise specifically provided by the terms of such instruments, shall constitute a contract between the Organization and the Government or assignee so long as the note hereby authorized remains unpaid.

Section 12. This resolution shall take effect and be in force from and after the 29th day of September, 19 93, being the date of its enactment.

The vote was: Yeas 6 Nays 0 Absent 1055

(SEAL) (if applicable)

Attest:

Carl Turner

Title Secretary

Kirksville Water Association

By Otis Bundy

Title President

CERTIFICATION

I, the undersigned, as secretary of the Kirksville Water Association

hereby certify that the membership of such Organization or Corporation is composed of 1061

members of whom those in attendance, constituting a quorum, were present at a meeting thereof duly called and held on the 29th day

of September, 19 93; that the foregoing resolution was adopted at such meeting by the vote shown above, and that said resolution has not been rescinded or amended in any way.

Dated, this 29th day of September, 19 93.

Carl Turner

Secretary of Kirksville Water Association