

BOND RESOLUTION

POWELL'S VALLEY WATER DISTRICT

AUTHORIZING

POWELL'S VALLEY WATER DISTRICT  
WATERWORKS REVENUE BONDS OF 1991

IN THE AMOUNT OF

\$194,000

I N D E X

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
	ARTICLE 1. DEFINITIONS; PURPOSE; AUTHORIZATION OF BONDS; SECURITY	
101	Definitions	3
102	Purpose; Construction Project	7
103	Construction Award Approved; Work Authorized	7
104	Declaration of Period of Usefulness	7
105	Authorization of Bonds	8
106	Recognition of Prior Bonds	8
107	Current Bonds Shall be Payable Out of Gross Revenues, and Secured by Statutory Mortgage Lien on a Parity with the Prior Bonds	9
108	Lien on Contracts	9
	ARTICLE 2. THE BONDS; PRINCIPAL INSTALLMENTS; BOND FORM; EXECUTION; PREPAYMENT	
201	Principal Installments	10
202	Issuance of Current Bonds; Bond Form	10
203	Place of Payment and Manner of Execution	10
204	Provisions as to Prepayment	10
	ARTICLE 3. CONSTRUCTION ACCOUNT; INTERIM FINANCING; APPLICATION OF PROCEEDS; ARBITRAGE LIMITATIONS	
301	The Construction Account; Fidelity Bond of Treasurer; Covenants Applicable if FmHA Purchases the Bonds; Application of Proceeds of Bonds; Other Transfers and Deposits	11
	A. Covenants Applicable if FmHA Purchases Bonds	11
	B. Application of Proceeds of Current Bonds	12

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
	(1) Payment of Interim Financing, Costs of Construction Project, and Costs of Issuance of Bonds	12
	(2) Construction Account; Grant Proceeds and District Contribution	12
	(3) Withdrawal of Funds From Construction Account	12
	(4) Transfer of Capitalized Interest to Current Sinking Fund	13
	(5) Investment of Funds in Construction Account	14
	(6) Statement of Contractors, Engineers, and Attorneys as to Payment	14
	(7) Disposition of Balance in Construction Account After Completion of Construction Project	14
302	Interim Financing Authorization	15
	A. Interim Financing	15
	B. Multiple Advances by FmHA	16
303	Arbitrage Limitations on Investment of Proceeds	17
	ARTICLE 4. CURRENT BONDS ON A PARITY WITH PRIOR BONDS; FLOW OF FUNDS	
401	Current Bonds on a Parity with Prior Bonds	21
402	Provisions of Prior Bond Resolution Incorporated Herein; Adjustments in Required Deposits	21
	A. Revenue Fund	22
	B. Adjustments in Required Prior Sinking Fund Deposits	22
	C. Monthly Principal and Interest Payments if Requested by the FmHA, or Other Owner of All Outstanding Bonds	23
	D. Operation and Maintenance Fund	23
	E. Adjustment in Depreciation Fund Deposits	24
	F. Surplus Funds	25
	G. General Requirements as to Funds	25

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
ARTICLE 5. COVENANTS OF DISTRICT		
501	Rates and Charges	26
502	Books and Accounts; Audit	26
503	System to Continue to be Operated on Fiscal Year Basis; Annual Budget	27
504	General Covenants	28
505	Other Covenants Applicable So Long as FmHA Owns Any Bonds	29
506	Insurance on Motors, Tanks and Structures	29
ARTICLE 6. INFERIOR BONDS AND PARITY BONDS		
601	Inferior Bonds	30
602	Parity Bonds to Complete the Construction Project	30
603	Parity Bonds to Finance Future Improvements	31
604	Covenants to be Complied with at Time of Issuance of Parity Bonds	32
605	Prepayment Provisions Applicable to Parity Bonds	33
606	Consent of the FmHA Regarding Future Bonds	33
607	Priority of Lien; Permissible Disposition of Surplus or Obsolete Facilities	33
ARTICLE 7. DEFAULT AND CONSEQUENCES		
701	Events of Default	35
702	Consequences of Event of Default	35
ARTICLE 8. CONTRACTUAL PROVISIONS; GRANT APPROVAL; MISCELLANEOUS PROVISIONS		
801	Resolution Contractual with Bondowners	37
802	All Current Bonds are Equal	37
803	District Obligated to Refund Current Bonds Owned by Government Whenever Feasible; Defeasement Prohibited	37
804	Approval and Acceptance of ARC Grant Agreement	38
805	Approval and Acceptance of Fiscal Court Fund Grant Agreement	38
806	Approval and Acceptance of DHUD Grant Agreement	38
807	Alternate Statutory Authority	39
808	Authorization, Ratification, and Confirmation of Approval and Execution of Various Documents	39
809	Authorization of Condemnation to Acquire Easements and/or Sites	39

<u>SECTION</u>	<u>TITLE</u>	<u>PAGE</u>
	ARTICLE 9. SALE OF CURRENT BONDS	
901	Sale of Current Bonds	41
902	Possible Adjustment in Date of Current Bonds, Maturities, Prepayment Provisions and Other Dates, with Consent of Purchaser if Delivery is Delayed	41
	ARTICLE 10. CONCLUDING PROVISIONS	
1001	Covenant of District to Take All Necessary Action to Assure Compliance with Internal Revenue Code	42
1002	Severability Clause	43
1003	All Provisions in Conflict Repealed	43
1004	Effective Ten Days From Adoption	43
	CERTIFICATION	44
	EXHIBIT A - Schedule of Principal Maturities	
	EXHIBIT B - Form of Fully Registered Bond	
	EXHIBIT C - Requisition Certificate	

BOND RESOLUTION

RESOLUTION OF THE POWELL'S VALLEY WATER DISTRICT OF POWELL AND ESTILL COUNTIES, KENTUCKY, AUTHORIZING AND PROVIDING FOR THE ISSUANCE AND SALE OF \$194,000 PRINCIPAL AMOUNT OF POWELL'S VALLEY WATER DISTRICT WATERWORKS REVENUE BONDS OF 1991 FOR THE PURPOSE OF FINANCING THE COST (NOT OTHERWISE PROVIDED) OF THE CONSTRUCTION OF EXTENSIONS, ADDITIONS AND/OR IMPROVEMENTS TO THE EXISTING WATERWORKS SYSTEM OF SAID DISTRICT; PROVIDING FOR SAID BONDS TO RANK ON A PARITY WITH CERTAIN OUTSTANDING REVENUE BONDS, PREVIOUSLY ISSUED BY SAID DISTRICT; SETTING FORTH TERMS AND CONDITIONS UPON WHICH SAID BONDS MAY BE ISSUED AND OUTSTANDING; PROVIDING FOR THE COLLECTION, SEGREGATION AND DISTRIBUTION OF THE REVENUES OF SAID WATERWORKS SYSTEM; AND PROVIDING FOR AN ADVERTISED, PUBLIC, COMPETITIVE SALE OF SAID BONDS.

WHEREAS, the waterworks system (the "System") of the Powell's Valley Water District (the "District") is owned and operated by said District pursuant to Chapters 74 and 106 and Sections 58.010 through 58.140, inclusive, of the Kentucky Revised Statutes (the "Act"), and

WHEREAS, the District presently has outstanding certain Prior Bonds (as hereinafter defined), which Prior Bonds are payable from and secured by a first pledge of the revenues derived from the operation of and by a first statutory mortgage lien against the System, and

WHEREAS, all of the Prior Bonds presently outstanding are current as to payment of both principal and interest, and for the security of which a certain Sinking Fund and certain reserves are being maintained in the manner and by the means prescribed in the Prior Bond Resolution (as hereinafter defined) of the District, authorizing the Prior Bonds, and

WHEREAS, it is the desire and intent of the District at this time to adopt this Resolution pursuant to the Act, to authorize and provide for the issuance of revenue bonds in the principal amount of \$194,000 (the "Current Bonds"), for the purpose of financing the cost (not otherwise provided) of the construction of extensions, additions and/or improvements to the System of the District, in accordance with plans and specifications prepared by Mayes, Sudderth & Etheredge, now on file in the office of the Secretary of the District, and to prescribe the covenants of the District, the rights of Bondowners and the

details of the issuance and sale of the proposed Current Bonds,  
and

WHEREAS, the District desires and intends that the Current Bonds be issued so as to rank on a parity basis with the Prior Bonds, and

WHEREAS, the Prior Bonds were issued to and are now held by the Farmers Home Administration of the Department of Agriculture of the United States of America (the "FmHA"), and

WHEREAS, the FmHA, as the Owner of the Prior Bonds, has consented to the issuance by the District of the Current Bonds, and

WHEREAS, the Public Service Commission of Kentucky has granted to the District a Certificate of Public Convenience and Necessity, authorizing the construction of said extensions, additions and/or improvements, and

WHEREAS, the proceeds of the Current Bonds will be supplemented by Grant Proceeds (as hereinafter defined) in the amount of approximately \$613,200, and by water connection charges in the amount of at least \$13,000, to provide the total cost of such construction, and

WHEREAS, the District has entered into Amended Water Purchase Contracts (as hereinafter defined) with the City of Clay City and the Estill County Water District, assuring the District an adequate supply of water for as long as any of the proposed Current Bonds shall be outstanding,

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF COMMISSIONERS OF THE POWELL'S VALLEY WATER DISTRICT OF POWELL AND ESTILL COUNTIES, KENTUCKY, AS FOLLOWS:

ARTICLE 1. DEFINITIONS; PURPOSE; AUTHORIZATION  
OF BONDS; SECURITY.

Section 101. Definitions. As used in this Resolution, unless the context requires otherwise:

"ACT" refers to Chapters 74 and 106 and Sections 58.010 through 58.140, inclusive, of the Kentucky Revised Statutes.

"ARC GRANT" refers to the Appalachian Regional Commission grant described in Section 804 of this Resolution.

"BEGINNING MONTH" means the month following the month in which the Current Bonds authorized herein are issued, sold and delivered to the Purchaser thereof.

"BOND COUNSEL" refers to an attorney or firm of attorneys recognized nationally as experts in the field of municipal bond law and shall be deemed to refer to Rubin Hays & Foley, Louisville, Kentucky, or their successors.

"BONDOWNER" or "OWNER" means and contemplates the registered Owners of the Current Bonds at the time issued and outstanding hereunder.

"BONDS" refers to the outstanding Prior Bonds and the Current Bonds.

"BONDS OF 1970" refers to the original authorized issue of \$278,000 of bonds designated as "Powell's Valley Water District Waterworks Revenue Bonds of 1970", dated the date of delivery, of which there are presently outstanding \$229,000 of Bonds, scheduled to mature on January 1 in each of the years 1992 through 2010, inclusive.

"BONDS OF 1987" refers to the original authorized issue of \$239,000 of bonds designated as "Powell's Valley Water District Waterworks Revenue Bonds of 1987", dated January 12, 1988, of which there are presently outstanding \$234,500 of Bonds, scheduled to mature on January 1 in each of the years 1992 through 2027, inclusive.

"BOND RESOLUTION OF 1970" or "1970 BOND RESOLUTION" refers to the Resolution authorizing the Bonds of 1970, duly adopted by the Board of Commissioners of the District on August 11, 1970.

"BOND RESOLUTION OF 1987" or "1987 BOND RESOLUTION" refers to the Resolution authorizing the Bonds of 1987, duly adopted by the Board of Commissioners of the District on September 29, 1987.

"CHAIRMAN" refers to the elected or appointed Chairman or Chairperson of the Commission.



"CODE" refers to the Internal Revenue Code of 1986, as amended, and the Treasury Regulations relating thereto.

"COMMISSION" means the Board of Commissioners of the District, or such other body as shall be the governing body of said District under the laws of Kentucky at any given time.

"CONSTRUCTION ACCOUNT" refers to the Powell's Valley Water District Waterworks Revenue Bonds Construction Account, created in Section 301(B) of this Current Bond Resolution.

"CONSTRUCTION PROJECT" refers specifically to the construction of the currently proposed extensions, additions and/or improvements to the System of the District, which Construction Project is being financed by the Current Bonds and by other funds.

"CONTRACTORS" means the general contractors who have been employed by the District to construct the Construction Project.

"CURRENT BOND RESOLUTION" or "RESOLUTION" refers to this Resolution authorizing the Current Bonds.

"CURRENT BONDS" refers to the \$194,000 of Powell's Valley Water District Waterworks Revenue Bonds of 1991 authorized by this Resolution, to be dated as of the date of issuance thereof.

"DEPOSITORY BANK" means the bank, which shall be a member of the FDIC, at which the principal of and interest on the Prior Bonds are payable and which has served and shall continue to serve as the depository of all of the Funds created in the Prior Bond Resolution and this Current Bond Resolution, which bank is Powell County Bank, Stanton, Kentucky, or its successor.

"DEPRECIATION FUND" refers to the Powell's Valley Water District Depreciation Reserve Fund, created in Section 11C of the Prior Bond Resolution.

"DHUD GRANT" refers to the Department of Housing and Urban Development grant described in Section 805 of this Resolution.

"DISTRICT" refers to the Powell's Valley Water District of Powell and Estill Counties, Kentucky.

"ENGINEERS" refers to the Engineers or any one of them, who prepared the plans and specifications for the construction of the Construction Project and who will supervise the construction thereof and/or will furnish full time resident inspection of the construction of the Construction Project, and shall be deemed to refer to Mayes, Sudderth & Etheredge, or a member of said firm, or their successors.

"EVENT OF DEFAULT" refers to one or more of the Events of Default set forth in Section 701 of this Resolution.

"FDIC" refers to the Federal Deposit Insurance Corporation, or its successors.

"FISCAL COURT FUND GRANT" refers to the grant from the Powell County Fiscal Court described in Section 805 of this Resolution.

"FISCAL YEAR" refers to the annual accounting period of the District, beginning on January 1 and ending on December 31 of each year.

"FmHA" means the Farmers Home Administration of the Department of Agriculture of the United States of America.

"FUNDS" refers to the Revenue Fund, the Prior Sinking Fund, the Depreciation Fund and the Operation and Maintenance Fund.

"GOVERNMENT" means the United States of America, or any agency thereof, including the FmHA.

"GRANT PROCEEDS" refers to the proceeds of the ARC Grant, the Fiscal Court Fund Grant and the DHUD Grant.

"INDEPENDENT CONSULTING ENGINEER" refers to a consulting engineer or a firm of consulting engineers of recognized excellent reputation in the field of waterworks system engineering, and such definition includes the Engineers named above.

"INTERIM LENDER" means any financial institution or governmental agency approved by the District.

"LOCAL COUNSEL" refers to Jeffrey M. Stiles, Esq., Stanton, Kentucky, or any other attorney or firm of attorneys designated by the District.

"MULTIPLE ADVANCES" refers to the advance of loan funds from the FmHA as described in Section 302 of this Resolution.

"NOTE" refers to a single note or any number of notes, in such form as may be prescribed by the Interim Lender, including any revenue bond anticipation notes issued pursuant to Section 58.150 of the Kentucky Revised Statutes, including any renewal or extensions of the Note, issued by the District evidencing the interim financing for the Construction Project as prescribed in Section 302 of this Resolution.

"OPERATION AND MAINTENANCE FUND" refers to the Operation and Maintenance Fund described in Section 402D of this Resolution.

"OUTSTANDING BONDS" refers to the outstanding Prior Bonds and Current Bonds, and any additional outstanding Parity Bonds, and does not refer to, nor include, any Bonds for the payment of the principal and interest of which sufficient funds will have been deposited and earmarked for payment of Bonds; provided all Outstanding Bonds of any series held by the FmHA shall be deemed to constitute Outstanding Bonds until paid regardless of the deposit of funds to pay for same.

"PARITY BONDS" means bonds which may be issued in the future, in addition to the Prior Bonds and the Current Bonds, which Parity Bonds issued in the future will, pursuant to the provisions of the Prior Bond Resolution and of this Current Resolution, rank on a basis of parity with said outstanding Prior Bonds and Current Bonds, as to priority, security and source of payment, and does not refer to bonds which might be issued so as to rank inferior to the security and source of payment of the outstanding Prior Bonds and Current Bonds.

"PRIOR BONDS" refers collectively to the Bonds of 1970 and the Bonds of 1987.

"PRIOR BOND RESOLUTION" refers collectively to the 1970 Bond Resolution and the 1987 Bond Resolution.

"PRIOR SINKING FUND" refers to the Powell's Valley Water District Waterworks Bond and Interest Sinking Fund of 1970, created in the 1970 Bond Resolution.

"PURCHASER" means the agency, person, firm or firms, or their successors, to whom the Current Bonds herein authorized are awarded at the public sale of the Current Bonds, and such definition shall refer to the FmHA if it is the Purchaser of the Current Bonds at said public sale.

"REQUIRED SIGNATURES" refers to the signatures necessary to be obtained with reference to the approval of the expenditures to be made from the Construction Account, which required signatures shall consist of the signatures of (1) the Chairman; (2) the Engineers; and (3) the Purchaser; provided, however, any expenditures for issuance and administrative costs and the costs of any equipment which is not permanently affixed to the real estate shall not require the signature or the approval of the Engineers.

"REVENUE FUND" refers to the Powell's Valley Water District Waterworks Revenue Fund, created in the 1970 Bond Resolution.

"SECRETARY" refers to the elected or appointed Secretary of the Commission.

"SYSTEM" refers to the existing waterworks system of the District, together with all extensions, additions and/or improvements to said System.

"TREASURER" refers to the elected or appointed Treasurer of the Commission.

"U.S. OBLIGATIONS" means bonds or notes which are the direct obligations of the United States of America, or obligations the principal of and interest on which are guaranteed by the United States of America.

"WATER PURCHASE CONTRACT" collectively refers to the contracts for purchase of treated water by and between the District and the City of Clay City, and the District and the Estill County Water District, as amended and supplemented.

All words and terms importing the singular number shall, where the context requires, import the plural number and vice versa. Unless otherwise indicated, references to Articles or Sections refers to those in this Resolution.

Section 102. Purpose; Construction Project. The Current Bonds shall be issued for the purpose of financing the cost (not otherwise provided) of the Construction Project, as set out in the plans and specifications prepared by the Engineers. The Commission hereby declares the System of the District, including the extensions, additions and/or improvements to be constructed, to constitute a revenue producing public project, and said System shall continue to be owned, controlled, operated and maintained by the District as a revenue producing public project pursuant to the Act, so long as any of the Prior Bonds, the Current Bonds or any additional Parity Bonds remain outstanding.

Section 103. Construction Award Approved; Work Authorized. The Commission hereby authorizes, approves, ratifies and confirms its previous action in advertising for and taking steps toward awarding the contracts for the construction of the Construction Project to the lowest and best bidders, and further approves the action of the District officials in entering into formal contracts with said bidders, subject to the necessary approvals being obtained. Authority is hereby given for undertaking the construction of the Construction Project according to the plans and specifications heretofore prepared by the Engineers for the District, after all necessary approvals have been obtained.

Section 104. Declaration of Period of Usefulness. The Commission hereby declares that the period of usefulness of the System is more than forty (40) years from the date of completion of the Construction Project.

Section 105. Authorization of Bonds. The District has heretofore determined that the total cost of the Construction Project, including preliminary expenses, land and rights-of-way, engineering expense, capitalized interest during construction, legal and administrative costs, publication costs, initial deposits required and all incidental expenses, will not exceed \$820,200. Therefore, it is hereby determined to be necessary in order for the District to finance the cost (not otherwise provided) of the Construction Project that the District issue a total of \$194,000 of Current Bonds, based on the following calculation:

Total cost of Construction Project	\$820,200
Less:	
ARC Grant	300,000
Fiscal Court Fund Grant	10,000
DHUD Grant	303,200
Connection Charges	<u>13,000</u>
Total Non-Bond Funds:	<u>(626,200)</u>
Balance to be financed by Current Bonds	\$194,000

Accordingly, for the purpose of financing the cost (not otherwise provided) of the Construction Project, under the provisions of the Act, there is hereby authorized to be issued and sold \$194,000 principal amount of Powell's Valley Water District Waterworks Revenue Bonds of 1991.

The Current Bonds shall be dated as of the date of delivery to the Purchaser thereof; shall bear interest from such date at such interest rate as may be fixed by supplemental resolution as a result of the advertised sale and competitive bidding for such Current Bonds, as hereinafter provided; and shall be issued and delivered as prescribed in Section 202 hereof.

Interest on the Current Bonds shall be payable semi-annually on January 1 and July 1 of each year, provided that the first interest payment period will cover interest only from the date of delivery of the Current Bonds to the ensuing January 1 or July 1, as the case may be. Principal of the Current Bonds shall be payable on January 1 of each of the respective years until maturity, as set out in Section 201 hereof.

Section 106. Recognition of Prior Bonds. The District hereby expressly recognizes and acknowledges that the District has previously created for the benefit and protection of the owners of the Prior Bonds, a certain statutory mortgage lien and pledge and certain security rights relating to the System, all as set forth in the Prior Bonds and in the Prior Bond Resolution.

Section 107. Current Bonds Shall be Payable Out of Gross Revenues and Secured by Statutory Mortgage Lien on a Parity with the Prior Bonds. All of the Current Bonds, the Prior Bonds and any additional Parity Bonds that may be issued under the conditions and restrictions herein set forth, shall be (i) secured on a parity first lien basis by and payable solely from the gross revenues of the System; (ii) a valid claim of the Owners thereof against the Current Sinking Fund created for the benefit of such Owners; and (iii) further secured, on a parity first lien basis, by a statutory mortgage lien as provided in Section 106.080 of the Kentucky Revised Statutes, which statutory mortgage lien is hereby recognized to be valid and binding upon the District and upon all of the properties constituting the System. Such lien shall take effect immediately upon delivery of the Current Bonds.

Section 108. Lien on Contracts. In addition to the revenue pledge and statutory mortgage lien securing the Bonds, a first lien is hereby created and granted in favor of the Current Bonds on all contracts, including specifically the Water Purchase Contract, and on all other rights of the District pertaining to the System, enforceable by assignment to any receiver or other operator proceeding by authority of any court.

## ARTICLE 2

### THE BONDS; PRINCIPAL INSTALLMENTS; BOND FORM; EXECUTION; PREPAYMENT.

Section 201. Principal Installments. Principal installments due on the Current Bonds shall be as set forth in the schedule of maturities set out in Exhibit A attached to this Resolution and incorporated herein.

Section 202. Issuance of Current Bonds; Bond Form. The Purchaser of the Current Bonds at the public sale shall take delivery of the Current Bonds in the form of one or more fully registered bonds, as set forth in Exhibit B attached hereto and incorporated herein, amounting in the aggregate to the principal amount of the Current Bonds authorized herein, maturing as to principal in installments as set out above. The Current Bonds shall be numbered R-1 and consecutively upward thereafter. Such Current Bonds shall, upon appropriate execution on behalf of the District as prescribed, constitute the entire bond issue herein authorized, shall be negotiable (subject to registration requirements as to transferability), registered as to principal and interest and payable as directed by the registered Owner.

Section 203. Place of Payment and Manner of Execution. Both principal of and interest on the Current Bonds shall be payable at the place and in the manner set out in the form of such Current Bond. The Current Bonds shall be executed on behalf of the District by being signed manually by the Chairman of the District, with the Corporate Seal of the District affixed thereto and attested by the manual signature of the Secretary of said District.

If either of the officers whose signatures appear on the Current Bonds ceases to be such officer before delivery of said Current Bonds, such signatures shall nevertheless be valid for all purposes the same as if such officers had remained in office until delivery.

Section 204. Provisions as to Prepayment. Except when all of the Current Bonds are held by the Government, installments of principal falling due prior to January 1, 2002, shall not be subject to prepayment. Installments of principal falling due on and after January 1, 2002, shall be subject to prepayment by the District on any interest payment date falling on and after January 1, 2001, at par plus accrued interest, without any prepayment penalty.

So long as all of the Current Bonds are owned by the Government, all or any of the Current Bonds, or installments in a multiple of \$1,000, may be prepaid at any time in inverse chronological order of the installments due, at par plus accrued interest without any prepayment penalty.

### ARTICLE 3

#### CONSTRUCTION ACCOUNT; INTERIM FINANCING; APPLICATION OF PROCEEDS; ARBITRAGE LIMITATIONS.

##### Section 301. The Construction Account; Fidelity Bond of Treasurer; Covenants Applicable if FmHA Purchases the Bonds; Application of Proceeds of Bonds; Other Transfers and Deposits.

The Treasurer of the District, or such other District official as shall be designated by the Commission, shall be the custodian of all funds belonging to and associated with the System, and such funds shall be deposited in the Depository Bank. All moneys in excess of the amount insured by the FDIC in the Construction Account shall be secured by the Depository Bank in accordance with U. S. Treasury Department Circular No. 176. The officials of the District entrusted with the receipt and disbursement of funds of the System and the custody of valuable property shall be covered by a fidelity bond in the amount of not less than \$43,000 (the "Fidelity Bond"), or such larger amount as the FmHA may require, which Fidelity Bond shall be effective and secured by a surety company approved by the FmHA so long as it is owner of any of the Bonds; the FmHA and the District shall be named co-obligees in such Fidelity Bond; and the amount thereof shall not be reduced without the written consent of the FmHA; provided that whenever sums in the various accounts referred to herein (other than the Construction Account) shall exceed \$43,000, the Fidelity Bond shall be increased accordingly as requested by and with the approval of the FmHA.

In like manner, the officials of the District entrusted with the receipt and disbursement of moneys in the Construction Account shall be covered by a separate fidelity bond (the "Construction Account Fidelity Bond") with the FmHA and the District named as co-obligees in the maximum amount anticipated to be on deposit in the Construction Account at any one time as determined by the Chairman, with the approval of the FmHA. The District will segregate and earmark its various funds, consistent with this Resolution, in such manner as to enable the District to obtain the lowest possible surety premium rate on such Fidelity Bond and Construction Account Fidelity Bond.

A. Covenants Applicable if FmHA Purchases Bonds. It is acknowledged that all covenants herein with reference to the necessity for approval of the FmHA, the necessity of observing FmHA procedure and the necessity of using FmHA forms (the "FmHA Forms"), shall apply only if the FmHA is the Purchaser of the Current Bonds and only so long as the FmHA holds the Bonds thereafter. In the event that the FmHA shall not be the Purchaser of the Current Bonds, or, after purchasing same, shall sell or transfer the Current Bonds to an Owner who shall not be the Government, all covenants herein with reference to the necessity for approval of the FmHA, the necessity of observing FmHA



procedure, and the necessity of using FmHA Forms, shall not be applicable.

B. Application of Proceeds of Current Bonds. The proceeds of the Current Bonds shall be applied as follows:

(1) Payment of Interim Financing, Costs of Construction Project, and Costs of Issuance of Bonds. Simultaneously with the delivery of the Bonds (to the extent of part or all of the proceeds of the Bonds), there shall immediately be paid to the Interim Lender (or the FmHA if Multiple Advances are made) an amount sufficient to pay principal of and interest on any temporary loans borrowed by the District in anticipation of the sale and delivery of the Current Bonds and/or of the receipt of Grant Proceeds. Also, at the time of delivery of the Current Bonds, there shall be paid all amounts then due and payable in connection with the costs of the Construction Project and in connection with the issuance of the Current Bonds.

(2) Construction Account; Grant Proceeds and District Contribution. If and to the extent that the proceeds of the Current Bonds shall be in excess of the amount necessary to pay the interest, principal and costs referred to in subparagraph B(1) of this Section, such excess amount shall immediately be deposited in the "Powell's Valley Water District Waterworks Revenue Bonds Construction Account" hereby created, which shall be established at the Depository Bank. There shall also be deposited in said Construction Account the Grant Proceeds, as and when received, or said Grant Proceeds may be applied, to the extent necessary, to liquidate or reduce any interim financing owed by the District at the time of receipt of Grant Proceeds. Simultaneously with or prior to the delivery of the Bonds, there shall also be deposited in the Construction Account the proceeds of the District contribution in the minimum amount of \$13,000 (less any amounts theretofore used for authorized purposes), to supplement the proceeds of the Bonds and Grant Proceeds in order to assure completion of the Construction Project.

(3) Withdrawal of Funds From Construction Account. Prior to the expenditure by the District of any moneys from the Construction Account, the District must obtain written approval from the FmHA as to such expenditures, if the FmHA is the Owner of any Outstanding Bonds. The proceeds of said Construction Account shall be withdrawn only on checks signed by the Treasurer (or by such other official of the District as may be authorized by the Commission), provided such Treasurer or such other official shall be covered by the Construction Account Fidelity Bond required by

Section 301 of this Resolution, in payment for services and/or materials supplied in connection with the Construction Project, as evidenced by (1) a Requisition Certificate; and (2) invoices and/or partial payment estimates bearing the written approval of the Engineers and the Chairman (or by such other official of the District as may be authorized by the Commission), and which invoices and/or partial payment estimates must have been reviewed and approved for payment by the designated FmHA official.

Written approval or certification of the Engineers shall not be required for matters not under the jurisdiction of the Engineers, such as legal fees, land acquisition and related items. The executed Requisition Certificates shall be retained by the Treasurer and need not be furnished to the Depository Bank, which shall be authorized to honor checks signed by the Treasurer.

During construction, the District shall disburse Construction Account funds in a manner consistent with FmHA Instruction 1942.17(p)(5) of Appendix "A" to FmHA Instruction 1942-A. Form FmHA 424-18, "Partial Payment Estimate" or similar form approved by FmHA, shall be used for the purpose of documenting periodic construction estimates, and shall be submitted to FmHA for review and acceptance. Form SF-271, "Outlay Report and Request for Reimbursement for Construction Programs," shall be prepared and submitted to FmHA to account for funds expended in the last 30-day period.

After the Bonds are delivered, the District shall prepare and submit Form SF-272, "Report of Federal Cash Transactions", to report the status of federal cash received during each prior monthly period. Form FmHA 440-11, "Estimate of Funds Needed for 30-Day Period Commencing \_\_\_\_\_", will be prepared by the District and submitted to FmHA in order that a periodic Advance of Federal Cash may be requested. Forms FmHA 440-11 and SF-272 will be submitted to FmHA simultaneously.

Periodic audits of the District's Construction Account records shall be made by FmHA as determined by it to be necessary.

(4) Transfer of Capitalized Interest to Prior Sinking Fund. There shall be transferred from the Construction Account an amount sufficient to provide for capitalized interest (initially estimated at \$7,000) during the construction of the Construction Project, as approved by the Engineers and by the FmHA. If and to the extent not theretofore expended in paying

interest on interim financing and if and to the extent then needed to pay interest during the remaining period of construction of the Construction Project, such amount so transferred from the Construction Account shall be deposited in the Prior Sinking Fund.

(5) Investment of Funds in Construction Account. Pending disbursement of amounts on deposit in the Construction Account, all such funds, or such portion of said amounts on deposit in said Construction Account as is designated by the Commission, shall be invested for the benefit of such Construction Account in Certificates of Deposit, savings accounts or U.S. Obligations which may be converted readily into cash, having a maturity date prior to the date when the sums invested will be needed for costs of the Construction Project (as determined by the Engineers, the Chairman and the representative of the FmHA), provided that to the extent that any amounts on deposit in said Depository Bank shall cause the total deposits of the District in said Depository Bank to exceed the amount insured by the FDIC, the same shall be continuously secured by a valid pledge of U.S. Obligations, having an equivalent market value, in conformity with Section 66.480 of the Kentucky Revised Statutes. Investments in Certificates of Deposit may be made only if a separate FmHA Form 402-4 Agreement is executed, if the FmHA has purchased any of the Bonds, and investments in Certificates of Deposit or savings accounts may be made only in such Certificates or accounts of an FDIC bank. Any such investments will be a part of the Construction Account, and income from such investments will be credited to the Construction Account. All such investments shall be subject to the limitations set out in Section 303 hereof.

(6) Statements of Contractors, Engineers, and Attorneys as to Payment. Prior to the delivery of the Current Bonds, if the FmHA is the Purchaser of the Current Bonds, the District will be required to provide the FmHA with statements from the Contractors, Engineers, and attorneys for the District that they have been paid to date in accordance with their contract or other agreements and, in the case of any Contractor, that he has paid his suppliers and subcontractors. Any exceptions must be authorized under FmHA Instructions 1942-A, Subsection 1942.17(n)(2).

(7) Disposition of Balance in Construction Account After Completion of Construction Project. When the Construction Project has been completed and all construction costs have been paid in full, as certified by the Engineers for the District and/or by the FmHA,

any balance then remaining in the Construction Account may, with the consent of the State Director of the FmHA, be applied to the cost of constructing additional extensions, additions and/or improvements to the System (the "Additional Construction"). If such Additional Construction is to be undertaken by the Contractors previously engaged in the Construction Project, such Additional Construction may be authorized by a change order.

If there is a balance remaining in the Construction Account after such Additional Construction, such balance (subject to legal requirements as to possible refund of any allocated portion of the balance derived from Grant Proceeds) shall be transferred to the Prior Sinking Fund, whereupon said Construction Account shall be closed. Such remaining balance in the Construction Account so transferred to the Prior Sinking Fund shall be used by the District immediately to prepay principal installments due on the Current Bonds in the inverse order of maturities without prepayment penalty, provided further that any balance insufficient to prepay at least \$1,000 of the principal payment falling due in any year on the Bonds will be transferred to the Depreciation Fund.

### Section 302. Interim Financing Authorization.

A. Interim Financing. The District shall use interim financing for the Construction Project during construction of that portion of the cost of the Construction Project financed by the Current Bonds, if available at reasonable rates and terms.

The borrowing of up to the aggregate sum of \$194,000 from the Interim Lender is hereby authorized; and the Chairman is hereby authorized to execute the Note in the name and on behalf of the District. Each advance under the Note shall evidence a loan by the Interim Lender to the District for services rendered and/or materials supplied in connection with the Construction Project, as evidenced by a Requisition Certificate.

Interim financing shall be disbursed as follows:

(1) At the direction of the District, the Interim Lender shall disburse the proceeds of the Note by cashier's checks directly to the parties entitled thereto as set forth in the Requisition Certificate; or

(2) At the direction of the District, the Interim Lender shall deposit the proceeds of the Note in the Construction Account, in which event amounts of the District on deposit therein shall, until expended to the extent that same shall exceed the amount insured by

the FDIC, be fully secured by a pledge of U.S. Obligations.

The aggregate of the principal amount of all Notes shall not exceed \$194,000. Each Note which is renewed or superseded shall be simultaneously cancelled by the Interim Lender and transmitted to the Treasurer. The rate of interest applicable to each Note shall not exceed a reasonable rate, which rate is subject to the approval of the FmHA.

The total authorized interim financing of \$194,000 shall be the maximum indebtedness which the District may owe at any one time to the Interim Lender; provided, however, that the District may reduce the amount owed by the District to the Interim Lender from time to time as and when funds are available to the District, whether derived from the proceeds of the Grant Proceeds, the proceeds of the sale of the Current Bonds or otherwise, and may reborrow from the Interim Lender additional amounts in anticipation of the further receipt by the District of additional proceeds from the Current Bonds and/or Grant Proceeds.

The District hereby covenants and agrees with the Interim Lender that upon the issuance and delivery of the Current Bonds and/or the receipt of said Grant Proceeds, the District will apply the proceeds thereof, to whatever extent may be necessary, in payment of the principal amount of the Note, together with accrued interest thereon to the date of such payment; and the proceeds of the Current Bonds and Grant Proceeds are hereby pledged therefor, and such pledge shall constitute a first and prior charge against said proceeds.

Although the proceeds of the Current Bonds and Grant Proceeds are pledged to the repayment of said interim financing, it is recognized that the Grant Proceeds may be applied to the extent required at the time of receipt of the Grant Proceeds, to the payment of costs of the Construction Project due and owing by the District at the time of receipt of such Grant Proceeds, rather than to the repayment of portions of the interim financing at that time. If and to the extent that the Grant Proceeds are in excess of any costs of the Construction Project due and owing at the time of receipt thereof, such Grant Proceeds may be applied, in the same manner as set out hereinabove, to the reduction of the amount of the interim financing, after which, such interim financing may again be increased as theretofore.

It is understood that the foregoing constitutes an alternative method of obtaining interim financing, and does not preclude the authorization and sale, by public advertisement or otherwise, of bond anticipation notes and/or grant anticipation notes to the most favorable bidder on the open market, by concurrent or subsequent proceedings of the District.

**B. Multiple Advances by FmHA.** In the event the Current Bonds are purchased by the FmHA, and in the event the

District is unable to obtain a commitment for interim financing for the Construction Project from any Interim Lender at reasonable rates and terms, the Chairman is authorized to request Multiple Advances of loan funds from the FmHA.

If the FmHA agrees to make Multiple Advances to the District pending the delivery of the Current Bonds, the Chairman is hereby authorized to execute in the name and on behalf of the District any number of Notes. Each such Note, evidencing an advance of funds by the FmHA to the District, shall be in the form prescribed by the FmHA.

Each request for an advance from the FmHA shall be accompanied by a Requisition Certificate. The District will also furnish to the FmHA, prior to the receipt of each Multiple Advance, whatever additional documentation shall be requested by the FmHA, including an updated supplemental title opinion of Local Counsel and an updated supplemental preliminary legal opinion of Bond Counsel.

The proceeds of any Multiple Advances shall be either (i) disbursed directly to the parties entitled thereto for services and/or materials supplied in connection with the Construction Project; or (ii) deposited into the Construction Account and disbursed in accordance with the provisions of Section 301B(3) hereof, in which event amounts on deposit in such Construction Account shall, until expended, to the extent that same shall exceed the amount insured by the FDIC, be fully secured by a pledge of U.S. Obligations.

The proceeds of the Current Bonds are hereby pledged to the repayment of such Multiple Advances, and such pledge shall constitute a first and prior pledge against such proceeds. The District further pledges the gross revenues of the System to the repayment of said Multiple Advances, subject to the priority of the pledges securing the Prior Bonds.

Section 303. Arbitrage Limitations on Investment of Proceeds. The District covenants and certifies, in compliance with the Code, as follows:

(a) The District certifies, on the basis of known facts and reasonable expectations on the date of adoption of this Resolution, that it is not expected that the proceeds of the Current Bonds will be used in a manner which would cause the Current Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code. The District covenants to the Purchaser and/or Owners of the Current Bonds that (1) the District will make no use of the proceeds of said Current Bonds which, if such use had been reasonably expected on the date of issue of such Current Bonds, would have caused such Current Bonds to be "arbitrage bonds"; and (2) the District will comply with all of

the requirements of the Code to whatever extent is necessary to assure that the Current Bonds shall not be treated as or constitute "arbitrage bonds" and that the interest on the Bonds shall be excludable from gross income for federal income tax purposes.

(b) The District certifies, based on information furnished by the Engineers, and on known facts and reasonable expectations at this time, as follows:

- (1) that the District has entered into a contract with the Engineers for engineering services in connection with the Construction Project financed by the Current Bonds and the fees to be paid to such Engineers will exceed 2-1/2% of the total cost of the Construction Project;
- (2) that work on the Construction Project has commenced or will commence within six (6) months from the date of issuance of the Current Bonds or from the date of the first interim financing loan made under this Resolution, whichever occurs first;
- (3) that the construction of said Construction Project will proceed thereafter to completion with due diligence on the part of the District;
- (4) that all of the proceeds of the Current Bonds, with the possible exception of five percent (5%) of the proceeds of the Bonds, will be expended on the costs of the Construction Project within less than three (3) years from the date of issuance of the Current Bonds;
- (5) that it is anticipated that amounts on deposit in the Prior Sinking Fund will be used within thirteen (13) months from the date of deposit for the payment of debt service on the Outstanding Bonds, and that, except for an amount equal to not more than the greater of (i) one-twelfth (1/12) of debt service requirements of the Outstanding Bonds for the then ensuing year; or (ii) one (1) year's earnings on the Prior Sinking Fund, such Prior Sinking Fund will be depleted through such application for current debt service requirements of the Outstanding Bonds;

- (6) that it is not anticipated that amounts will be accumulated in any reserve fund anticipated to be used for debt service on the Outstanding Bonds in excess of an amount reasonably required to sell the Current Bonds; provided, however, in no event shall such amount exceed the lesser of (i) the maximum annual debt service on all Outstanding Bonds; (ii) 1.25 times the average annual debt service for principal and interest on all Outstanding Bonds; or (iii) more than 10% of the face amount (par) of the Current Bonds, plus 10% of the face amount of all Prior Bonds (15% as to any Prior Bonds issued prior to August 16, 1986);
- (7) that it is not reasonably anticipated that amounts accumulated in the Depreciation Fund will be used for payment of the debt service on any Outstanding Bonds, even though such Depreciation Fund will be available if necessary to prevent a default in the payment of principal and interest on the Bonds; and
- (8) that the District has not been advised of any listing or contemplated listing by the Internal Revenue Service determining that the foregoing type of certification with respect to the District's obligations may not be relied on.

(c) The District covenants that neither the proceeds of the Bonds, nor Non-Exempt Revenues (hereinafter defined) of the District will be invested in investments which will produce a net adjusted yield in excess of the net interest cost (effective yield) of the Current Bonds, if such investment would cause the Current Bonds to be treated as "arbitrage bonds"; provided, however, that such proceeds and/or revenues may be invested to whatever extent and whenever such Code permits same to be invested without causing the Current Bonds to be treated as "arbitrage bonds".

"Non-Exempt Revenues" within the meaning of the foregoing shall be deemed to refer to revenues of the District deposited in any of the funds earmarked for or reasonably expected to be used for the payment of debt service on the Outstanding Bonds, in excess of Exempt Revenues (hereinafter defined).

"Exempt Revenues" shall consist of the following:

- (1) amounts deposited in the Prior Sinking Fund for the purpose of paying debt service on any



Outstanding Bonds within thirteen (13) months from the date of deposit;

- (2) amounts deposited in any reserve earmarked for or anticipated to be used for debt service on Outstanding Bonds, to the extent that such deposits do not cause the total amount of such reserves, deposits and other excess Non-Exempt Revenues, to exceed the limitations referred to in Section 303(b)(6) above, for which adequate provision will have been made to comply with such limitations;
- (3) amounts deposited in the Depreciation Fund, Operation and Maintenance Fund, or any other fund (however designated) reasonably expected to be used for extensions, additions, improvements, repairs or replacements to the System, and not reasonably expected to be used to pay debt service (even if pledged to be used to pay debt service in the event of the unexpected inadequacy of other funds pledged for that purpose) of Outstanding Bonds; and
- (4) an amount of the original proceeds of the Current Bonds if such amount does not exceed the lesser of five percent (5%) of the proceeds of the Current Bonds or \$100,000.

If and to the extent that any Non-Exempt Revenues are on deposit and are available for investment, such funds shall be subject to the investment limitation referred to in Section 303(a) above.

Prior to or at the time of delivery of the Current Bonds, the Chairman and/or the Treasurer (who are jointly and severally charged with the responsibility for the issuance of the Current Bonds) are authorized to execute the appropriate certification with reference to the matters referred to above, setting out all known and contemplated facts concerning such anticipated construction, expenditures and investments, including the execution of necessary and/or desirable certifications of the type contemplated by Section 148 of the Code in order to assure that interest on the Current Bonds shall be excludable from gross income for federal income tax purposes and that the Current Bonds will not be treated as "arbitrage bonds".

## ARTICLE 4

### CURRENT BONDS ON A PARITY WITH PRIOR BONDS; FLOW OF FUNDS.

Section 401. Current Bonds on a Parity with Prior Bonds. It is hereby certified and declared that prior to the issuance of any of the Current Bonds, there will have been procured and filed with the Secretary of the District (a) a letter from the FmHA to the effect that the FmHA agrees to the issuance of the Current Bonds ranking on a parity as to security and source of payment with the Prior Bonds, all of which are owned by the FmHA, together with (b) a certification signed by the FmHA to the effect that a legend has been typed, stamped or otherwise affixed on each of the Prior Bonds held by the FmHA, evidencing the agreement of the FmHA as the then Owner of the Prior Bonds, to the issuance of the Current Bonds so as to rank on a parity with the Prior Bonds, such legend to be in substantially the following form:

The holder of this Bond has consented to the issuance of \$194,000 of Powell's Valley Water District Waterworks Revenue Bonds of 1991 ranking on a parity as to security and source of payment with this Bond.

Accordingly, it is hereby found and declared that the Current Bonds shall rank and be payable on a parity with said outstanding Prior Bonds from the gross income and revenues of the System.

Section 402. Provisions of Prior Bond Resolution Incorporated Herein; Adjustments in Required Deposits. All proceedings preliminary to and in connection with the issuance of said outstanding Prior Bonds of the District, including provisions made for (i) the receipt, custody and application of the proceeds of said Prior Bonds; (ii) the operation of the System on a revenue-producing basis; (iii) the segregation, allocation and custody of the revenues derived from the operation of the System; (iv) the enforcement and payment of said Prior Bonds; and (v) the depreciation of the System; and all other covenants for the benefit of bondowners set out in the Prior Bond Resolution, are hereby ratified and confirmed and shall continue in force and inure to the security and benefit of the Current Bonds, as well as of the Prior Bonds, the same as if such provisions and proceedings were set out in full herein; provided, further, that the amount of the revenues of the System, to be paid into the Prior Sinking Fund during each of the fiscal years so long as any of the Prior Bonds and Current Bonds are outstanding, shall be sufficient to pay when due the interest upon and principal of all of the Prior Bonds and of all of the Current Bonds, as hereinafter specified.

A. Revenue Fund. A separate and special fund or account of the District, distinct and apart from all other funds and accounts, was heretofore created by the Prior Bond Resolution, which fund has been and is designated and identified as the Powell's Valley Water District Waterworks Revenue Fund, in the custody of the Treasurer, which Fund has been deposited with and shall continue to be maintained and deposited with the Depository Bank, so long as any of the Prior Bonds, the Current Bonds or any Parity Bonds are outstanding. The District covenants and agrees that it will continue to deposit therein, promptly as received from time to time, all revenues of the System, as same may be extended and improved from time to time. The moneys in the Revenue Fund from time to time shall continue to be used, disbursed and applied by the District only for the purpose and in the manner and order of priorities specified in the Prior Bond Resolution, as hereinafter modified by this Resolution, all as permitted by the Act, and in accordance with previous contractual commitments.

B. Adjustments in Required Prior Sinking Fund Deposits. In accordance with the requirements of Sections 402 and 604 of the 1987 Bond Resolution, it is hereby recognized that the District is obligated upon the issuance of the Current Bonds to provide for additional debt service requirements of the Current Bonds.

Accordingly, it is hereby provided that Section 402 of the 1987 Bond Resolution is amended and supplemented to provide further as follows:

At or after the delivery of the Current Bonds, there shall be transferred from the Construction Account to the Prior Sinking Fund an amount sufficient to provide for capitalized interest (initially estimated at \$7,000) on the Current Bonds during the construction of the Construction Project, if and to the extent not theretofore expended in paying interest on interim financing and if and to the extent then needed to pay interest during the remaining period of construction of the Construction Project.

Until the expiration of the month in which interest on the Current Bonds is last payable out of the sum set aside into the Prior Sinking Fund as capitalized interest, there shall continue to be transferred and deposited (as heretofore required by Section 402 of the Prior Bond Resolution) in each month from the Revenue Fund into the Prior Sinking Fund on or before the twentieth (20th) day of each month, for payment of interest on and principal of the Prior Bonds, a sum equal to the total of the following:

- (a) An amount equal to one-sixth (or such larger amount as is necessary) of the next succeeding six-month interest installment to become due on the Prior Bonds, plus

- (b) A sum equal to one-twelfth of the principal of any Prior Bonds maturing on the next succeeding January 1.

After the expiration of the month in which interest on the Current Bonds is last payable out of the sum set aside into the Prior Sinking Fund as capitalized interest, the deposits required by subsections (a) and (b) above shall be superseded, and thenceforth and thereafter, there shall be transferred in each month from the Revenue Fund and deposited into the Prior Sinking Fund on or before the twentieth (20th) day of each month, for payment of interest on and principal of all of the Outstanding Bonds, a sum equal to the total of the following:

- (1) An amount equal to one-sixth (or such larger amount as is necessary) of the next succeeding six-month interest installment to become due on the Outstanding Bonds, plus
- (2) A sum equal to one-twelfth (or such larger amount as is necessary) of the principal of the Outstanding Bonds maturing on the next succeeding January 1.

If the District for any reason shall fail to make any monthly deposit as required, then an amount equal to the deficiency shall be set apart and deposited into the Prior Sinking Fund out of the first available revenues in the ensuing months, which amount shall be in addition to the monthly deposit otherwise required during such succeeding months. Whenever there shall accumulate in the Prior Sinking Fund amounts in excess of the requirements during the next twelve (12) months for paying the principal of and interest due on the Outstanding Bonds, as same fall due, such excess may be used for redemption or prepayment of any of such Outstanding Bonds prior to maturity, as set forth in Section 204 hereof and as provided in the Prior Bond Resolution.

C. Monthly Principal and Interest Payments if Requested by the FmHA, or Other Owner of All Outstanding Bonds. So long as any of the Prior Bonds and Current Bonds are held or insured by the FmHA, the District shall, if requested by the FmHA, make the payments required by the preceding Section 402(B), in monthly installments to the FmHA or to the insured Owners of the Prior Bonds and Current Bonds; provided further that at the option of any other Owner of all of the Prior Bonds and Current Bonds, such payments shall similarly be made in monthly payments to such Owner.

D. Operation and Maintenance Fund. After the completion of the transfers required in this Section 402 to be made in each month, there shall next be transferred monthly from the Revenue Fund and deposited into said Operation and Maintenance Fund, sums sufficient to meet the current expenses of operating

and maintaining the System. The balance maintained in said Operation and Maintenance Fund shall not be in excess of the amount required to cover anticipated expenditures for a two-month period pursuant to the District's annual budget.

E. Adjustment in Depreciation Fund Deposits. It is hereby recognized that in Section 4020 of the 1987 Bond Resolution, provision was made for the accumulation of a Depreciation Fund to which, from the balance of the funds remaining after the current Prior Sinking Fund deposit requirements are satisfied, there shall be set aside and paid in each month, as the next payment from the Revenue Fund, the sum of \$255 in each month, until there has been accumulated in such Depreciation Fund the sum of \$30,600, after which no further deposits are required by the 1987 Bond Resolution to be made into such Depreciation Fund except to replace withdrawals.

Pursuant to the provisions of Section 604 of the 1987 Bond Resolution which requires that an adjustment be made in the Depreciation Fund upon the issuance of bonds ranking on a parity with the Prior Bonds, it is hereby determined that upon the issuance of the Current Bonds, and upon completion of the Construction Project, as certified by the Engineers and by the FmHA, the sum of \$351 (increased from \$255) each month shall be deposited into the Depreciation Fund until there is accumulated in such Depreciation Fund the sum of \$42,120 (increased from \$30,600), which amount shall be maintained, and when necessary, restored to said sum of \$42,120, so long as any of the Prior Bonds and/or Current Bonds are outstanding and unpaid.

In accordance with the provisions of Section 11C of the 1970 Bond Resolution, and as further security for the Bondowners and for the benefit of the District, it has been and is hereby provided that in addition to the monthly transfers required to be made from the Revenue Fund into the Depreciation Fund, there shall be deposited into said Depreciation Fund all proceeds of connection fees collected from potential customers (except the amounts necessary to pay the actual costs and service connections applicable to said potential customers) to aid in the financing of the cost of future extensions, additions and/or improvements to the System, plus the proceeds of any property damage insurance (not otherwise used to replace damaged or destroyed property); and any such amounts or proceeds so deposited shall be used solely and only for the purposes intended.

Moneys in the Depreciation Fund may be withdrawn and used by the District, upon appropriate certification of the Commission, for the purpose of paying the cost of unusual or extraordinary maintenance, repairs, renewals and replacements not included in the annual budget of current expenses and/or of paying the costs of constructing future extensions, additions and/or improvements to the System which will either enhance its revenue-producing capacity or will provide a higher degree of service, and when necessary, for the purpose of making payments

of principal and interest on the Prior Bonds and/or Current Bonds if the amount on deposit in the Prior Sinking Fund is not sufficient to make such payments.

All funds in the Prior Sinking Fund and the Depreciation Fund shall be deposited in the Depository Bank, or such portion thereof as is designated by the Commission. All funds in the Prior Sinking Fund and the Depreciation Fund shall be invested for the benefit of such respective Funds in Certificates of Time Deposit or savings accounts of the Depository Bank or in U.S. Obligations which may be converted readily into cash, having a maturity date prior to the date when the sums invested will be needed for the purposes for which such funds may be expended, provided that to the extent that any amount of the District on deposit in the Depository Bank shall cause the total deposits of the District in said Depository Bank to exceed the amount insured by the FDIC, such excess amount shall be continuously secured by a valid pledge of U.S. Obligations, having an equivalent market value, in conformity with Section 66.480 of the Kentucky Revised Statutes.

If the FmHA has purchased any of the Outstanding Bonds, investments in Certificates of Deposit may be made only if a separate FmHA Form 402-4 Agreement is executed. Any such investments will be a part of the respective Funds from which the proceeds invested are derived, and income from such investments will be credited to such respective Funds. All investments of funds derived from proceeds of the Outstanding Bonds shall be subject to the applicable limitations set out in Section 303 hereof.

**F. Surplus Funds.** Subject to the provisions for the disposition of the income and revenues of the System as set forth hereinabove, which provisions are cumulative, and after paying or providing for the payment of debt service on any subordinate obligations, there shall be transferred within sixty (60) days after the end of each fiscal year, to the Prior Sinking Fund, the balance of excess funds in the Revenue Fund on such date, to be applied to the maximum extent feasible, to the prompt purchase or redemption of Outstanding Bonds.

**G. General Requirements as to Funds.** All payments into the Funds shall be made on or before the twentieth (20th) day of each month, except that when the twentieth (20th) day of any month shall be a Saturday, Sunday or a legal holiday, then such payment shall be made on the next succeeding business day.

All moneys held in any of the Funds shall be kept apart from all other District funds and shall be deposited in the Depository Bank, and all such deposits which cause the aggregate of all deposits of the District therein to be in excess of the amount secured by FDIC, shall (unless invested as herein authorized) be secured by a surety bond or bonds or by a pledge of U.S. Obligations, having a market value equivalent to such deposit.

## ARTICLE 5

### COVENANTS OF DISTRICT

Section 501. Rates and Charges. The District shall charge such rates and charges for all services and facilities rendered by the System, which rates and charges shall be reasonable and just, taking into account and consideration the cost and value of the System, the cost of maintaining, repairing and operating the same and the amounts necessary for the payment of principal of and interest on Outstanding Bonds against the System. The District shall charge such rates and charges as shall be adequate to meet the requirements of Articles 4 and 5 hereof.

The District covenants that it will not reduce the rates and charges for the services rendered by the System without first filing with the Secretary a certification of an Independent Consulting Engineer that the annual net revenues (defined as gross revenues less current expenses) of the then existing System for the fiscal year preceding the year in which such reduction is proposed, as such annual net revenues are adjusted, after taking into account the projected reduction in annual net revenues anticipated to result from any such proposed rate decrease, are equal to not less than 120% of the average annual debt service requirements for principal and interest on all of the then Outstanding Bonds payable from the revenues of the System, calculated in the manner specified in Section 603 hereof.

Section 502. Books and Accounts; Audit. If and to the extent not now fully required by the Prior Bond Resolution, the District shall maintain proper records and accounts relating to the operation of the System and the District's financial affairs; and the Owners of any of the Prior Bonds or the Current Bonds, or their authorized representatives, shall have the right at all reasonable times to inspect the facilities of the System and all records, accounts and data relating thereto. An annual audit shall be made of the books and accounts pertinent to the System by a Certified Public Accountant licensed in Kentucky. No later than sixty (60) days after the close of each Fiscal Year, copies of such audit reports certified by such Certified Public Accountant shall be promptly mailed to the FmHA without request, so long as the Government is the Owner of any of the Current Bonds, and to any Bondowner that may have made a written request for same.

Monthly operating reports shall be furnished to the FmHA and to any Bondowner requesting same, during the first two (2) years of operation after completion of the Construction Project, and whenever and so long as the District is delinquent in any of the covenants set out in the Prior Bond Resolution or this Current Bond Resolution. Thereafter, quarterly operating reports shall be furnished at all other times to the FmHA and to any Bondowner requesting the same.

Section 503. System to Continue to be Operated on Fiscal Year Basis; Annual Budget. While any of the Prior Bonds, the Current Bonds, and any Parity Bonds are outstanding and unpaid, and to the extent permitted by law, the System shall continue to be operated and maintained on a Fiscal Year basis.

Not later than sixty (60) days after the end of each Fiscal Year, beginning immediately after the issuance of the Current Bonds, the District agrees to cause to be prepared a detailed statement of income and expenditures for the Fiscal Year, a current financial statement and a proposed annual budget of current expenses (the "Proposed Budget") of the System for the then ensuing Fiscal Year, itemized on the basis of monthly requirements. A copy of said Proposed Budget shall be mailed to any Bondowner who may request in writing a copy of such Proposed Budget and to the FmHA without request if the Government is the Owner of any of the Current Bonds.

For the purpose of the Proposed Budget, current expenses shall include all reasonable and necessary expenses of operating, repairing, maintaining and insuring the System, but shall exclude depreciation and payments into the Prior Sinking Fund and the Depreciation Fund. The District covenants that the current expenses incurred in any year will not exceed the reasonable and necessary amounts therefor, and that the District will not expend any amount or incur any obligation for operation or maintenance and repair in excess of the amounts provided for current expenses in the annual budget, except upon resolution by the District that such expenses are necessary to operate and maintain the System.

Not later than sixty (60) days after the end of each Fiscal Year, the District shall prepare an estimate of gross revenues to be derived from the operation of the System for said Fiscal Year, and, to the extent that said gross revenues are insufficient (a) to pay debt service requirements on all Outstanding Bonds during the ensuing Fiscal Year, (b) to accumulate and maintain all required reserves enumerated herein and (c) to pay current expenses, the District shall revise the rates and charges sufficiently to provide the funds required.

If the Owners of at least 50% of the principal amount of the Outstanding Bonds, or the Government so long as it is the Owner of any of said Outstanding Bonds, so request, the Commission shall hold an open hearing not later than thirty (30) days before the beginning of the ensuing Fiscal Year, at which time any Bondowner may appear by agent or attorney and may file written objections to such proposed budget. Notice of the time and place of such hearing shall be mailed at least fifteen (15) days prior to the hearing to each registered Bondowner and to the Government.

The District covenants that annually before the first day of July, the annual budget for the then current Fiscal Year



will be adopted substantially in accordance with the Proposed Budget, and that no expenditures for operation and maintenance expenses of the System in excess of the budgeted amount shall be made during such Fiscal Year unless directed by said District by a specific resolution duly adopted.

Section 504. General Covenants. The District, through its Commission, hereby covenants and agrees with the Owners of the Current Bonds that:

- (1) It will faithfully and punctually perform all duties with reference to the System required by the Constitution and laws of the Commonwealth of Kentucky;
- (2) It will make and collect reasonable and sufficient rates and charges for services and facilities rendered by the System;
- (3) It will segregate the revenues and income from the System and make application thereof consistent with and as provided by this Resolution;
- (4) Unless the written consent of the Owners of a majority of the principal amount of the Outstanding Bonds has been obtained, the District agrees not to sell, lease, mortgage or in any manner dispose of any integral part of the System, including any and all appurtenances thereto and extensions, additions and/or improvements that may be made thereto, until all of the Outstanding Bonds shall have been paid or provided for in full, as provided herein; subject to the provisions of Section 607 hereof;
- (5) It will maintain in good condition and continuously operate the System and appurtenances thereto and will charge such rates and charges for the services rendered thereby so that the gross income and revenues will be sufficient at all times (i) to pay the interest on and principal of the Outstanding Bonds as same become due; (ii) to pay the cost of operating and maintaining the System; and (iii) to provide for an adequate depreciation account; and
- (6) It will carry and maintain insurance on properties of the System subject to loss or damage in amounts and against hazards substantially in accordance with the practices of other districts, cities or corporations which own and maintain waterworks systems under similar conditions; and so long as the Government is the Owner of any of the Outstanding Bonds, the Government will be listed

as co-beneficiary on any such policy; and the District shall further comply with the insurance requirements of Section 506 hereof (involving insurance on motors, tanks and structures).

Section 505. Other Covenants Applicable So Long as FmHA Owns Any Bonds. So long as the FmHA shall own any of the Current Bonds, the District shall comply with such FmHA regulations, requirements and requests as shall be made by the FmHA, including the furnishing of operating and other financial statements, in such form and substance and for such periods as may be requested by the FmHA, the carrying of insurance of such types and in such amounts as the FmHA may specify, with insurance carriers acceptable to the FmHA and compliance with all of the terms and conditions of the Loan Resolution (FmHA Form 442-47) adopted and executed by the District, which is hereby authorized, approved, ratified and confirmed.

Section 506. Insurance on Motors, Tanks and Structures. If and to the extent not now fully required by the Prior Bond Resolution, the District shall (a) immediately after the adoption of this Resolution and (b) at the time of final acceptance of the Construction Project from the Contractors, insure all electric motors, elevated water storage tanks, pumping stations and major structures of the System in an amount recommended by the Engineers and approved by the FmHA, so long as the FmHA is the Owner of any of the Current Bonds, for the hazards usually covered in such area, and shall similarly insure same in an amount recommended by the Engineers, without the necessity of approval by the FmHA if and whenever the District has Outstanding Bonds against the System and none of such Outstanding Bonds are owned by the FmHA.

## ARTICLE 6

### INFERIOR BONDS AND PARITY BONDS

Section 601. Inferior Bonds. Except as provided below in this Article, the District shall not, so long as any of the Prior Bonds, Current Bonds and/or Parity Bonds are outstanding, issue any additional bonds payable from the revenues of the System unless the security and/or pledge of the revenues and statutory mortgage lien to secure such additional bonds are made inferior and subordinate in all respects to the security of the Prior Bonds, the Current Bonds and any Parity Bonds.

The District expressly reserves the right at any time to issue its bonds or other obligations payable from the revenues of the System and not ranking on a parity basis with the Current Bonds, without any proof of previous earnings or net revenues, provided that the consent of the FmHA must be obtained prior to the issuance of any inferior bonds so long as the FmHA owns any of the Prior Bonds, the Current Bonds or any Parity Bonds, and provided further that, after the initial completion of the Construction Project, such inferior bonds may be issued only for the purpose of providing for future extensions, additions and/or improvements to the System, and only in express recognition of the priorities, liens and rights created and existing for the security, source of payment and protection of the Prior Bonds, the Current Bonds and any Parity Bonds; provided further, that nothing in this Section is intended to restrict or shall be construed as a restriction upon, the ordinary refunding of the Prior Bonds, the Current Bonds and any other Parity Bonds.

Section 602. Parity Bonds to Complete the Construction Project. The District hereby certifies, covenants and agrees that in the event that the cost of completion of the construction of the Construction Project shall exceed the moneys available to the District from any and all sources, the District shall have the right, if necessary, to provide for such excess, and only such excess, through the issuance of Parity Bonds, provided the District has obtained a certification from the Engineers to the effect that it is necessary to issue the desired amount of Parity Bonds in order to enable the District to pay the cost (not otherwise provided) of the completion of the Construction Project, and provided the District has complied with the provisions of Section 603 below or has obtained:

- (a) the consent of the FmHA as the Owner of the Prior Bonds at that time or the consent of any other Owners of the Prior Bonds, and
- (b) the consent of (1) the FmHA if the Government is the purchaser of the Current Bonds; or (2) the Owners of at least 75% of the principal amount of the Current Bonds outstanding, if the Current

Bonds have been issued, sold and delivered and are held by Owners other than the Government.

**Section 603. Parity Bonds to Finance Future**

**Improvements.** In the Prior Bond Resolution, the District reserved the right and privilege, and does hereby reserve the right and privilege, of issuing additional Parity Bonds, but only under the conditions specified in the Prior Bond Resolution, which conditions are hereinafter repeated, taking into account the issuance of the Current Bonds, as follows:

The District further reserves the right to add new waterworks facilities and/or to finance future extensions, additions and/or improvements to the System by the issuance of one or more additional series of Parity Bonds to be secured by a parity lien on and ratably payable on a parity with the Current Bonds, from the revenues of the System, and also secured by a parity statutory mortgage lien on the System, subject to the priority of the Prior Bonds, provided:

(a) The facilities to be constructed from the proceeds of the additional Parity Bonds are made a part of the System and their revenues are pledged as additional security for the additional Parity Bonds and for the outstanding Prior Bonds and Current Bonds.

(b) The District is in compliance with all covenants and undertakings in connection with all of the Outstanding Bonds and payable from the revenues of the System or any part thereof.

(c) The annual net revenues (defined as gross revenues less operation and maintenance expenses), of the then existing System for the Fiscal Year preceding the year in which such Parity Bonds are to be issued, adjusted as hereinafter provided, shall be certified by an independent Certified Public Accountant to be equal at least one hundred twenty percent (120%) of the average annual debt service requirements for principal and interest on all Outstanding Bonds payable from the revenues of the System, including such requirements of the Prior Bonds, the Current Bonds, any Parity Bonds then outstanding plus the anticipated debt service requirements of any Parity Bonds then proposed to be issued. The calculation of average annual debt service requirements of principal and interest on the additional Parity Bonds to be issued shall, regardless of whether such additional Parity Bonds are to be serial or term bonds, be determined on the basis of the principal of and interest on such Parity Bonds being payable in approximately equal annual installments.

(d) The annual net revenues referred to above may be adjusted for the purpose of the foregoing computations to reflect:

(1) any revisions in the schedule of rates or charges being imposed at the time of the issuance of any such additional Parity Bonds, and

(2) any increase in the annual net revenues to be realized from the proposed extensions, additions and/or improvements being financed (in whole or in part) by such additional Parity Bonds;

provided all such adjustments shall be based upon and included in a certification of an Independent Consulting Engineer.

(e) Compliance with Section 603(a) through (d) shall not be necessary for the issuance of Parity Bonds if the District has obtained (1) the written consent of the FmHA for the issuance of such Parity Bonds, if the FmHA is the Owner of any of the Prior Bonds or any of the Current Bonds at the time of issuance of such Parity Bonds; (2) the written consent of the Owners of all of the then outstanding Prior Bonds; and (3) the written consent of the Owners of 75% of the principal amount of the then outstanding Current Bonds and any other Parity Bonds; provided, however, that if the District obtains the written consent of the Owners of all Current Bonds and of all Parity Bonds outstanding against the System, no other prerequisite need be complied with by the District in order to issue Parity Bonds.

(f) Reference is made to Section 606 hereof as to the necessity of obtaining the written consent of the FmHA for the issuance of future bonds encumbering the System while the FmHA owns any Bonds payable from the revenues of the System.

Section 604. Covenants to be Complied with at Time of Issuance of Parity Bonds. The District hereby covenants and agrees that in the event any Parity Bonds are issued, the District shall:

(a) Adjust the monthly amount to be deposited into the Prior Sinking Fund on the same basis as that prescribed in the provisions establishing such Prior Sinking Fund, to reflect the average annual debt service requirements of the Parity Bonds;

(b) Adjust the minimum annual amount to be deposited monthly into the Depreciation Fund on the same basis as that prescribed in the provisions

establishing such Depreciation Fund, taking into account the future debt service requirements of all second lien bonds which will then be outstanding against the System; and

(c) Make such Parity Bonds payable as to principal on January 1 of each year in which principal falls due and payable as to interest on January 1 and July 1 of each year until the final maturity of such Parity Bonds.

Section 605. Prepayment Provisions Applicable to Parity Bonds. If, in connection with any subsequently issued series of Parity Bonds, it is provided that excess revenues in the Revenue Fund shall be used to prepay Outstanding Bonds in advance of scheduled maturity, or if the District at its option undertakes to prepay Outstanding Bonds in advance of scheduled maturity, it is agreed and understood, for so long as the Government owns any of the Outstanding Bonds, that no such prepayment will be effected without the approval of the FmHA.

Section 606. Consent of the FmHA Regarding Future Bonds. Notwithstanding any other provisions of this Resolution, the District agrees that so long as the Government owns any Outstanding Bonds against and/or payable from the revenues of the System, the District will not issue any future bonds, notes or other obligations against, secured by or payable from the revenues of the System without the written consent of the FmHA.

Section 607. Priority of Lien; Permissible Disposition of Surplus or Obsolete Facilities. The District covenants and agrees that so long as any of the Prior Bonds and/or Current Bonds are outstanding, the District will not sell or otherwise dispose of any of the facilities of the System, or any part thereof, and, except as provided above, the District will not create or permit to be created any charge or lien on the revenues thereof ranking equal or prior to the charge or lien of the Prior Bonds or Current Bonds. Notwithstanding the foregoing, the District may at any time permanently abandon the use of, or sell at fair market value, any part of the facilities of the System, provided that:

- (a) The District is in compliance with all covenants and undertakings in connection with all of the Outstanding Bonds, and the required reserves for such Outstanding Bonds will have been accumulated;
- (b) The District will, in the event of any such sale, apply the proceeds to either (1) redemption of Outstanding Bonds in accordance with the provisions governing prepayment of bonds in advance of maturity; or (2) replacement of the facility so disposed of by another facility, the revenues of

which shall be incorporated into the System, as hereinbefore provided;

- (c) The District certifies, in good faith, prior to any abandonment of use, that the facilities to be abandoned are no longer economically feasible of producing net revenues; and
- (d) The District certifies, in good faith, that the estimated net revenues of the remaining facilities of the System for the then next succeeding Fiscal Year, plus the estimated net revenues of the facilities, if any, to be added to the System, comply with the earnings requirements hereinbefore provided in the provisions and conditions governing the issuance of Parity Bonds.

Notwithstanding any other provisions hereof, so long as any of the Prior Bonds and/or Current Bonds are held by the Government, the District shall not dispose of its title to the System or to any part thereof, without first obtaining the written consent of the FmHA.

## ARTICLE 7

### DEFAULT AND CONSEQUENCES

Section 701. Events of Default. The following items shall constitute an Event of Default on the part of the District:

- (a) The failure to pay principal of the Current Bonds or the Prior Bonds as and when same shall become due and payable, either at maturity or by proceedings for redemption.
- (b) The failure to pay any installment of interest on the Current Bonds or the Prior Bonds when the same shall become due and payable or, if any or all of the Outstanding Bonds are owned by the FmHA, within thirty (30) days thereafter.
- (c) The default by the District in the due or punctual performance of any of the covenants, conditions, agreements and provisions contained in the Current Bonds, the Prior Bonds, the Prior Bond Resolution or in this Resolution.
- (d) The failure to promptly repair, replace or reconstruct facilities of the System that have been damaged and/or destroyed.
- (e) The entering of any order or decree with the consent or the acquiescence of the District, appointing a receiver of all or any part of the System or any revenues thereof; or if such order or decree shall be entered without the acquiescence or consent of the District, its failure to have the order vacated, discharged or stayed on appeal within sixth (60) days after entry.

Section 702. Consequences of Event of Default. Any Owner of the Current Bonds may enforce and compel the performance of all duties and obligations of the District set forth herein. Upon the occurrence of an Event of Default, then upon the filing of a suit by any Owner of said Bonds, any court having jurisdiction of the action may appoint a receiver to administer said System on behalf of the District with power to charge and collect rates sufficient to provide for the payment of operating and maintenance expenses and for the payment of principal of and interest on the Prior Bonds and the Current Bonds and to provide and apply the income and revenues in conformity with this Resolution and with the laws of the Commonwealth of Kentucky.

The District hereby agrees to transfer to any bona fide receiver or other subsequent operator of the System, pursuant to any valid court order in a proceeding brought to enforce collection or payment of the District's obligations, all contracts,



including specifically the Water Purchase Contract, and other rights of the District pertaining to the System, conditionally, for such time only as such receiver or operator shall operate by authority of the court. Upon the occurrence of an Event of Default, the Owner of any of the Prior Bonds or the Current Bonds may require the governing body of the District by appropriate order to raise the rates a reasonable amount consistent with the requirements of this Resolution.

## ARTICLE 8

### CONTRACTUAL PROVISIONS; GRANT APPROVAL; MISCELLANEOUS PROVISIONS.

#### Section 801. Resolution Contractual with Bondowners.

The provisions of this Resolution constitute a contract between the District and its Commission and the Owners of the Current Bonds as may be outstanding from time to time; and after the issuance of any of said Current Bonds, no change, alteration or variation of any kind of the provisions of this Resolution shall be made in any manner which will affect an Owner's rights except as herein provided or except with the written consent of all Bondowners until such time as all of the Current Bonds and the interest thereon have been paid in full or fully provided for; provided that the Commission may adopt any resolution for any purpose not inconsistent with the terms of this Resolution and which shall not impair the security of the Owners of the Current Bonds and/or for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective or inconsistent provisions contained herein or in any resolution or other proceedings pertaining hereto.

It is further agreed that the Owners of 80% in principal amount of the Current Bonds at any time outstanding shall have the right to consent to and approve the adoption of resolutions or other proceedings, modifying or amending any of the terms or provisions contained in this Resolution, subject to the conditions that (a) this Resolution shall not be so modified in any manner that may adversely affect the rights of the Owners of any of the Prior Bonds, nor in any manner that may adversely affect the rights of any certain Owners of the Prior Bonds and Current Bonds without similarly affecting the rights of all Owners of such Prior Bonds, Current Bonds and any Parity Bonds then outstanding, or to reduce the percentage of the number of Owners whose consent is required to effect a further modification and (b) no such change may be effected without the consent of the FmHA so long as the FmHA owns any of the Outstanding Bonds.

Section 802. All Current Bonds are Equal. The Current Bonds authorized herein shall not be entitled to priority one over the other in the application of the income and revenues of the System, or with respect to the security for their payment, regardless of the time or times of their issuance, it being the intention that there shall be no priority among any of the Current Bonds regardless of the fact that they may be actually issued and delivered at different times.

Section 803. District Obligated to Refund Current Bonds Owned by Government Whenever Feasible; Defeasement Prohibited. So long as the Government is the Owner of any of the Current Bonds, if it appears to the Government that the District is able to refund such Current Bonds in whole or in part, by obtaining a loan for such purposes from responsible cooperative

or private credit sources, or to sell bonds of the District in the open market, at reasonable rates and terms, for loans or bond issues for similar purposes and periods of time, the District will, upon request of the Government, obtain such loan and/or issue such bonds in sufficient amount to repay the Government and will take all such action as may be required in connection therewith.

In addition, so long as the Government is the Owner of any of the Current Bonds, the District shall not issue any bonds or other obligations for the purpose of defeasing or otherwise terminating the lien of the Current Bonds without immediately prepaying all of the then outstanding Current Bonds.

**Section 804. Approval and Acceptance of ARC Grant Agreement.** As set out in Section 105 hereof, the Appalachian Regional Commission (the "ARC") has agreed to make a grant to the District in the amount of \$300,000 (the "ARC Grant") to supplement the proceeds of the Current Bonds in order to provide the total cost of the Construction Project, and the ARC has requested the District to approve, accept and execute a certain ARC Grant Agreement (the "ARC Grant Agreement"), setting out the terms and conditions upon which said ARC Grant will be made. Said ARC Grant Agreement is hereby approved, and the Chairman and the Secretary are authorized to execute said ARC Grant Agreement on behalf of the District. The Chairman and Secretary are also authorized on behalf of the District to accept any and all other ARC Grants offered to the District in connection with the Construction Project and to execute any and all ARC Grant Agreements and any other documents as may be requested by the ARC in connection with ARC Grants which have been and/or which may hereafter be approved for such Construction Project.

**Section 805. Approval and Acceptance of Fiscal Court Fund Grant Agreement.** As set out in Section 105 hereof, the Powell County Fiscal Court (the "Fiscal Court") has agreed to make a grant to the District in the amount of \$10,000 (the "Fiscal Court Grant") to supplement the proceeds of the Current Bonds in order to provide the total cost of the Construction Project. Said Fiscal Court Grant is hereby approved, and the Chairman and the Secretary are authorized to execute a Fiscal Court Grant Agreement, if required. The Chairman and Secretary are also authorized on behalf of the District to accept any and all other Fiscal Court Grants offered to the District in connection with the Construction Project and to execute any and all Fiscal Court Grant Agreements and any other documents as may be requested by the Fiscal Court in connection with Fiscal Court Grants which have been and/or which may hereafter be approved for such Construction Project.

**Section 806. Approval and Acceptance of DHUD Grant Agreement.** As set out in Section 105 hereof, the Department of Housing and Urban Development (the "DHUD") has agreed to make a grant to the District in the amount of \$303,200 (the "DHUD

Grant"), to supplement the proceeds of the Current Bonds in order to provide the total cost of the Construction Project, and the DHUD has requested the District to approve, accept and execute a certain DHUD Grant Agreement (the "DHUD Grant Agreement") setting out the terms and conditions upon which said DHUD Grant will be made. Said DHUD Grant Agreement is hereby approved, and the Chairman and the Secretary are authorized to execute said DHUD Grant Agreement on behalf of the District. The Chairman and Secretary are also authorized on behalf of the District to accept any and all other DHUD Grants offered to the District in connection with the Construction Project and to execute any and all DHUD Grant Agreements and any other documents as may be requested by the DHUD in connection with DHUD Grants which have been and/or which may hereafter be approved for such Construction Project.

Section 807. Alternate Statutory Authority. If it shall ever be held that the District did not have the authority to issue said Current Bonds and/or to construct the Construction Project under the provisions of Chapter 106 of the Kentucky Revised Statutes, then this Resolution shall be deemed to have been authorized under the provisions of Section 74.370 and Sections 96.350 through 96.510, inclusive, of the Kentucky Revised Statutes, with said Current Bonds being secured by a statutory mortgage lien as provided in Section 96.400 of the Kentucky Revised Statutes.

Section 808. Authorization, Ratification and Confirmation of Approval and Execution of Various Documents. The Commission hereby authorizes, approves, ratifies and confirms the previous action of the officers of the District in approving and executing various documents related to the financing of the Project, including the following:

- (a) Legal Services Agreement with Bond Counsel.
- (b) Legal Services Agreement with Local Counsel.
- (c) Letter of Intent to Meet Conditions of FmHA Letter of Conditions (FmHA Form 442-46).
- (d) Loan Resolution (FmHA Form 442-47).
- (e) Agreement for Engineering Services with the Engineers.

Section 809. Authorization of Condemnation to Acquire Easements and/or Sites. In the event that (a) any necessary deeds of easement to allow construction of the Construction Project over the property of any property owner or (b) any necessary deed to the necessary site of any waterworks facility of the Construction Project shall not be obtained through negotiation within ten (10) days after the date of adoption of this Resolution and in the event that (1) such waterworks lines cannot be located within the right-of-way of the State and/or

County road involved; and/or (2) such waterworks facilities cannot be located on a site already owned by the District, Local Counsel is hereby authorized and directed to file condemnation actions to obtain such necessary rights-of-way and/or sites forthwith, without further authorization or direction from the District or the Commission. Local Counsel is further directed to follow the same condemnation procedure in the event that it becomes necessary, through change orders, line extensions and/or errors in the location of property lines and/or property owners, to obtain additional easements, rights-of-way and/or sites for completion of the Construction Project and whenever the necessary deed is not obtained by negotiation at least ten (10) days prior to the date on which construction is contemplated in the respective easement, right-of-way and/or site.

The District further approves the payment from the funds available therefor (proceeds of Current Bonds, Grant Proceeds and other funds) allocated to the costs of the Construction Project to pay any judgment award, or compromise, determined by Local Counsel with the acquiescence of the Commission, toward the costs of such easements, rights-of-way and/or sites; provided, in each instance, that the payment of such funds to satisfy any judgment, award or compromise must first be approved by the FmHA; and the Commission further determines that if and to whatever extent the funds available from the proceeds of the Bonds, Grant Proceeds and other supplemental funds, shall be inadequate to pay any judgment, award or compromise amount for such easements, rights-of-way and/or sites, or if the District is unable to obtain the approval of the FmHA for any such payment, the Commission shall take all reasonably necessary actions, within the powers and authority of the Commission, to make such additional amount available from all other available District resources.

## ARTICLE 9

### SALE OF CURRENT BONDS

Section 901. Sale of Current Bonds. The Current Bonds shall be offered publicly for sale upon the basis of sealed, competitive bids at such time as the Commission shall designate.

A suggested form of "Notice of Bond Sale", a suggested form of "Official Notice of Sale of Bonds" and a suggested form of "Bid Form", having been prepared in advance by Bond Counsel, and a suggested form of Statement of Essential Facts having been prepared in advance by the Engineers, and all of such documents having been found to be in satisfactory form, the same are hereby approved, and a copy of each is hereby ordered to be filed in the records of the Secretary with the Minutes of the meeting at which this Resolution is adopted. The Notice of Bond Sale shall be signed by the Secretary and may be used for the purpose of publishing notice of the sale of the Current Bonds. Copies of such documents shall be furnished to any interested parties who may request same.

In the event that there is no bid or that all bids are rejected, the District may readvertise the sale pursuant to this Resolution.

Section 902. Possible Adjustment in Date of Current Bonds, Maturities, Prepayment Provisions and Other Dates, with Consent of Purchaser if Delivery is Delayed. In the event that delivery of the Current Bonds authorized herein is delayed for any reason until after January 1, 1992, the name of the Current Bonds may, pursuant to Resolution adopted by the Commission with the written consent of the Purchaser of the Current Bonds, be changed to reflect the year in which the Current Bonds will be issued, with maturities, the applicable prepayment date and all other dates being adjusted accordingly, if so desired.

## ARTICLE 10

### CONCLUDING PROVISIONS

#### Section 1001. Covenant of District to Take All Necessary Action To Assure Compliance with Internal Revenue Code.

In order to assure the Purchaser and any subsequent owner of the Current Bonds that such Current Bonds shall continue to be legal and that interest thereon will continue to be excludable from gross income for federal income tax purposes and exempt from all Kentucky income taxation, the District covenants to and with the owners of the Current Bonds to take the following action:

(a) The District will (1) take all actions necessary to comply with the provisions of the Code necessary to assure that interest on the Current Bonds will be excludable from gross income for federal income tax purposes; (2) will take no actions which will violate any of the provisions of the Code; and (3) not use the proceeds of the Current Bonds for any purpose which will cause interest on the Current Bonds or on interim financing obligations, including but not limited to the Note, issued pursuant to Section 302 hereof to become includable in gross income for federal income tax purposes.

(b) The District hereby certifies that it does not reasonably anticipate that the total principal amount of "qualified tax-exempt obligations" within the meaning of Section 265(b)(3) of the Code which the District, or any subordinate entity of the District, will issue during the calendar year during which the Current Bonds are issued, will exceed \$10,000,000; and therefore the District hereby designates the Current Bonds and all interim financing obligations, including but not limited to the Note, issued pursuant to Section 302 hereof as "qualified tax-exempt obligations".

(c) The District further certifies that the Current Bonds and any and all interim financing obligations of the District are not "private activity bonds" within the meaning of the Code.

(d) The District covenants and agrees to comply with the rebate requirements on certain excess earnings imposed by Section 148 of the Code, and in the event it is determined by the District, upon the advice of Bond Counsel, that the Construction Account, or any other Fund established hereunder, is subject to said rebate requirements and does in fact generate earnings from "non-purpose investments" in excess of the amount which said investments would have earned at a rate equal to the "yield" on the Current Bonds, plus any income

attributable to such excess, there shall be established a separate and special fund with the Depository Bank, which fund shall be designated the "Excess Earnings and Rebate Fund", which shall be utilized for the collection and payment of any excess generated from investments and the remittance thereof to the United States of America on or before the anniversary of the fifth (5th) year from the date of the Current Bonds, and once every five (5) years thereafter until the final retirement of the Current Bonds; the last installment, to the extent required, to be made no later than sixty (60) days following the date on which funds sufficient for the complete retirement of the Current Bonds are deposited with the Depository Bank. The District further covenants to file any and all reports, if any, as may be required to be filed with the Government with regard to the liability or non-liability of the District as to any such rebate requirements and to maintain records in regard thereto for the period of time required by applicable Treasury regulations.

Section 1002. Severability Clause. If any section, paragraph, clause or provision of this Resolution shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Resolution, which shall continue in full force and effect.

Section 1003. All Provisions in Conflict Repealed. All motions, resolutions and orders, or parts thereof, in conflict with the provisions of this Resolution, are to the extent of such conflict hereby repealed. It is hereby specifically ordered and provided that any proceedings heretofore taken for the issuance of other bonds of the District payable or secured in any manner by all or any part of the income and revenues of said System or any part thereof, and which have not been heretofore issued and delivered, are hereby revoked and rescinded, and none of such other bonds shall be issued and delivered. The District covenants to correct by appropriate proceedings any required procedure previously taken invalidly.

Section 1004. Effective Ten Days From Adoption. This Resolution shall take effect and be effective ten (10) days after its adoption in order to enable notice of the adoption hereof to be published pursuant to Section 106.250 of the Kentucky Revised Statutes.



Adopted this February 10, 1992.

Earl Polk  
Chairman

(Seal of District)

Attest:

John H. Stevenson  
Secretary

#### CERTIFICATION

I, JOHN STEVENSON, hereby certify that I am the duly qualified and acting Secretary of the Powell's Valley Water District of Powell and Estill Counties, Kentucky, and that the foregoing Resolution is a true copy of a Resolution duly adopted by the Board of Commissioners of said District, signed by the Chairman of said District and attested under Seal by me as Secretary, at a properly convened meeting of said Board of Commissioners held on February 10, 1992, as shown by the official records of said District in my custody and under my control.

I further certify that said meeting was duly held in accordance with all applicable requirements of Kentucky law, including KRS 61.810, 61.815, 61.820 and 61.825, that a quorum was present at said meeting, that said Resolution has not been modified, amended, revoked or repealed, and that same is now in full force and effect.

IN TESTIMONY WHEREOF, witness my signature as Secretary and the official Seal of the District this February 10, 1992.

John H. Stevenson  
Secretary

(Seal of District)

EXHIBIT A

Schedule of Principal Maturities

<u>Payment Due</u> <u>January 1,</u>	<u>Principal</u> <u>Installments</u>
1994	2,000
1995	2,000
1996	2,000
1997	2,000
1998	2,000
1999	2,000
2000	3,000
2001	3,000
2002	3,000
2003	3,000
2004	3,000
2005	3,000
2006	3,000
2007	4,000
2008	4,000
2009	4,000
2010	4,000
2011	4,000
2012	5,000
2013	5,000
2014	5,000
2015	5,000
2016	6,000
2017	6,000
2018	6,000
2019	6,000
2020	7,000
2021	7,000
2022	7,000
2023	8,000
2024	7,000
2025	8,000
2026	8,000
2027	8,000
2028	9,000
2029	9,000
2030	10,000
2031	9,000

EXHIBIT B

(FORM OF FULLY REGISTERED BOND)

UNITED STATES OF AMERICA  
COMMONWEALTH OF KENTUCKY  
COUNTIES OF POWELL AND ESTILL  
POWELL'S VALLEY WATER DISTRICT  
WATERWORKS REVENUE BONDS OF 1991

No. R- \_\_\_\_\_ INTEREST RATE: \_\_\_\_\_ % \$ \_\_\_\_\_

KNOW ALL MEN BY THESE PRESENTS:

That the Powell's Valley Water District (the "District"), acting by and through its Board of Commissioners (the "Commission"), a public body corporate in Powell and Estill Counties, Kentucky, for value received, hereby promises to pay to

\_\_\_\_\_ the registered owner hereof, or to its registered assigns, solely from the fund hereinafter identified, the sum of

\_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_),

on the first day of January, in years and installments as follows:

Year      Principal      Year      Principal      Year      Principal

[Here the printer of the Current Bond will print the maturities of the Current Bonds purchased by the individual Purchaser (registered Owner)]

and in like manner, solely from said fund, to pay interest on the balance of said principal sum from time to time remaining unpaid, at the Interest Rate specified above, semiannually on the first days of January and July in each year, beginning with the first January or July after the date of this Bond, until said sum is paid, except as the provisions hereinafter set forth with respect to prepayment may be and become applicable hereto, both principal and interest being payable, without deduction for exchange or collection charges, in lawful money of the United States of America, at the address of the registered owner shown on the registration book of the District.

This Bond is issued by the District under and in full compliance with the Constitution and Statutes of the Commonwealth of Kentucky, including Chapters 74 and 106 and Sections 58.010

through 58.140, inclusive, of the Kentucky Revised Statutes (collectively the "Act"), and pursuant to a duly adopted Bond Resolution of the District authorizing same (the "Current Bond Resolution"), to which Current Bond Resolution reference is hereby made for a description of the nature and extent of the security thereby created, the rights and limitations of rights of the registered owner of this Bond, and the rights, obligations and duties of the District, for the purpose of financing the cost (not otherwise provided) of the construction of extensions, additions and/or improvements to the existing waterworks system of the District (said existing waterworks system, together with said extensions, additions and/or improvements, being hereinafter referred to as the "System").

This Bond ranks on a parity as to security and source of payment with certain outstanding Powell's Valley Water District Waterworks Revenue Bonds of 1970, dated the date of delivery (the "Bonds of 1970"), authorized by a Resolution adopted by the Commission of the District on August 11, 1970 (the "1970 Bond Resolution"); and the outstanding Powell's Valley Water District Waterworks Revenue Bonds of 1987, dated January 12, 1988 (the "Bonds of 1987"), authorized by a Resolution adopted by the Commission of the District on September 29, 1987 (the "1987 Bond Resolution"); [hereinafter the Bonds of 1970 and the Bonds of 1987 shall be collectively referred to as the "Prior Bonds", and the 1970 Bond Resolution and the 1987 Bond Resolution shall be collectively referred to as the "Prior Bond Resolution"].

This Bond has been issued in full compliance with the Prior Bond Resolution; and this Bond, together with said Prior Bonds, and any bonds ranking on a parity therewith that may be issued and outstanding under the conditions and restrictions of the Current Bond Resolution and Prior Bond Resolution, are and will continue to be payable from and secured by a pledge of the gross revenues to be derived from the operation of said System, which revenues shall be sufficient to pay the principal of and interest on the Prior Bonds, this Bond and any additional bonds ranking on a parity therewith, as may be issued and outstanding under the conditions and restrictions set out in said Current Bond Resolution and the Prior Bond Resolution, as and when the same become due and payable, and a sufficient portion of which revenues shall be set aside in a fund for that purpose and identified as the "Powell's Valley Water District Waterworks Bond and Interest Sinking Fund of 1970", created in said Prior Bond Resolution.

This Bond does not constitute an indebtedness of the District within the meaning of any constitutional or statutory provisions or limitations and is payable solely out of the revenues of the System. As provided in the Current Bond Resolution, the District covenants that so long as any of the Prior Bonds and/or this Bond, are outstanding, the System will be continuously owned and operated by the District as a revenue

producing public undertaking within the meaning of the aforesaid Act for the security and source of payment of the Prior Bonds and of this Bond, and that the District will fix, and if necessary adjust, from time to time, such rates for the services and facilities of the System and will collect and account for the revenues therefrom sufficient to pay promptly the principal of and interest on the Prior Bonds, this Bond and all other bonds ranking on a parity therewith as may be outstanding from time to time, to pay the cost of operation and maintenance of the System and to provide for the depreciation thereof.

A statutory mortgage lien has been created and granted by the District in the Current Bond Resolution pursuant to the Act, and more specifically by Section 106.080 of the Kentucky Revised Statutes, to and in favor of the registered owner of this Bond, ranking on a parity with the Prior Bonds; and the System and all appurtenances thereof and extensions thereto shall remain subject to such statutory mortgage lien until payment in full of the principal of and interest on the Prior Bonds and on this Bond.

The District has reserved the right to issue additional bonds ranking on a parity as to security and source of payment with this Bond in order to complete the Project, provided the District has complied with the parity requirements of the Current Bond Resolution, and to finance future extensions, additions and/or improvements to the System, provided the necessary calculations as to the earnings coverage required by the Current Bond Resolution are in existence and properly certified.

This Bond shall be registered as to principal and interest in the name of the owner hereof, after which it shall be transferable only upon presentation to the Secretary of the District as the Bond Registrar, with a written transfer duly acknowledged by the registered owner or his duly authorized attorney, which transfer shall be noted upon this Bond and upon the book of the District kept for that purpose.

The District, at its option, shall have the right to prepay, on any interest payment date on and after January 1, 2001, in inverse chronological order of the installments due on this Bond, the entire principal amount of this Bond then remaining unpaid, or such lesser portion thereof, in a multiple of One Thousand Dollars (\$1,000), as the District may determine, at a price in an amount equivalent to the principal amount to be prepaid plus accrued interest to the date of prepayment, without any prepayment premium. Notice of such prepayment shall be given by registered mail to the registered owner of this Bond or his assignee, at least 30 days prior to the date fixed for prepayment. Notice of such prepayment may be waived with the written consent of the registered owner of this Bond.

So long as the registered owner of this Bond is the United States of America, or any agency thereof, the entire

principal amount of this Bond, or installments in multiples of \$1,000, may be prepaid at any time in inverse chronological order of the installments due.

Upon default in the payment of any principal or interest payment on this Bond, or upon failure by the District to comply with any other provision of this Bond or with any provision of the Current Bond Resolution, the registered owner may, at his option, institute all rights and remedies provided by law or by said Current Bond Resolution.

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, do exist, have happened and have been performed in due time, form and manner as required by law, and that the face amount of this Bond, together with all other obligations of the District, does not exceed any limit prescribed by the Constitution or Statutes of the Commonwealth of Kentucky.

IN WITNESS WHEREOF said Powell's Valley Water District, by its Board of Commissioners, has caused this Bond to be executed by its Chairman, its corporate seal to be hereunto affixed, and attested by its Secretary, on the date of this Bond, which is

POWELL'S VALLEY WATER DISTRICT  
Powell and Estill Counties,  
Kentucky

By Earl Adams  
Chairman

Attest:

John H. Stevenson  
Secretary

(Seal of District)

#### PROVISION FOR REGISTRATION

This Bond shall be registered on the registration book of the District kept for that purpose by the Secretary, as Bond Registrar, upon presentation hereof to said Secretary, who shall make notation of such registration in the registration blank, and this Bond may thereafter be transferred only upon written transfer acknowledged by the registered owner or his attorney, such transfer to be made on said book and endorsed hereon.

(FORM OF REGISTRATION)

Date of Registration	Name of Registered Owner	Signature of Secretary of the Powell's Valley Water District, Bond Registrar
:	:	:
:	:	:
:	:	:
:	:	:
:	:	:

(FORM OF ASSIGNMENT)

For value received, this Bond is hereby assigned,  
without recourse and subject to all of its terms and conditions,  
unto \_\_\_\_\_, this \_\_\_\_ day of \_\_\_\_\_,  
\_\_\_\_\_.

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

EXHIBIT C

REQUISITION CERTIFICATE

Re: Powell's Valley Water District Waterworks Revenue Bonds of 1991, in the amount of \$194,000.

The undersigned hereby certify as follows:

1. That they are the signatories required for construction and/or administrative draws pursuant to the Bond Resolution adopted by the Powell's Valley Water District (the "District") of Powell and Estill Counties, Kentucky.

2. That the following named firms and/or persons are now entitled to the aggregate sum of \$\_\_\_\_\_, itemized as set forth below and as per approved invoices attached hereto:

Firm/Person

Amount

3. That upon said amount being lent to said District and/or obtained by said District from the proceeds of the Current Bonds and/or other sources, the undersigned approve such expenditure and the payment of said amounts to said firms and/or persons, either directly or from amounts deposit in the "Powell's Valley Water District Waterworks Revenue Bonds Construction Account", at the Powell County Bank, Stanton, Kentucky.

4. That we hereby certify that we have carefully inspected the work and, as a result of our inspection and to the best of our knowledge and belief, the amounts shown in this Requisition Certificate are correct and the work has been performed in accordance with the agreements between the District and the parties requesting payment.



IN TESTIMONY WHEREOF, witness the signature of the undersigned, this \_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.

MAYES, SUDDERTH & ETHEREDGE

By \_\_\_\_\_  
Registered Professional  
Engineer  
State of Kentucky No. \_\_\_\_\_

Approved on \_\_\_\_\_

POWELL'S VALLEY WATER DISTRICT

By Earl Adams  
Chairman

Approved on \_\_\_\_\_

By \_\_\_\_\_  
Authorized FmHA Official

Amount expended heretofore \$ \_\_\_\_\_

Amount approved herein \_\_\_\_\_

Total \$ \_\_\_\_\_