

TAX COMPLIANCE CERTIFICATE
\$10,000,000
PUEBLO CONSERVANCY DISTRICT
REFUNDING & IMPROVEMENT CONSERVANCY MAINTENANCE FUND BONDS,
SERIES 2018 A

The undersigned hereby certifies for and on behalf of the Pueblo Conservancy District (the "District") as to the following facts, estimates and circumstances:

1. In General.

1.1 The District is issuing and delivering, simultaneously with the delivery of this Certificate, its Refunding and Improvement Conservancy Maintenance Fund Bonds, Series 2018 A in the aggregate principal amount of \$10,000,000 (the "Bonds").

1.2 The undersigned President of the District is one of the officers of the District delegated the responsibility for issuing the Bonds.

1.3 I am familiar with the proceedings of the Board of Directors of the District (the "Board") taken preliminary to and in issuance of the Bonds, including the resolution adopted by the Board on February 28, 2018, authorizing the issuance of the Bonds (the "Resolution").

1.4 This certificate is for the purpose of establishing the reasonable expectations of the District as to future events relating to the Bonds pursuant to the Internal Revenue Code of 1986, as amended (the "Code"), and to the regulations promulgated thereunder (the "Regulations") as specifically required by Regulation Section 1.148-2(b) and for the purpose of evidencing compliance with and setting forth procedures which are designed to comply with certain provisions of the Code and the Regulations.

1.5 The District has not been notified of any listing or proposed listing of the District by the Internal Revenue Service as an issuer that may not certify its bonds.

1.6 To the best of my knowledge, information and belief, the expectations contained in this Certificate are reasonable.

1.7 Capitalized terms used herein shall have the meanings ascribed to such terms in the Resolution, or as set forth in Exhibit A hereto.

2. Purpose of the Bonds. The Bonds are being issued for the purpose of (a) currently refunding (the Refunding Project") the District's Conservancy Maintenance Bonds, Series 2015 A (the "Series 2015 Bonds") and (b) providing moneys to finance the construction of improvements to the Levee through the City of Pueblo, owned and maintained by the District through the City of Pueblo, as further described in the Resolution (the "New Money Project" and together with the Refunding Project, the "Project").

3. Cost of Project: No Over issuance.

3.1 The estimated total cost of the Project including the costs and expenses referred to in Subsection 3.2 hereof is not less than \$10,000,000.00.

3.2 The estimated total costs of the Project is not less than the amount received from the sale of the Bonds set forth in Subsection 4.1 hereof plus the investment income earned thereon.

4. Application of Sale Proceeds.

4.1 The Sale Proceeds will not exceed \$10,000,000.00 which amount consists of the principal amount of the Bonds of \$10,000,000.00.

4.2 The Sale Proceeds and all investment income earned thereon are expected to be needed and fully expended as follows:

(i) An amount of the Sale Proceeds equal to \$28,000.00 will be used to pay the costs associated with the issuance of the Bonds.

(ii) An amount of proceeds equal to \$9,156.382 will be used to pay the cost of the Refunding Project.

(iii) An amount of the Sale Proceeds equal to \$815,618.00 will be used, to pay the costs of the New Money Project.

5. Expenditure, Time and Due Diligence Tests. The District reasonably expects that one hundred percent of the Sale Proceeds of the Bonds, (less the Bond issuance costs indicated in

Section 4.2(i) above) allocable to the New Money Project will be allocated to expenditures for the New Money Project within three years of the date hereof. The District will incur within six months of the date hereof a substantial binding obligation (i.e., not subject to contingencies within the control of the District or a related party) to a third-party to expend at least five percent of the Sale Proceeds of the Bonds allocable to the New Money Project on the costs of the Project. The completion of construction and improvement of the New Money Project and the allocation of Sale Proceeds of the Bonds allocable to the New Money Project to expenditures for the Project will proceed with due diligence.

6. No Replacement. No portion of the amounts received from the sale of the Bonds will be used as a substitute for other funds which were otherwise to be used as a source of financing for any of the purposes specified in Section 2 hereof and which have been or will be used to acquire, directly or indirectly, Investment Property producing a Yield in excess of the Yield of the Bonds.

7. Economic Life of Project. In accordance with Regulation § 1.148-l(c) regarding the safe harbor against the creation of “replacement proceeds,” the average reasonably expected economic life of the facilities that constitute the New Money Project, determined as of the issue date, is at least 100 years. The principal of and interest on the Bonds will be paid from the Maintenance Fund Assessment. A Maintenance Fund Assessment Account will be maintained with the Bank of the San Juans, a Division of Glacier Bank, into which Maintenance Fund Assessment fees will be deposited.

8. Rebate Fund. All amounts, if any, to be deposited into the 2018 A Rebate Fund, and all amounts on deposit therein shall be paid to the Department of Treasury at the times and in the amounts required by this Certificate.

9. Application of Investment Earnings. It is anticipated that net investment earnings on amounts in any fund or account will be retained therein and used for the purposes thereof.

10. No Other Funds. Other than the funds described herein, there is no fund or account that would constitute a sinking fund (as defined in Regulation Section 1.148-1 (c)(2)) or a pledged fund (as defined in Regulation Section 1.148-1 (c)(3)) for the Bonds.

11. Single Issue. Other than the Bonds, the District does not expect to issue other obligations which will be: (a) sold at substantially the same time as the Bonds (i.e., less than 15 days apart); (b) sold pursuant to the same plan of financing with the Bonds; or (c) reasonably expected to be paid for from substantially the same source of funds as will be used to pay the Bonds.

12. Temporary Periods and Yield Limitations.

12.1 All amounts allocable to the costs of issuing the Bonds will be used for the payment of costs of issuance on or before three years from the date hereof. Such amounts may be invested without regard to Yield restriction. Investment earnings on such amounts that are retained in the Maintenance Assessment Account may be invested without regard to Yield restriction for a period not to exceed one year from the date of receipt of the amount earned. Such amounts are, however, subject to the rebate requirements set forth in Exhibit B hereto (the "Rebate Requirement").

12.2 Proceeds derived from the sale of the Bonds deposited into the Construction Disbursement Account (New Money Project Fund) to finance the cost of the New Money Project may be invested without regard to Yield restriction (subject to the Rebate Requirement) for a period not to exceed three years from the date hereof and thereafter shall be invested at a Yield not in excess of the Yield of the Bonds. Investment earnings thereon may be invested without regard to Yield restriction (subject to the Rebate Requirement) for a period not to exceed three years from the date hereof or one year from the date of receipt thereof, whichever is longer and thereafter shall be invested at a Yield not in excess of the Yield of the Bonds.

13. Rebate and Accounting. The District will comply with Exhibit B – Rebate Exhibit C - Allocation and Accounting Rules and Exhibit D Investment Instructions and Remedial Action Procedures throughout the term of the Bonds. There are several elections which must be made as of the date of issuance with respect to the Rebate Requirement.

13.1 For purposes of demonstrating that the New Money Project relating to the Bonds constitutes a construction issue within the meaning of Section 148(f)(4)(C)(iv) of the Code, an election can be made, with respect to the provisions that are based on the District's reasonable expectations, to apply all of those provisions based on actual facts. The District does make this election. The District expects to comply with the eighteen month rebate for exception for construction projects by spending the following percentages of Available Construction Proceeds as follows: 15% within six months of issuance; 60% within one year of issuance; and 100% within eighteen months of issuance. See Exhibit B.12.

13.2 Where the expenditure requirements are not met, the District may elect to be subject to a penalty in lieu of being subject to the rebate rules. The penalty is the product of 1 .5 percent and under expended proceeds as of the end of the spending period. For each spending period, under expended proceeds is the difference between the Available Construction Proceeds spent and the Available Construction Proceeds required to be spent according to the expenditure schedule. The penalty is to be recalculated and paid for each spending period until the Bonds and any bonds issued to refund the Bonds are repaid. The penalty must be remitted within 90 days of the end of the spending period to which it relates. The District does not make this election.

13.3 No Artifice or Device. The District has not engaged and will not engage in a transaction or series of transactions enabling it to exploit the difference between tax-exempt and taxable interest rates to gain a material financial advantage and which increases the burden on the market for Tax-Exempt Obligations, including selling obligations that would not otherwise be necessary or issuing obligations sooner or allowing them to remain outstanding longer than would otherwise be necessary.

14. Prohibited Uses of Proceeds; Federal Guarantees.

14.1 None of the Proceeds of the Bonds will be used (directly or indirectly) to acquire any “nongovernmental output property” as defined in Section 141(d) of the Code or to make or finance loans to persons other than Governmental Units, other than (i) loans which enable the borrower to finance any governmental tax or assessment of general application for specific essential governmental functions or (ii) loans which consist of investments in Nonpurpose Investments.

14.2 Not more than an amount which is less than 5% of the Proceeds of the Bonds will be used to finance Output Facilities other than facilities for furnishing water, any portion of the output of which is dedicated to or otherwise made available for use by persons other than Governmental Units on a basis other than that provided to the general public.

14.3 Not more than 10% of the Proceeds of the Bonds will be used (directly or indirectly) in a trade or business (or to finance facilities which are used in a trade or business) carried on by any person other than a Governmental Unit. Not more than 5% of the Proceeds of the Bonds will be used (directly or indirectly) in a trade or business (or to finance facilities which are used in a trade or business) carried on by any person other than a Governmental Unit which private business use is not related to any governmental use or is disproportionate to governmental use, all as described in Section 141 (b)(3) of the Code (“Unrelated or Disproportional Use”). For the purpose of this Subsection, use as a member of the general public shall not be taken into account.

14.4 The immediately preceding Subsection shall apply only if the payment of 10% or more (5% more in the case of Unrelated or Disproportional Use) of the principal of or interest on the Bonds is (under the terms of the Bonds or any underlying arrangement) directly or indirectly secured by any interest in property used or to be used for a private business use or in payments in respect of such property or derived from payments whether or not to the District in respect of property or borrowed money used or to be used for a private business use.

14.5 The payment of the principal of and interest on the Bonds is not and will not be guaranteed directly or indirectly by the federal government within the meaning of Section 149(b) of the Code.


14.6 Not more than 50% of the Proceeds of the Bonds allocable to the Project will be invested in Nonpurpose Investments having a substantially guaranteed Yield for 4 or more years.

14.7 The District does not expect to sell or otherwise dispose of the Project before final retirement of the Bonds.

14.8 The District hereby designates the Bonds as qualified tax- exemption obligations for purposes of Section 265(b)(3)(B) of the Code. The District (including any subordinate entities) does not expect to issue more than \$10,000,000 of tax-exempt obligations during calendar year 2018.

14.9 This Certificate is, in part, to serve as a guideline in implementing the requirements of Sections 141 to 150 of the Code. If regulations, rulings, announcements and notices validly promulgated under the Code contain requirements which differ from those outlined here which must be satisfied for the Bonds to be Tax-Exempt Obligations or in order to avoid the imposition of penalties under Section 148 of the Code, pursuant to the covenants contained in the Resolution, the District is obligated to take such steps as are necessary to comply with such requirements. The District has been advised to seek the advice of competent counsel with a nationally recognized expertise in matters affecting the exclusion of interest on municipal bonds from gross income for Federal income tax purposes in fulfilling its obligations under the Code to take all steps as are necessary to maintain the status of the Bonds as Tax-Exempt Obligations.

WITNESS my hand this 28th day of February, 2018.



Donna Phillips, President

EXHIBIT A

DEFINITIONS

A.1 “Available Construction Proceeds” means, with respect to the Bonds, the amount equal to the sum of the issue price of the Bonds, earnings on the issue price, earnings on any amounts in a Reserve or Replacement Fund not funded by the Bonds and earnings on all of the foregoing earnings, less the amount of the issue price deposited in a Reserve or Replacement Fund and less the issuance costs financed by the Bonds. For purposes of this definition, earnings include earnings on any tax-exempt bond. Earnings on any Reserve or Replacement Fund are Available Construction Proceeds only to the extent that those earnings accrue before earlier of (i) the date construction is substantially completed or (ii) the date that is two years after the issue date. For this purpose, the date construction is substantially completed is either the date that the construction financed with the proceeds of the Bonds is substantially complete or the date on which construction is abandoned. In no event, however, will construction be considered substantially completed earlier than the date that the District has spent Available Construction Proceeds on the construction in an amount equal to at least 90% of the total cost of construction that the District reasonably expects as of such date will be financed with proceeds of the Bonds. If only a portion of the construction is abandoned, the date of substantial completion is the date that the non-abandonment portion of the construction is substantially completed.

A.2 “Bond Year” means the one-year period (or, in the case of the first Bond Year, the shorter period from the date of issue of the Bonds) ending on the day in the calendar year that is selected by the District. If no day is selected by the District before the earlier of the final maturity of the Bonds or the date that is five years after the date of issuance of the Bonds, each Bond Year ends at the close of business on the day preceding the anniversary date of the issue date and on the final maturity date.

A.3 “Code” means the Internal Revenue Code of 1986, as amended.

A.4 “Commingled Fund” means any fund or account containing both Gross Proceeds of the Bonds and amounts in excess of \$25,000 that are not Gross Proceeds of the Bonds if the amounts in the fund or account are invested and accounted for collectively, without regard to the source of funds deposited in the fund or account.

A.5 “Computation Date” means each date on which the Rebate Amount for the Bonds is computed.

A.6 “Computation Date Credit” means a credit of \$1,000 against the rebatable arbitrage on (i) the last day of each Bond Year during which there are amounts allocated to Gross Proceeds of the Bonds subject to the Rebate Requirement and (ii) the final maturity date for the Bonds.

A.7 “Computation Period” means the period between Computation Dates. The first Computation Period begins on the date hereof and ends on the first Computation Date. Each succeeding Computation Period begins on the date immediately following the Computation Date and ends on the next Computation Date.

A.8 “Construction Expenditures” means capital expenditures (i.e., costs of a type that are properly chargeable to capital account, or that would be so chargeable with a proper election under general federal income tax principles or with the application of the definition of Placed in Service) that, on or before the date the property financed by the expenditures is placed in service, are allocable to the cost of (i) Constructed Personal Property or (ii) Real Property (other than expenditures for the acquisition of any interest in land and the acquisition of any interest in existing Real Property other than land, except that expenditures are not for the acquisition of an interest in existing Real Property other than land if the purchase contract requires the seller to build or install the property (such as under a “turnkey contract”) and the property has not been built or installed at the time the parties enter into the contract, provided that, if the property has been partially built or installed at the time the parties enter into the contract, expenditures that are allocable to the portion of the property built or installed before that time are expenditures for the acquisition of existing Real Property).

A.9 “Constructed Personal Property” means Tangible Personal Property (or, if acquired pursuant to a single acquisition contract, properties) or Specially Developed Computer Software if a substantial portion of the property or properties is completed more than 6 months after the earlier of the date construction or rehabilitation commenced and the date the District entered into an acquisition contract based on the reasonable expectations of the District, if any, or representations of the person constructing the property, with the exercise of due diligence,

completion of construction or rehabilitation (and delivery to the District) could not have occurred within that 6-month period and if the District itself builds or rehabilitates the property, not more than 75% of the capitalizable cost is attributable to property acquired by the District (such as components, raw materials, and other supplies).

A.10 “Governmental Unit” means a state or political subdivision thereof. Such term does not include the United States or any agency or instrumentality thereof.

A.11 “Gross Proceeds” means the Proceeds of the Bonds and any Replacement Proceeds for the Bonds.

A.12 “Investment Proceeds” means any amounts actually or constructively received from investing Proceeds of the Bonds.

A.13 “Investment Property” means any security or obligation within the meaning of Section 148(b)(2) of the Code, any annuity contract, any interest in any residential rental property for family units which is not located within the jurisdiction of the District, any “specified private activity bond” within the meaning of Section 57(a)(5)(c) of the Code and any other Investment-Type Property.

A.14 “Investment-Type Property” means any property that is held principally as a passive vehicle for the production of income. A prepayment for property or services is Investment-Type Property if a principal purpose for prepaying is to receive an investment return from the time the prepayment is made until the time payment would otherwise be made. A prepayment is not Investment-Type Property if prepayments on substantially the same terms are made by a substantial percentage of persons who are similarly situated to the District but who are not beneficiaries of tax-exempt financing.

A.15 “Maintenance Fund Assessment” means the assessment defined in C.R.S. 37-5-107 and C.R.S. 37-5-108.

A.16 “Maintenance Account” Maintenance Fund Assessment as defined in C.R.S. 37-5-107 and C.R.S. 37-5-108, and as authorized by the Order on Expansion of District

Boundary, issued by the District Court, Pueblo County, Colorado, dated January 13, 2013, Case No. 67CV17644, and levied for the purpose of levee improvements through Pueblo.

A.17 “Multipurpose Issue” means an issue that is used for two or more separate governmental purposes.

A.18 “Net Sale Proceeds” means Sale Proceeds, less the portion of those Sale Proceeds invested in a Reserve or Replacement Fund.

A.19 “Nonpurpose Investment” means any Investment Property that is not a Purpose Investment.

A.20 “Output Facility” means electric and gas generation, transmission, distribution, and related facilities, and water collection, storage and distribution facilities.

A.21 “Payment” means:

(i) amounts actually or constructively paid to acquire a Nonpurpose Investment (or treated as paid to a Commingled Fund);

(ii) in the case of a Nonpurpose Investment that is first allocated to the Bonds on a date after it is actually acquired (e.g., an investment that becomes allocable to Transferred Proceeds or to Replacement Proceeds) or that becomes subject to the Rebate Requirement on a date after it is actually acquired (e.g., an investment allocated to a Reserve or Replacement Fund for a construction issue at the end of the two year spending period), the Value of that investment on that date;

(iii) in the case of a Nonpurpose Investment that was allocated to an issue at the end of the preceding Computation Period, the Value of that Nonpurpose Investment at the beginning of the Computation Period; and

(iv) the Computation Date Credit.

A.22 “Present Value” in general means with respect to an investment on any date an amount equal to the present value of all unconditionally payable Receipts to be received

from and Payments to be paid for the investment after that date, using the Yield of the investment as the discount rate. Present value of an investment is computed under the economic accrual method, using the same compounding interval and financial conventions used to compute the Yield of the Bonds.

A.23 “Pre-issuance Accrued Interest” means amounts representing interest that has accrued on the Bonds for a period of not greater than one year before its issue date but only if those amounts are paid within one year after the date hereof.

A.24 “Proceeds” of the Bonds means any Sale Proceeds, Investment Proceeds and Transferred Proceeds.

A.25 “Project Fund” or “New Money Project Fund” means the Construction Distribution Account held by the Bank of the San Juans, a Division of Glacier Bank.

A.26 “Purpose Investment” means an investment that is acquired to carry out the governmental purpose of the Bonds.

A.27 “Qualified Administrative Costs” means reasonable, direct administrative costs, other than carrying costs, such as separately stated brokerage and selling commissions that are comparable to those charged nongovernmental entities in transactions not involving tax-exempt bond proceeds, but not legal and accounting fees, record keeping, custody or similar costs. For a guaranteed investment contract, a broker’s commission paid on behalf of either an issuer or the provider is not a Qualified Administrative Cost to the extent that the commission exceeds the lesser of (i) \$35,000 and (ii) 0.2% of the amount of Gross Proceeds the issuer reasonably expects, as of the date the contract is acquired, to be deposited in the guaranteed investment contract over the term of the contract or, if more, \$3,000.

A.28 “Real Property” means land and improvements thereto, such as buildings or other inherently permanent structures, including interests in real property. For example, Real Property includes wiring in a building, plumbing systems, central heating or air-conditioning systems, pipes or ducts, elevators, escalators installed in a building, paved parking areas, roads, wharves and docks, bridges and sewage lines.

A.29 “Reasonable Retainage” means an amount, not to exceed 5 percent of Available Construction Proceeds as of the end of the fourth spending period, which is retained for reasonable business purposes relating to the property financed with the proceeds of the Bonds, such as to ensure or promote compliance with the terms of a construction contract. Retainage is reasonable if the retained amount is not yet payable, or, at the end of the 2-year period following the issue date, the District determines that an actual dispute exists regarding either completion of construction or payment.

A.30 “Rebate Amount” means the amount computed as described in Exhibit B.

A.31 “Rebate Requirement” shall have the meaning ascribed thereto in Section 13.

A.32 “Receipt” means

(i) amounts actually or constructively received from a Nonpurpose Investment (including amounts treated as received from a Commingled Fund)

(ii) in the case of a Nonpurpose Investment that ceases to be allocated to the Bonds before its disposition or redemption date (e.g., an investment that becomes allocable to Transferred Proceeds of another issue or that ceases to be allocable to the Bonds pursuant to the Universal Cap) or that ceases to be subject to the Rebate Requirement on a date earlier than its disposition or redemption date (e.g. an investment allocated to a fund initially subject to the Rebate Requirement but that subsequently qualifies as a bona fide debt service fund), the Value of that Nonpurpose Investment on that date; and

(iii) in the case of a Nonpurpose Investment that is held at the end of a Computation Period, the Value of that Nonpurpose Investment at the end of that Computation Period.

A.33 “Regulations” means the Treasury Regulations promulgated under Sections 103 and 141 through 150 of the Code, and to the extent applicable, any subsequent amendments to such regulations or any successor regulations.

A.34 “Replacement Proceeds” means amounts that have a sufficiently direct nexus to the Bonds to conclude that the amounts would have been used for that governmental purpose if the Proceeds of the Bonds were not used or to be used for that governmental purpose. For this purpose, governmental purposes include the expected use of amounts for the payment of debt service on a particular date. The mere availability or preliminary earmarking of amounts for a governmental purpose, however, does not in itself establish a sufficient nexus to cause those amounts to be Replacement Proceeds. Replacement Proceeds include, but are not limited to, amounts held in a sinking fund or a pledged fund. For these purposes, an amount is pledged to pay principal of or interest on the Bonds if there is reasonable assurance that the amount will be available for such purposes in the event that the District encounters financial difficulties.

A.35 “Reserve or Replacement Fund” includes any reasonably required reserve or replacement fund (as described in Section 148(d) of the Code), any fund reasonably expected to be used to pay the principal of or interest on the Bonds (including any sinking fund, as defined in Regulation Section 1.148-1 (b), for the Bonds and any bona fide debt service fund, as defined in Regulation Section 1.148-1(c)(2)), any fund pledged directly or indirectly to the payment of the Bonds in such a manner that the owners of the Bonds have a reasonable assurance that the fund will be available to directly or indirectly pay debt service on the Bonds if the District encounters financial difficulties, and any other amounts treated as being in a reserve or replacement fund by the Regulations.

A.36 “Sale Proceeds” means any amounts actually or constructively received by the District from the sale of the Bonds, including amounts or compensation and interest other than Pre-issuance Accrued Interest.

A.37 “Specially Developed Computer Software” means any program or routine used to cause a computer to perform a desired task or set of tasks, together with the documentation required to describe and maintain such program, provided that the software is specially developed and is functionally related and subordinate to real property or other Constructed Personal Property.

A.38 “Tangible Personal Property” means any tangible property except Real Property and includes interests in tangible personal property, (e.g., machinery that is not a structural component of a building and furnishings).

A.39 “Tax-Exempt Obligation” means any obligation the interest on which is excluded from gross income under Section 103(a) of the Code and which is not a specified private activity bond as defined in Section 57(a)(5)(C) of the Code. Such term includes an interest in a regulated investment company to the extent that least 95 percent of the income to the holder of the interest is interest that is excludable from gross income under Section 103(a) of the Code.

A.40 “Universal Cap” means the Value of all the outstanding principal amount of the Bonds.

A.41 “Value (of a Bond)” means with respect to the Bonds, the outstanding principal amount plus accrue unpaid interest.

A.42 “Value (of an investment)” means any of the following:

(i) with respect to an investment with not more than two percent original issue discount or original issue premium, the outstanding stated principal amount, plus accrued unpaid interest;

(ii) with respect to a fixed rate investment, its Present Value;

(iii) except as provided in (iv), with respect to any investment, its fair market value; or

(iv) with respect to any Yield restricted investment, its Present Value.

A.43 “Yield of the Bonds” means the discount rate that, when used in computing the Present Value as of the issue date of the Bonds of all unconditionally payable payments of principal, interest and fees for qualified guarantees reasonably expected to be paid on the Bonds, produces an amount equal to the Present Value, using the same discount rate of the aggregate issue price of the Bonds as of the issue date. Mandatory and expected contingent

redemptions are taken into account, based on reasonable expectations as of the issue date. If the Bonds are subject to mandatory redemption and have a stated redemption price at maturity in excess of one-fourth of one percent multiplied by the product of the stated redemption price at maturity and the number of years to its weighted average maturity date (determined by taking into account the mandatory redemption schedule), then in computing the Yield of the Bonds, the Bonds are treated as redeemed at their Present Value; otherwise the Bonds are treated as redeemed at their outstanding stated principal amount plus accrued unpaid interest. Optional redemptions are not taken into account in determining the Yield of the Bonds unless they satisfy one of the three following conditions:

(i) The Bonds are subject to optional redemption within 5 years of the issue date and the Yield of the Bonds computed by assuming the Bonds are redeemed at maturity is more than one-eighth of one percent higher than the Yield of the Bonds computed by assuming the Bonds are redeemed at the earliest date for their redemption;

(ii) The Bonds are issued at an issue price that exceeds the stated redemption price at maturity by more than one-fourth of one percent multiplied by the product of the stated redemption price at maturity and the number of complete years to the first optional redemption date (e.g., an original issue premium in excess of 2.5% in the case of 10-year no call Bond); or

(iii) The Bond subject to optional redemption bears interest at an increasing interest rate (i.e., a stepped coupon bond).

A.44 “Yield of an Investment” means the discount rate that, when used in computing the Present Value of all unconditionally payable Receipts from the investment, produces an amount equal to the Present Value of all unconditionally payable payments for the investment. Unless otherwise decided by the District, the Yield of any investments and the Yield of the Bonds shall be calculated using a 360-day year and a semi-annual compounding interval.

EXHIBIT B

REBATE

B.1 Generally. In order to implement the provisions of Section 148(f) of the Code, the District has established the Series 2018 A Bond Rebate Fund into which will be deposited any amount required to be rebated to the federal government pursuant to Section 148(f) of the Code. Section 148(f) of the Code requires that certain earnings on Nonpurpose Investments allocable to the Gross Proceeds of the Bonds be paid to the federal government to prevent the Bonds from being arbitrage bonds. The arbitrage that must be rebated is based on the difference between the amount actually earned on Nonpurpose Investments and the amount that would have been earned if those investments had a Yield equal to the Yield of the Bonds. As of any date, the Rebate Amount for the Bonds is the excess of the future value, as of that date, of all Receipts on Nonpurpose Investments over the future value, as of that date, of all Payments on Nonpurpose Investments (taking into account that the Computation Date Credit is a Payment on Nonpurpose Investments). The future value of a Payment or Receipt at the end of any period is determined using the economic accrual method and equals the value of that Nonpurpose Payment or Receipt when it is paid or received (or treated as paid or received), plus interest assumed to be earned and compounded over the period at a rate equal to the Yield of the Bonds, using the same compounding interval and financial conventions used to compute the Yield of the Bonds. In order to meet the Rebate Requirement of the Code, unless Subsection B.10, B.11, or B.12 applies or unless during each Bond Year all Gross Proceeds are invested at a Yield that is less than the Yield of the Bonds or are invested in Tax-Exempt Obligations, the District will comply with and take the action required by this Section.

B.2 Computation Dates. The District may treat any date as a Computation Date. After the first required rebate payment is made, the District must consistently treat either the end of each Bond Year or the end of each fifth Bond Year as Computation Dates and may not change these Computation Dates after the first rebate payment is made.

B.3 Final Computation Date. The date that the Bonds are discharged is the Final Computation Date. If the Bonds are retired within three years of the issue date, however, the Final Computation Date need not occur before the end of 8 months after the issue date or

during the period in which the District reasonably expects that any of the spending exceptions to the Rebate Requirement will apply to the Bonds.

B.4 Amount of Required Rebate Installment Payments. For Computation Dates other than the Final Computation Date, the District must rebate an amount that when added to the future value, as of that Computation Date, of previous rebate payments made for the Bonds, equals at least 90 percent of the Rebate Amount as of that date. In all events, the first rebate payment must be made for a Computation Date that is not later than five year after the issue date and subsequent payments must be made for a Computation Date that is not later than five years after the previous Computation Date for which a payment was made. For the Final Computation Date, a final rebate payment must be paid in an amount that, when added to the future value of previous rebate payments made for the Bonds, equals 100 percent of the Rebate Amount as of that date. The District's obligation to make such deposits and to make payment to the United States as provided below is a special obligation of the District, payable only from investment income earned on investments of Gross Proceeds and other funds, to the extent appropriated therefor, there being no obligation on the District to appropriate any funds other than such investment income. The obligation to make deposits into the Series 2018 A Bond Rebate Fund and payments to the United States does not constitute a debt or indebtedness of the District under any Charter, constitutional or statutory provisions applicable to the District. In the event the District does not appropriate investment income or other fund" for the purpose of making deposits into the 2018 A Rebate Fund, the District will invest all Gross Proceeds at such a Yield that no deposit into the 2018 A Rebate Fund is required.

B.5 Bona Fide Debt Service Fund Execution. As the Bonds are not private activity bonds and have a fixed rate of interest, amounts earned on moneys in the 2018 A Bond Fund shall not be taken into account for purposes of complying with the Rebate Requirement.

B.6 Time and Manner of Rebate Payment. Each rebate payment must be paid no later than 60 days after the Computation Date to which the payment relates. Any rebate payment paid within this 60-day period may be treated as paid on the Computation Date to which it relates. Each payment made pursuant to this Section shall be filed with the Internal Revenue Service Center, Ogden, UT 84201, and shall be accompanied by Form 8038-T.

B.7 Penalty in Lieu of Loss of Tax Exemption. The failure to pay the correct Rebate Amount when required will cause the Bonds to be arbitrage bonds, unless the Commissioner of Internal Revenue (the “Commissioner”) determines that the failure was not caused by willful neglect and the District promptly pays a penalty to the United States. The penalty equals 50 percent of the Rebate Amount not paid when required to be paid, plus interest on that amount. Interest accrues at the underpayment rate under Section 6621 of the Code, beginning on the date the correct Rebate Amount is due and ending on the date 10 days before it is paid. The penalty is automatically waived if the Rebate Amount that the District failed to pay plus interest is paid within 180 days after discovery of the failure, unless the Commissioner determines that the failure was due to willful neglect, or the Bonds are under examination by the Commissioner at any time during the period beginning on the date the failure first occurred and ending on the date 90 days after the receipt of the Rebate Amount.

B.8 Recovery of Overpayment of Rebate. The District may recover an overpayment of the Rebate Amount by establishing to the satisfaction of the Commissioner that the overpayment occurred. An overpayment is the excess of the amount paid to the United States for the Bonds under Section 148 of the Code over the sum of the Rebate Amount for the Bonds as of the most recent Computation Date and all amounts that are otherwise required to be paid under Section 148 of the Code as of the date the recovery is requested. Notwithstanding the preceding sentence, an overpayment may be recovered only to the extent that a recovery on the date that it is first requested would not result in an additional Rebate Amount if that date were treated as a Computation Date. Furthermore, except for overpayments in certain limited circumstances, an overpayment of less than \$5,000 may not be recovered before the Final Computation Date.

B.9 Recordkeeping Requirement. The District must retain records of the determination of its Rebate Requirement until six years after the retirement of the last obligation of the Bonds.

B.10 Six Month Exception to Rebate. Notwithstanding anything in this Section to the contrary, if all of the Gross Proceeds of the Bonds allocable to the Project (other than amounts on deposit in a bona fide debt service fund) have been expended for the Project by no

later than the day which is six months after the date of issue of the Bonds, then the Rebate Amount allocable to the Gross Proceeds of the Bonds allocable to the Project shall be zero until such time as amounts are received, which amounts are held in a sinking fund or any other fund pledged to or expected to be used to pay debt service or such time as any other amounts are pledged as security for the Bonds, and not expended on the payment of principal or interest on the Bonds within 13 months of the date of their receipt. The six-month exception provided by the previous sentence shall apply in the event that Gross Proceeds of the Bonds allocable to the Project (other than amounts on deposit in a bona fide debt service fund) in an amount equal to the lesser of five percent of the proceeds of the Bonds allocable to the Project or \$100,000 have not been expended by the date which is six months after the date the Bonds are issued if all of such Gross Proceeds are expended within one year of the date the Bonds are issued. The six-month exception provided by this Subsection is inapplicable if any reserve fund, sinking fund or pledged fund other than a debt service fund is maintained for the Bonds, whether or not funded from proceeds of the Bonds, except that if a Reserve or Replacement Fund (as described in Section 148(d) of the Code) has been established for the Bonds and all of the Gross Proceeds of the Bonds other than amounts in that Reserve or Replacement Fund and amounts deposited in a bona fide debt service fund for the Bonds qualify for the six-month exception described in this Subsection, then the Rebate Amount need only be calculated with respect to all amounts not required to be spent within six months, after such six-month period.

B.11 Two-Year Construction Exception. Notwithstanding anything in this Section to the contrary, if 75 percent of the Available Construction Proceeds of the Bonds are to be used for Construction Expenditures and all of the Available Construction Proceeds of the Bonds are reasonably expected, as of the issue date, to be spent (or, at the election of the District on or before the issue date, are actually spent) for the governmental purposes of the Bonds within 24 months from the date hereof according to the schedule set forth below, then the Available Construction Proceeds and the Gross Proceeds of the Bonds used to pay costs of issuance of the Bonds will not be subject to the Rebate Requirement. The applicable schedule of expenditures is as follows:

- (i) 10 percent within 6 months of the date hereof (the “first spending period”),

(ii) 45 percent within 1 year of the date hereof (the “second spending period”),

(iii) 75 percent within 18 months of the date hereof (the “third spending period”), and

(iv) 100 percent within 2 years (the “fourth spending period”).

If 95 percent of the Available Construction Proceeds are spent within 24 months and the extra five percent is needed as a Reasonable Retainage and such amount is spent within three years of the date hereof, the above schedule will be treated as met for the first three spending periods described above, Available Construction Proceeds include the amount of future earnings that the District reasonably expected as of the issue date. For the fourth spending period described above, Available Construction Proceeds include the actual earnings received. Earnings that accrue after the end of the 2-year spending period are not part of the Available Construction Proceeds for purposes of this 5 percent limitation, but are part of Available Construction Proceeds for all other purposes of this Subsection. The governmental purposes of the Bonds include payments of interest on but not payments of principal of the Bonds and payments of principal of and interest on other obligations of the District, which interest either (i) accrues on such other obligations during a one-year period including the issue date, (ii) is a capital expenditure as defined in Regulation Section 1.150-1(b), or (iii) is a Working Capital Expenditure.

If the requirements of this two-year exception are not met, the Rebate Requirement is to be calculated as otherwise described in this Section as of the date of issuance. In the event the Bonds satisfy all requirements necessary to qualify for the exemption from the Rebate Requirement described in this Subsection, the District may nevertheless subsequently elect to disregard the available exemption from the Rebate Requirement with respect to the Bonds.

B.12 18-Month Rebate Exception. Notwithstanding anything in this Section to the contrary, if (i) the Gross Proceeds of the Bonds are allocated to expenditures for a governmental purpose of the Bonds within 18 months of the date hereof in accordance with the

schedule set forth below, (ii) the Rebate Requirement is met for all amounts not required to be spent in accordance with the 18-month expenditure schedule (as set forth in Regulation Section 1.148-7(c)(3)) (other than earnings on a bona fide debt service fund) and (iii) all of the Gross Proceeds of the Bonds qualify for the initial temporary period under Regulation Section 1.148-2(e)(2), then the Gross Proceeds of the Bonds will not be subject to the Rebate Requirement. The applicable schedule of expenditures is as follows:

- (i) 15 percent within 6 months of the date hereof (the “first spending period”),
- (ii) 60 percent within 12 months of the date hereof (the “second spending period”), and
- (iii) 100 percent within 18 months of the date hereof (the “third spending period”).

The Bonds will not fail to satisfy the spending requirement for the third spending period as a result of a Reasonable Retainage if the Reasonable Retainage is allocated to expenditures within 30 months of the date hereof. For purposes of this rebate exception, Reasonable Retainage refers to the end of the 18-month period, rather than the 24-month period. For purposes of determining compliance with the first two spending periods set forth above, the amount of investment proceeds included in Gross Proceeds of the Bonds is determined based on the District’s reasonable expectations on the date hereof.

The 18-month rebate exception may not be available for any portion of the Bonds that is treated as meeting the 2-year construction rebate exception described in Subsection B.11 above.

EXHIBIT C

ACCOUNTING AND ALLOCATION RULES

C.1 General Rule. The District may use any reasonable, consistently applied accounting method to account for Gross Proceeds, investments and expenditures of the Bonds. An accounting method is “consistently applied” if it is applied uniformly within a Fiscal Period (as defined below) and between Fiscal Periods to account for Gross Proceeds of the Bonds and any amounts that are in a Commingled Fund.

C.2 Allocations of Gross Proceeds to an Issue. Amounts are allocable to only one issue at a time as Gross Proceeds. Amounts cease to be allocated to the issue as Proceeds only when those amounts (i) are allocated to an expenditure for a governmental purpose; (ii) are allocated to Transferred Proceeds of another issue of obligations; or (iii) cease to be allocated to that issue at retirement of the issue or under the Universal Cap.

C.3 Allocation of Gross Proceeds to Investments. Upon the purchase or sale of a Nonpurpose Investment, Gross Proceeds of the Bonds are not allocated to a payment for that Nonpurpose Investment in an amount greater than, or to a receipt from that Nonpurpose Investment in an amount less than, the fair market value of the Nonpurpose Investment as of the purchase or sale date. The fair market value of a Nonpurpose Investment is adjusted to take into account Qualified Administrative Costs allocable to the investment. Thus Qualified Administrative Costs increase the payments for, or decrease the receipts from, a Nonpurpose Investment.

C.4 Allocation of Gross Proceeds to Expenditures. Reasonable accounting methods for allocating funds from different sources to expenditures for the same governmental purpose include a “specific tracing” method, a “gross-proceeds-spent-first” method, a “first-in-first-out” method or a ratable allocation method, so long as the method used is consistently applied. An allocation of Gross Proceeds of the Bonds to an expenditure must involve a current outlay of cash for a governmental purpose of the Bonds. A current outlay of cash means an outlay reasonably expected to occur not later than five banking days after the date as of which the allocation of Gross Proceeds to the expenditure is made.

C.5 Commingled Funds. All Payments and Receipts (including deemed Payments and Receipts) on investments held by a Commingled Fund must be allocated (but not necessarily distributed) among each different source of funds invested in the Commingled Fund in accordance with a consistently applied, reasonable ratable allocation method. Reasonable ratable allocation methods include, without limitation, methods that allocate Payments and Receipts in proportion to either (i) the average daily balances of the amounts in the Commingled Fund from each different source of funds during any consistent time period within its fiscal year, but at least quarterly (the Fiscal Period”); or (ii) the average of the beginning and ending balances of the amounts in the Commingled Fund from each different source of funds for a Fiscal Period that does not exceed one month.

Funds invested in the Commingled Fund may be allocated directly to expenditures for governmental purposes pursuant to a reasonable consistently applied accounting method. If a ratable allocation method is used to allocate expenditures from the Commingled Fund, the same ratable allocation method must be used to allocate Payments and Receipts on investments in the Commingled Fund.

Generally a Commingled Fund must treat all its investments as if sold at fair market value either on the last day of the fiscal year or on the last day of each Fiscal Period. The net gains or losses from these deemed sales of investments must be allocated to each different source of funds invested in the Commingled Fund during the period since the last allocation. This mark-to-market requirement does not apply if (i) the remaining weighted average maturity of all investments held by a Commingled Fund during a particular fiscal year does not exceed 18 months, and the investments held by the Commingled Fund during that fiscal year consist exclusively of obligations (as defined in Regulation Section 1.150-1(b)); or (ii) the Commingled Fund operated exclusively as a reserve fund, sinking fund or replacement fund for two or more issues of the same issuer. Subject to the Universal Cap limitation, and the principle that amounts are allocable to only one issue at a time as Gross Proceeds, investments held by a Commingled Fund that serves as a common reserve fund, replacement fund or sinking fund must be allocated ratably among the issues served by the Commingled Fund in proportion to either (i) the relative values of the bonds of those issues; (ii) the relative amounts of the remaining maximum annual

debt service requirements on the outstanding principal amounts of those issues; or (iii) the relative original stated principal amounts of the outstanding issues.

C.6 Universal Cap. Amounts that would otherwise be Gross Proceeds allocable to the Bonds are allocated (and remain allocated) thereto only to the extent that the Value of the Nonpurpose Investments allocable to those Gross Proceeds does not exceed the Value of the outstanding principal amount of the Bonds. Nonpurpose Investments allocated to Gross Proceeds in a bona fide debt service fund for the Bonds are not taken into account in determining the Value of the Nonpurpose Investments, and those Nonpurpose Investments remain allocated to the Bonds. To the extent that the Value of the Nonpurpose Investments allocable to the Gross Proceeds of the Bonds exceeds the value of the outstanding principal amount of the Bonds, the District should seek the advice of competent counsel with a nationally recognized expertise in matters affecting the exclusion of interest on municipal bonds from gross income for Federal income tax purposes for the procedures necessary to comply with the Universal Cap.

C.7 Expenditure for Working Capital Purposes. Subject to certain exceptions, the Proceeds of the Bonds may only be allocated to “working capital expenditures” as of any date to the extent that those expenditures exceed “available amounts” as of that date (i.e., “proceeds-spent-last”).

For purposes of this Section, “working capital expenditures” include all expenditures other than “capital expenditures.” “Capital expenditures” are costs of a type properly chargeable (or chargeable upon proper election) to a capital account under general federal income tax principles. Such costs include, for example, costs incurred to acquire, construct, or improve land, buildings and equipment having a reasonably expected useful life in excess of one year. Thus, working capital expenditures include, among other things, expenditures for current operating expenses and debt service.

For purposes of this Section, “available amount” means any amount that is available to the District for working capital expenditure purposes of the type financed by the Bonds. Available amount excludes Proceeds of the Bonds but includes cash, investments and other amounts held in accounts or otherwise by the: District for working capital expenditures of

the type being financed by the Bonds without legislative or judicial action and without a legislative, judicial, or contractual requirement that those amounts be reimbursed. Notwithstanding the preceding sentence, a “reasonable working capital reserve” is treated as unavailable. A working capital reserve is reasonable if it does not exceed five percent of the actual working capital expenditures of the District in the fiscal year before the year in which the determination of available amounts is made. For purposes of the preceding sentence only, in determining the working capital expenditures of the District for a prior fiscal year, any expenditures (whether capital or working capital expenditures) that are paid out of current revenues may be treated as working capital expenditures.

The proceeds-spent-last requirement does not apply to expenditures to pay (i) any Qualified Administrative Costs; (ii) fees for a qualified guarantee of the Bonds or payments for a qualified hedge for the Bonds; (iii) interest on the issue for a period commencing on the issue date and ending on the date that is one year after the completion date of any capital project funded with the Proceeds of the Bonds; (iv) the United States for Yield reduction payments (including rebate payments) or penalties for the failure to meet the spend down requirements associated with certain spending exceptions to the Rebate Requirement; (v) costs, other than those described in (i) through (iv) above, that do not exceed five percent of the Sale Proceeds and that are directly related to capital expenditures financed by the Bonds (e.g., initial operating expenses for a new capital project); (vi) principal or interest on the Bonds paid from unexpected excess sale or investment proceeds; (vii) principal or interest on an issue paid from investment earnings on a Reserve or Replacement Fund that are deposited in a bona fide debt service fund; and (viii) principal, interest, or redemption premium on a prior issue. Notwithstanding the preceding paragraph, the exceptions described above do not apply if the allocation merely substitutes Gross Proceeds for other amounts that would have been used to make those expenditures in a manner that gives rise to Replacement Proceeds.

C.8 Valuation of Investments - Fair Market Value. The fair market value of an investment is the price at which a willing buyer would purchase the investment from a willing seller in a bona fide arm’s-length transaction. Fair market value generally is determined on the date on which a contract to purchase or sell the Nonpurpose Investment becomes binding (i.e., the trade date rather than the settlement date). An investment that is not of a type traded on an

established securities market, within the meaning of Section 1273 of the Code, is rebuttably presumed to be acquired or disposed of for a price that is not equal to its fair market value. The fair market value of a United States Treasury obligation that is purchased directly from the United States Treasury is its purchase price.

C.9 Certificates of Deposit. A certificate of deposit that has a fixed interest rate, a fixed payment schedule and a substantial penalty for early withdrawal shall be treated as purchased at its fair market value if the Yield of the certificate of deposit is not less than (i) the Yield of reasonably comparable direct obligations of the United States; and (ii) the highest Yield that is published or posted by the provider to be currently available from the provider on reasonably comparable certificates of deposit offered to the public.

C.10 Guaranteed Investment Contracts. The purchase price of a guaranteed investment contract is treated as its fair market value on the purchase date if (i) the District makes a bona fide solicitation for a specified guaranteed investment contract and receives at least three bona fide bids from providers that have no material financial interest in the Bonds (e.g., underwriters or brokers); (ii) the District purchases the highest-yielding guaranteed investment contract for which a qualifying bid is made (determined net of broker's fees); (iii) the Yield of the guaranteed investment contract (determined net of broker's fees) is not less than the Yield then available from the provider on reasonably comparable guaranteed investment contracts, if any, offered to other persons from a source of funds other than Gross Proceeds of tax-exempt bonds; (iv) the determination of the terms of the guaranteed investment contract takes into account as a significant factor the District's reasonably expected drawdown schedule for the amounts to be invested, exclusive of amounts deposited in debt service funds and Reserve or Replacement Funds; (v) the terms of the guaranteed investment contract, including collateral security requirements, are reasonable; and (vi) the obligor on the guaranteed investment contract certifies the administrative costs that it is paying (or expects to pay) to third parties in connection with the guaranteed investment contract.

C.11 Recordkeeping Requirement. To evidence the fair market value of a guaranteed investment contract, the District must retain the following records with the bond documents until three years after the last outstanding Bond is redeemed:

- (i) a copy of the investment contract;
- (ii) the receipt or other record of the amount actually paid by the Issuer for the guaranteed investment contract, including a record of any administrative costs paid by the Issuer;
- (iii) for each bid that is submitted, the name of the person and entity submitting the bid, the time and date of the bid, and the bid results; and
- (iv) the bid solicitation form and, if the terms of the purchase agreement or guaranteed investment contract deviated from the bid solicitation form or a submitted bid is modified, a brief statement explaining the deviation and stating the purpose for the deviation.

**EXHIBIT D
TO TAX COMPLIANCE AGREEMENT**

INVESTMENT INSTRUCTIONS AND REMEDIAL ACTION PROCEDURES

March 1, 2018

Pueblo Conservancy District
P.O. Box 234
Pueblo, Colorado 81002

**\$10,000,000
Pueblo Conservancy District
Refunding and Improvement Conservancy Maintenance Fund Bonds,
Series 2018 A (the "Bonds")**

Ladies and Gentlemen:

Terms not otherwise defined herein shall have the definitions ascribed to such terms in the Tax Compliance Certificate (the "Tax Certificate") to which these Instructions (defined below) are attached as Exhibit D. The financial information contained herein with respect to the \$10,000,000, Pueblo Conservancy District Conservancy Refunding and Improvement Maintenance Fund Bonds, Series 2018 A (the "Bonds") is derived from representations of the Pueblo Conservancy District (the "District" or "Issuer")

This letter sets forth instructions and written procedures ("Written Procedures") regarding the investment and disposition of moneys deposited in various accounts created under the Resolution of the Issuer, adopted on February 28, 2018 (the "Resolution"), providing for the issuance and delivery of the Bonds. The Bonds are being issued to provide funds for the Project as described in the Tax Compliance Certificate.

The purpose of these Instructions is to assure that the investment of moneys in the accounts described herein will comply with the arbitrage limitations imposed by Section 148 of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder (the "Regulations"), and to further define and explain terms used in certain of the tax covenants in the Resolution. These Instructions also implement the investment provisions of the Resolution and the Tax Certificate.

Section 1. Computation of Yield. For purposes of these Instructions, the term "yield" shall have the meaning set forth in the Regulations. The Regulations provide that the term "yield" means that yield which when used in computing the present worth of all payments of principal and interest to be paid on an obligation produces an amount equal to the purchase price of such obligation. The yield of the Bonds and the yield of obligations acquired with moneys described in these Instructions shall be computed by using the same frequency of interest compounding. In the case of the Bonds, the purchase price is \$10,000,000. There is no Accrued Interest on the Bonds. The yield on the Bonds is 3.40%.

Section 2. Investments - General. If the yield of an investment obligation is restricted to a yield not in excess of either the yield of the Bonds or 1/8% greater than the yield of the Bonds, the yield must be the market price of the investment obligation on an established market. This means that you cannot pay a premium to adjust the yield and that you cannot accept a lower interest rate than is usually paid. Currently, if an obligation cannot be purchased on an established market or a bona fide bid price cannot be established at a yield which does not exceed the target restricted yield, you are limited (a) to acquiring United States Treasury Certificates of Indebtedness, Bonds and Bonds - State and Local Government Series ("SLGs") which yield no more than the target restricted yield or (b) to making Yield Reduction Payments as provided in Section 1.148-S(c) of the Regulations. SLGs are available at the Bureau of the Public Debt of the United States Department of the Treasury in Parkersburg, West Virginia.

Section 3. Maintenance Assessment Account.

Any money deposited in the Maintenance Assessment Account that has been held or is expected to be held for more than 13 months from the date of receipt under the Resolution or Tax Compliance Certificate may not be invested in obligations that bear a yield in excess of the yield of the Bonds to the extent that such amount exceeds the greater of (i) one-twelfth of the annual debt service on the Bonds or (ii) one year's earnings on such portion deposited in the Maintenance Assessment Account.

Section 4. Rebate Requirement. The District does not expect to be subject to the arbitrage rebate requirement as indicated in Section 13.1 of the Tax Compliance Certificate.

Section 5. Conditions to taking remedial action.

(a) An action that causes an issue to meet the private business tests or the private loan financing test is not treated as a deliberate action if the Issuer takes a remedial action described in this section with respect to the nonqualified bond and if all the requirements in paragraphs (a)(1) through (4) of this section are met.

- (1) **Reasonable expectations test met.** The Issuer reasonably expected on the issue date that the issue would meet neither the private business tests nor the private loan financing test for the entire term of the bond. For this purpose, if the Issuer reasonably expected on the issue date to take a deliberate action prior to the final maturity date of the issue that would cause either the private business tests or the private loan financing test to be met, the term of the bond for this purpose may be determined by taking into account a redemption provision if the provisions of §1.141-2(d)(2)(ii)(A) through (C) are met.
- (2) **Fair market value consideration.** Except as provided in paragraph (f) of this section, the terms of any arrangement that results in satisfaction of either the private business tests or the private loan financing test are bona fide and arm's length, and the new user pays fair market value for the use of the financed property. Thus, for example, fair market value may be

determined in a manner that takes into account restrictions on the use of financed property that serve a bona fide governmental purpose.

- (3) **Disposition proceeds treated as gross proceeds for arbitrage purposes.** The Issuer must treat any disposition proceeds as gross proceeds for purposes of Section 148. For purposes of eligibility for temporary periods under Section 148(c) and exemptions from the requirement of Section 148(f), the Issuer may treat the date of receipt of the disposition proceeds as the issue date of the bond and disregard the receipt of disposition proceeds for exemptions based on expenditure of proceeds under §1.148-7 that were met before the receipt of the disposition proceeds.
 - (4) **Proceeds expended on a governmental purpose.** Except for a remedial action under paragraph (d) of this section, the proceeds of the issue that are affected by the deliberate action must have been expended on a governmental purpose before the date of the deliberate action.
- (b) **Effect on a remedial action.**
- (1) In general. The effect of a remedial action is to cure use of proceeds that causes the private business use test or the private loan financing test to be met. A remedial action does not affect application of the private security or payment test.
- (c) **Disposition proceeds.**
- (1) **Definition.** Disposition proceeds are any amounts (including property, such as an agreement to provide services) derived from the sale, exchange, or other disposition (disposition) of property (other than investments) financed with the proceeds of an issue.
 - (2) **Allocating disposition proceeds to an issue.** In general, if the requirements of paragraph (a) of this section are met, after the date of the disposition, the proceeds of the issue allocable to the transferred property are treated as financing the disposition proceeds rather than the transferred property. If a disposition is made pursuant to an installment sale, the proceeds of the issue continue to be allocated to the transferred property. If an issue does not meet the requirements for remedial action in paragraph (a) of this section or the issuer does not take an appropriate remedial action, the proceeds of the issue are allocable to either the transferred property or the disposition proceeds, whichever allocation produces the greater amount of private business use and private security or payments.
 - (3) **Allocating disposition proceeds to different sources of funding.** If property has been financed by different sources of funding, for purposes of this section, the disposition proceeds from that property are first allocated

to the outstanding bond that financed that property. In no event may disposition proceeds be allocated to a bond that is no longer outstanding or to a source of funding not derived from a borrowing (such as revenues of the Issuer) if the disposition proceeds are not greater than the total principal amount of the outstanding bond that is allocable to that property. For purposes of this paragraph (c)(3), principal amount has the same meaning as in §1-148-9(b)(2) and outstanding bond does not include an advance refunded bond.

(d) Redemption or defeasance of nonqualified bonds.

- (1) **In general.** The requirements of this paragraph (d) are met if all of the nonqualified bonds or bonds of the issue are redeemed. Proceeds of tax-exempt bonds or bonds must not be used for this purpose, unless the tax-exempt bonds or bonds are qualified bonds, taking into account the purchaser's use of the facility. If the bonds or notes are not redeemed within 90 days of the date of the deliberate action, a defeasance escrow must be established for those bonds or notes within 90 days of the deliberate action.
- (2) **Special rule for dispositions of cash.** If the consideration for the disposition of financed property is exclusively cash, the requirements of this paragraph (d) are met if the disposition proceeds are used to redeem a pro rata portion of the nonqualified bonds or notes at the earliest call date after the deliberate action. If the bonds or notes are not redeemed within 90 days of the date of the deliberate action, the disposition proceeds must be used to establish a defeasance escrow for those bonds or notes within 90 days of the deliberate action.
- (3) **Notice of defeasance.** The issuer must provide written notice to the Commissioner of the establishment of the defeasance escrow within 90 days of the date of the defeasance escrow is established.
- (4) **Special limitation.** The establishment of a defeasance escrow does not satisfy the requirements of this paragraph (d) if the period between the issue date of the first call date of the bonds or notes are more than 10½ years.
- (5) **Defeasance escrow defined.** A defeasance escrow is an irrevocable escrow established to redeem the bond on its earliest call date in an amount that, together with investment earnings, is sufficient to pay all the principal of, and interest and call premium on, the bond from the date of escrow is established to the earliest call date. The escrow may be invested in higher yielding investments or in any investment under which the obligor is a user of the proceeds of the bonds.

(e) Alternative use of disposition proceeds.

(1) **In general.** The requirements of this paragraph (e) are met if

- i. The deliberate action is a disposition for which the consideration is exclusively cash;
- ii. The issuer reasonably expects to expend the disposition proceeds within two years of the date of the deliberate action;
- iii. The disposition proceeds are treated as proceeds of Section 141 and are used in a manner that does not cause the issue to meet either the private business tests or the private loan financing test, and the issuer does not take any action subsequent to the date of the deliberate action to cause either of these tests to be met; and
- iv. If the issuer does not use all of the disposition proceeds for an alternative use described in paragraph (e)(1)(iii) of this section, the issuer uses those remaining disposition proceeds for a remedial action that meets paragraph (d) of this section.

(f) **Alternative use of facility.** The requirements of this paragraph (f) are met if:

- (1) The facility with respect to which the deliberate action occurs is used in an alternative matter (for example, used for qualifying purpose by a nongovernmental person or used by a 501(c)(3) organization rather than a governmental person);
- (2) The nonqualified bond is treated as reissued, as of the date of the deliberate action, for purposes of sections 55 through 59 and 141, 142, 144, 145, 146, 147, 149 and 150, and under this treatment, the nonqualified bond satisfies all the applicable requirements for the qualified bond throughout the remaining term of the nonqualified bond;
- (3) The deliberate action does not involve a disposition to a purchaser that finances the acquisition with proceeds of another issue of tax-exempt bonds; and
- (4) Any disposition proceeds other than those arising from an agreement to provide services (including disposition proceeds from an installment sale) resulting from the deliberate action are used to pay the debt service on the bonds on the next available payment date or, within 90 days of receipt, are deposited into an escrow that is restricted to the yield on the Bonds to pay the debt service on the bonds on the next available payment date.

(g) **Rules for deemed reissuance.** For purposes of determining whether the Bonds that is treated as reissued under paragraph (e) and (f) of this section is a qualified Bonds--

- (1) The provisions of the Code and regulations thereunder in effect as of the date of the deliberate action apply; and

- (2) For purposes of paragraph (f) of this section, Section 147(d) (relating to the acquisition of existing property) does not apply.

(h) **Effect of remedial action on continuing compliance.** Solely for purposes of determining whether deliberate actions that are taken after a remedial action cause an issue to meet the private business tests or the private loan financing test—

- (1) If a remedial action is taken under paragraph (d), (e) or (f) of this section, the private business use or private loans resulting from the deliberate action are not taken into account for purposes of determining whether the bonds are private activity bonds; and
- (2) After a remedial action is taken, the amount of disposition proceeds is treated as equal to the proceeds of the issue that had been allocable to the transferred property immediately prior to the disposition.

Section 6. Other Tax Compliance Requirements. The Tax Certificate sets forth additional constraints on the use of proceeds of the bonds which you must observe in order to preserve the excludability of interest on the bonds from gross income for federal income tax purposes.

Under Section 15(g) of the Resolution, the District covenants that it will take no action and permit no action within its control to be taken which would adversely affect the excludability from gross income for federal income tax purposes of interest on the Bonds.

Section 7. Change in Law. The Instructions set forth herein are based on law in effect as of this date, and we undertake no obligation to monitor or update the status of these Instructions. Statutory or regulatory changes, including, but not limited to, clarifying Regulations, may affect the Instructions contained herein. Pursuant to the Tax Compliance Certificate, the District is bound to take all actions necessary to maintain the tax-exempt status of interest on the Bonds. Accordingly, the District should retain counsel or other experts from time to time to ensure compliance, in a timely fashion, with the tax covenants.

Sincerely,

SPENCER FANE LLP