

**TOWN OF BETHANY**

**Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)**

**BOND TRANSCRIPT**

**Table of Contents**

**BASIC DOCUMENTS**

1. Bond Ordinance
2. Supplemental Resolution
3. Loan Agreement
4. Public Service Commission Orders
5. Infrastructure and Jobs Development Council Approval
6. Cross-Receipt for Bonds and Bond Proceeds
7. Direction to Authenticate and Deliver Bonds
8. Specimen Bond

**OPINIONS OF COUNSEL**

9. Approving Opinion of Steptoe & Johnson PLLC, Bond Counsel
10. Opinion of Counsel to Issuer
11. Title Opinion

## **CERTIFICATES**

12. General Certificate of Issuer and Attorney
13. Certificate of Engineer, with Schedule A Attached
14. Certificate of Certified Public Accountant
15. Certificate as to Arbitrage

## **DOCUMENTS OF THE ISSUER**

16. Charter
17. Oaths of Office of Officers and Councilmembers
18. Ordinance Creating Sanitary Board & Oaths of Office of Officers
19. Petition of Sanitary Board
20. Sewer Rate Ordinance
21. Affidavit of Publication of Sewer Rate Ordinance and Notice of Public Hearing
22. Minutes on Adoption and Enactment of Sewer Rate Ordinance
23. Affidavit of Publication of Abstract of Bond Ordinance and Notice of Public Hearing
24. Minutes on Adoption and Enactment of Bond Ordinance and Adoption of Supplemental Resolution and First Draw Resolution
25. Municipal Bond Commission New Issue Report
26. IRS Information Return (Form 8038-G)

## **MISCELLANEOUS DOCUMENTS**

27. Acceptance of Appointment as Depository Bank
28. Acceptance of Duties as Registrar
29. Certificate of Registration of Bonds

30. Registrar's Agreement
31. NPDES Permit and Health Permit
32. Evidence of Insurance
33. Closing Memorandum
34. Receipt of Payment of Prior Notes
35. Receipt of Payment of Step I Loan

02/08/05  
072227.00002

**TOWN OF BETHANY**

**SEWER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA INFRASTRUCTURE FUND)**

**CONFORMED BOND ORDINANCE**

**Table of Contents**

<b>Subject</b>		<b>Page</b>
<b>ARTICLE I</b>		
<b>STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS</b>		
Section 1.01	Authority for this Ordinance	1
Section 1.02	Findings	1
Section 1.03	Bond Legislation Constitutes Contract	4
Section 1.04	Definitions	4
<b>ARTICLE II</b>		
<b>AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT AND REFUNDING OF PRIOR NOTES</b>		
Section 2.01	Authorization of Acquisition and Construction of the Project	12
Section 2.02	Authorization of Refunding of the Prior Notes	12
<b>ARTICLE III</b>		
<b>AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT</b>		
Section 3.01	Authorization of Bonds	13
Section 3.02	Terms of Bonds	13
Section 3.03	Execution of Bonds	14
Section 3.04	Authentication and Registration	14
Section 3.05	Negotiability, Transfer and Registration	14
Section 3.06	Bonds Mutilated, Destroyed, Stolen or Lost	15
Section 3.07	Bonds not to be Indebtedness of the Issuer	15
Section 3.08	Bonds Secured by Pledge of Net Revenues	16

Section 3.09	Delivery of Bonds	16
Section 3.10	Form of Bonds	16
	FORM OF BOND	17
Section 3.11	Sale of Bonds; Approval and Ratification of Execution of Loan Agreement	25
Section 3.12	"Amended Schedule A" Filing	25

**ARTICLE IV**  
**[RESERVED]** 26

**ARTICLE V**  
**FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF**

Section 5.01	Establishment of Funds and Accounts with Depository Bank	27
Section 5.02	Establishment of Funds and Accounts with Commission	27
Section 5.03	System Revenues; Flow of Funds	27

**ARTICLE VI**  
**BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS**

Section 6.01	Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds	32
Section 6.02	Disbursements From the Bond Construction Trust Fund	32

**ARTICLE VII**  
**ADDITIONAL COVENANTS OF THE ISSUER**

Section 7.01	General Covenants of the Issuer	34
Section 7.02	Bonds not to be Indebtedness of the Issuer	34
Section 7.03	Bonds Secured by Pledge of Net Revenues	34
Section 7.04	Initial Schedule of Rates and Charges	34
Section 7.05	Sale of the System	35
Section 7.06	Issuance of Other Obligations Payable Out of Revenue and General Covenant Against Encumbrances	36
Section 7.07	Additional Parity Bonds	36
Section 7.08	Books; Records and Audit	38
Section 7.09	Rates	40
Section 7.10	Operating Budget and Monthly Financial Report	41
Section 7.11	Engineering Services and Operating Personnel	41
Section 7.12	No Competing Franchise	42
Section 7.13	Enforcement of Collections	42

Section 7.14	No Free Services	42
Section 7.15	Insurance and Construction Bonds	43
Section 7.16	Mandatory Connections	44
Section 7.17	Completion of Project; Permits and Orders	45
Section 7.18	Compliance with Loan Agreement and Law	45
Section 7.19	Tax Covenants	45
Section 7.20	Securities Law Compliance	47
Section 7.21	Contracts; Public Releases	47

## **ARTICLE VIII INVESTMENT OF FUNDS**

Section 8.01	Investments	48
Section 8.02	Non-Arbitrage	49
Section 8.03	Small Issuer Exemption from Rebate	49

## **ARTICLE IX DEFAULT AND REMEDIES**

Section 9.01	Events of Default	51
Section 9.02	Remedies	51
Section 9.03	Appointment of Receiver	51

## **ARTICLE X PAYMENT OF BONDS**

Section 10.01	Payment of Bonds	53
---------------	------------------	----

## **ARTICLE XI MISCELLANEOUS**

Section 11.01	Amendment or Modification of Bond Legislation	54
Section 11.02	Bond Legislation Constitutes Contract	54
Section 11.03	Severability of Invalid Provisions	54
Section 11.04	Headings, Etc.	54
Section 11.05	Conflicting Provisions Repealed	54
Section 11.06	Covenant of Due Procedure, Etc.	55
Section 11.07	Effective Date	55
Section 11.08	Statutory Notice and Public Hearing	55
	<b>SIGNATURES</b>	55
	<b>CERTIFICATION</b>	56
	<b>EXHIBIT A</b>	57

## TOWN OF BETHANY

ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2003, AND ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE TOWN OF BETHANY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF BETHANY OF NOT MORE THAN \$3,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE TOWN OF BETHANY:

### ARTICLE I

#### STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

Section 1.01. Authority for this Ordinance. This Ordinance (together with any ordinance, order or resolution supplemental hereto or amendatory hereof, the "Bond Legislation") is enacted pursuant to the provisions of Chapter 16, Article 13 and Chapter 31, Article 15 A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and other applicable provisions of law.

Section 1.02. Findings. It is hereby found, determined and declared that:

A. The Town of Bethany (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Brooke County of said State.

B. The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be acquired and constructed certain additions, betterments and improvements for the existing public sewerage system of the Issuer, consisting of wastewater treatment plant improvements, storm sewer separation and collection system rehabilitation and all necessary appurtenances (collectively, the "Project"), which constitute properties for the collection, treatment, purification and disposal of liquid or solid wastes, sewage or industrial wastes (the existing public sewerage system of the Issuer, the Project and any further additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer has heretofore financed the design of the Project by the issuance of the Sewerage System Bond Anticipation Notes, Series 2003, dated May 22, 2003, issued in the original aggregate principal amount of \$225,000 (the "Prior Notes").

D. The Prior Notes were issued pursuant to an ordinance of the Issuer previously enacted for such purpose (such ordinance, as so amended and supplemented, is here called the "Prior Ordinance").

E. It is deemed necessary and desirable for the Issuer to refund the Prior Notes to effect the release and termination of certain restrictions, conditions and limitations imposed in the Prior Ordinance.

F. The Issuer intends to refund the Prior Notes and permanently finance the costs of acquisition and construction of the Project through the issuance of its revenue bonds to the West Virginia Water Development Authority (the "Authority"), which administers the West Virginia Infrastructure Fund (the "Infrastructure Fund") for the West Virginia Infrastructure and Jobs Development Council (the "Council").

G. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, Series 2004 A (West Virginia Infrastructure Fund), in the total aggregate principal amount of not more than \$3,000,000 (the "Series 2004 A Bonds"), initially to be represented by a single bond, to refund the Prior Notes and permanently finance a portion of the costs of acquisition and construction of the Project. The remaining costs of the Project shall be funded from the sources set forth in Section 2.01 hereof. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor; interest, if any, upon the Series 2004 A Bonds prior to and during acquisition or construction and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Series 2004 A Bonds Reserve Account (as hereinafter defined); engineering and legal expenses; expenses for estimates of costs and revenues, expenses for plans, specifications and

surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, commitment fees, fees and expenses of the Authority; discount, initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2004 A Bonds and such other expenses as may be necessary or incidental to the financing herein authorized, the acquisition or construction of the Project and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2004 A Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

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

I. It is in the best interests of the Issuer that its Series 2004 A Bonds be sold to the Authority pursuant to the terms and provisions of a loan agreement (the "Loan Agreement") by and between the Issuer and the Authority, on behalf of the Council, in form satisfactory to the Issuer, the Authority and the Council, to be approved hereby if not previously approved by resolution of the Issuer.

J. Upon the refunding of the Prior Notes on the Closing Date, there will be no outstanding obligations of the Issuer which will rank on a parity with the Series 2004 A Bonds as to liens, pledge, source of and security for payment or are secured by revenues or assets of the System.

K. The estimated revenues to be derived in each year after completion of the Project and the refunding of the Prior Notes from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Series 2004 A Bonds and to make payments into all funds and accounts and other payments provided for herein.

L. The Issuer has complied with all requirements of West Virginia law and the Loan Agreement relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2004 A Bonds, or will have so complied prior to issuance of any thereof, including, among other things, the approval of the Project and the financing thereof by the West Virginia Infrastructure and Jobs Development Council and the obtaining of a Certificate of Public Convenience and Necessity from the Public Service Commission of West Virginia by final order, the time for rehearing and appeal of which will either have expired prior to the issuance of the Series 2004 A Bonds or such final order will not be subject to appeal.

M. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board, and the Sanitary Board has petitioned the Governing Body to issue the Series 2004 A Bonds for the purposes set forth herein.

N. The Project has been reviewed and determined to be technically and financially feasible by the West Virginia Infrastructure and Jobs Development Council as required under Chapter 31, Article 15A of the West Virginia Code of 1931, as amended.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2004 A Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 2004 A Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

"Act" means, collectively, Chapter 16, Article 13 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

"Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser and Registered Owner of the Series 2004 A Bonds, or any other agency, board or department of the State that succeeds to the functions of the Authority.

"Authorized Officer" means the Mayor of the Issuer, or any other officer of the Issuer specifically designated by resolution of the Governing Body.

"Board" means the Sanitary Board of the Issuer.

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

"Bond Legislation," "Ordinance," "Bond Ordinance" or "Local Act" means this Bond Ordinance and all ordinances, orders and resolutions supplemental hereto or amendatory hereof.

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

"Bonds" means the Series 2004 A Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

"Bond Year" means the 12-month period beginning on the anniversary of the Closing Date in each year and ending on the day prior to the anniversary date of the Closing Date in the following year, except that the first Bond Year shall begin on the Closing Date.

"Closing Date" means the date upon which there is an exchange of the Series 2004 A Bonds for all or a portion of the proceeds of the Series 2004 A Bonds from the Authority.

"Code" means the Internal Revenue Code of 1986, as amended, and the Regulations.

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

"Consulting Engineers" means Cerrone Associates, Inc., Wheeling, West Virginia, or any qualified engineer or firm of engineers, licensed by the State, that shall at any time hereafter be procured by the Issuer as Consulting Engineers for the System, or portion thereof, in accordance with Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended; provided however, that the Consulting Engineers shall not be a regular, full-time employee of the State or any of its agencies, commissions, or political subdivisions.

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

"Council" means the West Virginia Infrastructure and Jobs Development Council and any successor thereto.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns.

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

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

"Governing Body" means the Council of the Issuer, as it may now or hereafter be constituted.

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

"Gross Revenues" means the aggregate gross operating and non-operating revenues of the System, determined in accordance with generally accepted accounting principles, after deduction of prompt payment discounts, if any, and reasonable provision for uncollectible accounts; provided, that "Gross Revenues" does not include any gains from the sale or other disposition of, or from any increase in the value of, capital assets (including Qualified Investments, as hereinafter defined, purchased pursuant to Article 8.01 hereof), or any Tap Fees, as hereinafter defined.

"Herein," "hereto" and similar words shall refer to this entire Bond Legislation.

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

"Investment Property" means:

(A) any security (within the meaning of Section 165(g)(2)(A) or (B) of the Code),

(B) any obligation,

(C) any annuity contract,

(D) any investment-type property, or

(E) in the case of a bond other than a private activity bond, any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan.

Except as provided in the following sentence, the term "Investment Property" does not include any tax-exempt bond. With respect to an issue other than an issue a part of which is a specified private activity bond (as defined in section 57(a)(5)(C) of the Code), the term "Investment Property" includes a specified private activity bond (as so defined).

"Issuer" means the Town of Bethany, a municipal corporation and political subdivision of the State of West Virginia, in Brooke County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Loan Agreement" means the loan agreement heretofore entered, or to be entered, into between the Authority and the Issuer, on behalf of the Council, providing for the purchase of the Series 2004 A Bonds from the Issuer by the Authority, the form of which shall be approved, and the execution and delivery by the Issuer authorized and directed or ratified by the Supplemental Resolution.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2004 A Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2004 A Bonds Reserve Account. For purposes of the Private Business Use limitations set forth herein, the term Net Proceeds shall include any amounts resulting from the investment of proceeds of the Series 2004 A Bonds, without regard to whether or not such investment is made in tax-exempt obligations.

"Net Revenues" means the balance of the Gross Revenues, remaining after deduction of Operating Expenses, as hereinafter defined.

"Nonpurpose Investment" means any Investment Property as defined in Section 148 (b) of the Code, that is not a purpose investment.

"Operating Expenses" means the reasonable, proper and necessary costs of repair, operation and maintenance of the System, and includes, without limiting the generality of the foregoing, administrative, engineering, legal, auditing and insurance expenses, other than those capitalized as part of the Costs, fees and expenses of the Authority, fiscal agents, the Depository Bank, the Registrar and Paying Agent (all as herein defined), payments to pension or retirement funds, taxes and such other reasonable operating costs and expenses as should normally and regularly be included under generally accepted accounting principles; provided, that "Operating Expenses" does not include payments on account of the principal of or redemption premium, if any, or interest on the Bonds, charges for depreciation, losses from the sale or other disposition of, or from any decrease in the value of, capital assets, amortization of debt discount or such miscellaneous deductions as are applicable to prior accounting periods.

"Outstanding" when used with reference to Bonds and as of any particular date, describes all Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond cancelled by the Bond Registrar, at or prior to said date; (ii) any Bond, for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with

interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; and (iv) for purposes of consents or other action by a specified percentage of Bondholders, or holders of any Bonds registered to the Issuer.

"Parity Bonds" means Parity Bonds issued under the provisions and within the limitations prescribed by Section 7.07 hereof.

"Paying Agent" means the Commission or such other entity or authority as may be designated as a Paying Agent by the Issuer in the Supplemental Resolution with the written consent of the Authority and the Council.

"Prior Notes" means the Issuer's Sewerage System Bond Anticipation Notes, Series 2003, dated May 22, 2003, issued in the original principal amount of \$225,000.

"Prior Ordinance" means the ordinance of the Issuer, as supplemented by the supplemental resolution of the Issuer, authorizing the Prior Notes.

"Private Business Use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit; provided that, use as a member of the general public shall not be taken into account.

"Project" means the Project as described in Section 1.02B hereof.

"Qualified Investments" means and includes any of the following, unless otherwise set forth in the Supplemental Resolution:

(a) Government Obligations;

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

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

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

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

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

(g) Repurchase agreements, fully secured by investments of the types described in paragraphs (a) through (e) above, with banks or national banking associations which are members of FDIC or with government bond dealers recognized as primary dealers by the Federal Reserve Bank of New York, provided, that said investments securing said repurchase agreements either must mature as nearly as practicable coincident with the maturity of said repurchase agreements or must be replaced or increased so that the market value thereof is always at least equal to the principal amount of said repurchase agreements, and provided further that the holder of such repurchase agreement shall have a prior perfected security interest in the collateral therefor; must have (or its agent must have) possession of such collateral; and such collateral must be free of all claims by third parties;

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

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

"Recorder" means the Recorder of the Issuer.

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

"Registrar" means the Bond Registrar.

"Regulations" means temporary and permanent regulations promulgated under the Code, or any predecessor thereto.

"Renewal and Replacement Fund" means the Renewal and Replacement Fund created by Section 5.01 hereof.

"Revenue Fund" means the Revenue Fund created by Section 5.01 hereof.

"Series 2004 A Bonds" means the Sewer Revenue Bonds, Series 2004 A (West Virginia Infrastructure Fund), of the Issuer, authorized by this Bond Legislation.

"Series 2004 A Bonds Construction Trust Fund" means the Series 2004 A Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2004 A Bonds Reserve Account" means the Series 2004 A Bonds Reserve Account established in Section 5.02 hereof.

"Series 2004 A Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest which will become due on the Series 2004 A Bonds in the then current or any succeeding year.

"Series 2004 A Bonds Sinking Fund" means the Series 2004 A Bonds Sinking Fund established by Section 5.02 hereof.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2004 A Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2004 A Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Net Revenues not required by the Bond Legislation to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Renewal and Replacement Fund, the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account.

"System" means, collectively, the complete existing municipal sewage treatment and collection system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any additions, betterments and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever, both within and without the Issuer.

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

"West Virginia Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Chapter 31, Article 15A, Section 9 of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

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

## ARTICLE II

### AUTHORIZATION OF ACQUISITION AND CONSTRUCTION OF THE PROJECT AND REFUNDING OF PRIOR NOTES

Section 2.01.      Authorization of Acquisition and Construction of the Project. There is hereby authorized and ordered the acquisition and construction of the Project, at an estimated cost not to exceed \$3,000,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2004 A Bonds shall be applied as provided in Article VI hereof. The Issuer has received bids and will enter into contracts for the acquisition and construction of the Project, compatible with the financing plan submitted to the Council and the Authority. The cost of the Project is estimated not to exceed \$3,000,000, which will be obtained from proceeds of the Series 2004 A Bonds.

Section 2.02.      Authorization of Refunding of the Prior Notes. There is hereby authorized and ordered the payment in full of the entire outstanding principal of and all accrued interest on the Prior Notes on the Closing Date. The cost of the refunding will be obtained from the proceeds of the Series 2004 A Bonds. Upon payment in full of the Prior Notes, the pledge of revenues in favor of the holders of the Prior Notes imposed by the Prior Ordinance and the monies in the funds and accounts created by the Prior Ordinance pledged to the payment of the Prior Notes are hereby ordered terminated discharged and released.

### ARTICLE III

#### AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS; AUTHORIZATION AND EXECUTION OF LOAN AGREEMENT

Section 3.01.      Authorization of Bonds. For the purposes of refunding the Prior Notes, capitalizing interest on the Series 2004 A Bonds, funding a reserve account for the Series 2004 A Bonds, paying Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2004 A Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2004 A Bonds of the Issuer. The Series 2004 A Bonds shall be issued as a single bond, designated "Sewer Revenue Bonds, Series 2004 A (West Virginia Infrastructure Fund)," in the principal amount of not more than \$3,000,000, and shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2004 A Bonds remaining after paying the outstanding principal of and interest on the Prior Notes, funding of the Series 2004 A Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Series 2004 A Bonds Construction Trust Fund established by Section 5.01 hereof.

Section 3.02.      Terms of Bonds. The Series 2004 A Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2004 A Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest on the Series 2004 A Bonds, if any, shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar, or by such other method as shall be mutually agreeable so long as the Authority is the Registered Owner thereof.

Unless otherwise provided by the Supplemental Resolution, the Series 2004 A Bonds shall initially be issued in the form of a single bond, fully registered to the Authority, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of the Series 2004 A Bonds, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2004 A Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds; provided, that the Authority shall not be obligated to pay any expenses of such exchange.

Subsequent series of Bonds, if any, shall be issued in fully registered form and in denominations as determined by a Supplemental Resolution. Such Bonds shall be dated and shall bear interest, if any, as specified in a Supplemental Resolution.

Section 3.03. Execution of Bonds. The Series 2004 A Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Recorder. In case any one or more of the officers who shall have signed or sealed the Series 2004 A Bonds shall cease to be such officer of the Issuer before the Series 2004 A Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2004 A Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2004 A Bond shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2004 A Bond shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2004 A Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2004 A Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2004 A Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2004 A Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging Series 2004 A Bonds or transferring the registered Series 2004 A Bonds are exercised, all Series 2004 A Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2004 A Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2004 A Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of Series 2004 A Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2004 A Bonds or, in the case of any proposed redemption of Series 2004 A Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2004 A Bond shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2004 A Bonds shall not, in any event, be or constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2004 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2004 A Bonds or the interest, if any, thereon.

Section 3.08.      Bonds Secured by Pledge of Net Revenues. The payment of the debt service on the Series 2004 A Bonds shall be secured by a first lien on the Net Revenues derived from the System. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Series 2004 A Bonds and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 3.09.      Delivery of Bonds. The Issuer shall execute and deliver the Series 2004 A Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register and deliver the Series 2004 A Bonds to the original purchasers upon receipt of the documents set forth below:

A.    If other than the Authority; a list of the names in which the Series 2004 A Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B.    A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2004 A Bonds to the original purchasers;

C.    An executed and certified copy of the Bond Legislation;

D.    An executed copy of the Loan Agreement; and

E.    The unqualified approving opinion of bond counsel on the Series 2004 A Bonds.

Section 3.10.      Form of Bonds. The text of the Series 2004 A Bonds shall be in substantially the following form, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF BOND)

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
TOWN OF BETHANY  
SEWER REVENUE BONDS, SERIES 2004 A  
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR-\_\_\_\_\_

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

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF BETHANY, a municipal corporation and political subdivision of the State of West Virginia in Brooke County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of \_\_\_\_\_ DOLLARS (\$ \_\_\_\_\_), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, 200\_\_, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The interest on this Bond at the rate per annum set forth on said Exhibit B, shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing \_\_\_\_\_ 1, \_\_\_\_\_, as set forth on said EXHIBIT B.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council"), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated \_\_\_\_\_, 2004.

This Bond is issued (i) to pay in full the entire outstanding principal of and all accrued interest on the Issuer's Sewerage System Bond Anticipation Notes, Series 2003 (the "Prior Notes"); (ii) to pay a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (iii) to pay certain costs of issuance of the Bonds and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on \_\_\_\_\_, 200\_\_, and a Supplemental Resolution duly adopted by the Issuer on \_\_\_\_\_, 200\_\_ (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

UPON THE REFUNDING OF THE PRIOR NOTES, THE ISSUER WILL HAVE NO BONDS OR OBLIGATIONS OTHER THAN THIS BOND WHICH IS SECURED BY NET REVENUES OF THE SYSTEM.

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2004 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2004 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds; provided however, that so long as there exists in the Series 2004 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds

for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, the TOWN OF BETHANY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated \_\_\_\_\_, 2004.

[SEAL]

\_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Recorder

(Form of)

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2004 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: \_\_\_\_\_, 2004.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

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

(Form of)

EXHIBIT A

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1) \$		(19) \$	
(2) \$		(20) \$	
(3) \$		(21) \$	
(4) \$		(22) \$	
(5) \$		(23) \$	
(6) \$		(24) \$	
(7) \$		(25) \$	
(8) \$		(26) \$	
(9) \$		(27) \$	
(10) \$		(28) \$	
(11) \$		(29) \$	
(12) \$		(30) \$	
(13) \$		(31) \$	
(14) \$		(32) \$	
(15) \$		(33) \$	
(16) \$		(34) \$	
(17) \$		(35) \$	
(18) \$		(36) \$	
TOTAL		\$	

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

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

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

Section 3.11. Sale of Bonds; Approval and Ratification of Execution of Loan Agreement. The Series 2004 A Bonds shall be sold to the Authority, pursuant to the terms and conditions of the Loan Agreement. If not so authorized by previous ordinance or resolution, the Mayor is specifically authorized and directed to execute the Loan Agreement in the form attached hereto as "Exhibit A" and made a part hereof, and the Recorder is directed to affix the seal of the Issuer, attest the same and deliver the Loan Agreement to the Authority, and any such prior execution and delivery is hereby authorized, approved, ratified and confirmed. The Loan Agreement, including all schedules and exhibits attached thereto, is hereby approved and incorporated in this Bond Legislation.

Section 3.12. "Amended Schedule A" Filing. Upon completion of the acquisition and construction of the Project, the Issuer will file with the Authority and the Council a schedule the form of the which will be provided by the Council, setting forth the actual costs of the Project and sources of funds therefor.

ARTICLE IV

[RESERVED]

## ARTICLE V

### FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

#### Section 5.01. Establishment of Funds and Accounts with Depository Bank.

The following special funds or accounts are hereby created with and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund; and
- (3) Series 2004 A Bonds Construction Trust Fund.

#### Section 5.02. Establishment of Funds and Accounts with Commission.

The following special funds or accounts are hereby created with and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

- (1) Series 2004 A Bonds Sinking Fund; and
- (2) Series 2004 A Bonds Reserve Account.

#### Section 5.03. System Revenues; Flow of Funds.

A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt by the Issuer in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in this Bond Legislation. All monies in the Revenue Fund shall be disposed of only in the following manner and order of priority:

- (1) The Issuer shall first, each month, transfer from the Revenue Fund an amount sufficient to pay all current Operating Expenses of the System.
- (2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission, commencing 3 months prior to the first date of payment of interest on the Series 2004 A Bonds for which interest has not been capitalized or as required in the Loan Agreement, for deposit in the Series 2004 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of interest which will become due on the Series 2004 A Bonds on the next ensuing quarterly interest payment date; provided that, in the event the

period to elapse between the date of such initial deposit in the Series 2004 A Bonds Sinking Fund and the next quarterly interest payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly interest payment date, the required amount of interest coming due on such date.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2004 A Bonds for deposit in the Series 2004 A Bonds Sinking Fund, an amount equal to 1/3rd of the amount of principal which will mature and become due on the Series 2004 A Bonds on the next ensuing quarterly principal payment date; provided that, in the event the period to elapse between the date of such initial deposit in the Series 2004 A Bonds Sinking Fund and the next quarterly principal payment date is less than 3 months, then such monthly payments shall be increased proportionately to provide, 1 month prior to the next quarterly principal payment date, the required amount of principal coming due on such date.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Commission, commencing 3 months prior to the first date of payment of principal of the Series 2004 A Bonds, if not fully funded upon issuance of the Series 2004 A Bonds, for deposit in the Series 2004 A Bonds Reserve Account, an amount equal to 1/120th of the Series 2004 A Bonds Reserve Requirement; provided that, no further payments shall be made into the Series 2004 A Bonds Reserve Account when there shall have been deposited therein, and as long as there shall remain on deposit therein, an amount equal to the Series 2004 A Bonds Reserve Requirement.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank for deposit in the Renewal and Replacement Fund, a sum equal to 2 1/2% of the Gross Revenues each month, exclusive of any payments for account of any reserve account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in as provided herein. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, emergency repairs, improvements or extensions to the System; provided that, any deficiencies in any reserve account (except to the extent such deficiency exists because the required payments into such account have not, as of the date of determination of a deficiency, funded such account to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

Monies in the Series 2004 A Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2004 A Bonds as the same shall become due. Monies in the Series 2004 A Bonds Reserve Account shall be used only for the purposes of paying principal of and interest, if any, on the Series 2004 A Bonds as the same shall come due, when other monies in the Series 2004 A Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2004 A Bonds Construction Trust Fund, and following completion of construction of the Project, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment, if any, due on the Series 2004 A Bonds and then to the next ensuing principal payment due thereon.

Any withdrawals from the Series 2004 A Bonds Reserve Account which result in a reduction in the balance of the Series 2004 A Bonds Reserve Account to below the Series 2004 A Bonds Reserve Requirement shall be subsequently restored from the first Net Revenues available after all required payments have been made in full in the priority as set forth above.

As and when additional Bonds ranking on a parity with the Series 2004 A Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve account in an amount equal to the requirement therefor.

The Issuer shall not be required to make any further payments into the Series 2004 A Bonds Sinking Fund or the Series 2004 A Bonds Reserve Account when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2004 A Bonds issued pursuant to this Bond Legislation then Outstanding and all interest, if any, to accrue until the maturity thereof.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. If required by the Authority at anytime, the Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2004 A Bonds Sinking Fund and the Series 2004 A Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2004 A Bonds under the conditions and restrictions set forth herein.

B. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest, if any, and reserve payments with respect to the Series 2004 A Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

C. Whenever all of the required and provided transfers and payments from the Revenue Fund into the several special funds, as hereinabove provided, are current and there remains in the Revenue Fund a balance in excess of the estimated amounts required to be so transferred and paid into such funds during the following month or such other period as required by law, such excess shall be considered as surplus revenues (the "Surplus Revenues"). Surplus Revenues may be used for any lawful purpose of the System.

D. The Issuer shall complete the "Monthly Payment Form," a form of which is attached to the Loan Agreement, and submit a copy of said form along with a copy of its payment check to the Authority by the 5th day of such calendar month.

E. The Issuer shall remit from the Revenue Fund to the Commission, the Registrar, the Paying Agent or the Depository Bank, on such dates as the Commission, the Registrar, the Paying Agent or the Depository Bank, as the case may be, shall require, such additional sums as shall be necessary to pay their respective charges and fees then due. In the case of payments to the Commission under this Section, the Issuer shall, if required by the Authority at anytime, make the necessary arrangements whereby such required payments shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required.

F. The monies in excess of the maximum amounts insured by FDIC in all funds and accounts shall at all times be secured, to the full extent thereof in excess of such insured sum, by Qualified Investments as shall be eligible as security for deposits of state and municipal funds under the laws of the State.

G. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as hereinabove provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment

dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies before being applied to any other payments hereunder.

H. The Gross Revenues of the System shall only be used for purposes of the System.

## ARTICLE VI

### BOND PROCEEDS; CONSTRUCTION DISBURSEMENTS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2004 A Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2004 A Bonds, there shall first be paid the amounts required to pay in full the entire outstanding principal of and all accrued interest on the Prior Notes.

B. From the proceeds of the Series 2004 A Bonds, there shall be deposited with the Commission in the Series 2004 A Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest; provided, that such amount may not exceed the amount necessary to pay interest on the Series 2004 A Bonds for the period commencing on the date of issuance of the Series 2004 A Bonds and ending 6 months after the estimated date of completion of construction of the Project.

C. Next, from the proceeds of the Series 2004 A Bonds, there shall be deposited with the Commission in the Series 2004 A Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2004 A Bonds Reserve Account.

D. As the Issuer receives advances of the remaining monies derived from the sale of the Series 2004 A Bonds, such monies shall be deposited with the Depository Bank in the Series 2004 A Bonds Construction Trust Fund and applied solely to payment of the costs of the Project in the manner set forth in Section 6.02 hereof and, until so expended, are hereby pledged as additional security for the Series 2004 A Bonds.

E. After completion of construction of the Project, as certified by the Consulting Engineers, and all costs have been paid, any remaining proceeds of the Series 2004 A Bonds shall be expended as directed by the Authority.

Section 6.02. Disbursement from the Bond Construction Trust Fund.

A. The Issuer shall each month provide the Council with a requisition for the costs incurred for the Project, together with such documentation as the Council shall require. Payments for Costs of the Project shall be made monthly.

Except as provided in Section 6.01 hereof, disbursements from the Series 2004 A Bonds Construction Trust Fund shall be made only after submission to, and approval from, the Council of a certificate, signed by an Authorized Officer and the Consulting Engineers, stating that:

- (A) None of the items for which the payment is proposed to be made has formed the basis for any disbursement theretofore made;
- (B) Each item for which the payment is proposed to be made is or was necessary in connection with the Project and constitutes a Cost of the Project;
- (C) Each of such costs has been otherwise properly incurred; and
- (D) Payment for each of the items proposed is then due and owing.

Pending such application, monies in the Series 2004 A Bonds Construction Trust Fund shall be invested and reinvested in Qualified Investments at the written direction of the Issuer.

The Issuer shall expend all proceeds of the Series 2004 A Bonds within 3 years of the date of issuance of the Council's bonds, the proceeds of which were used to make the loan to the Issuer.

## ARTICLE VII

### ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2004 A Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2004 A Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2004 A Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2004 A Bonds shall not be nor constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2004 A Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2004 A Bonds or the interest, if any, thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues. The payment of the debt service on the Series 2004 A Bonds shall be secured by a first lien on the Net Revenues derived from the System. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on the Series 2004 A Bonds and to make the payments into all funds and accounts and all other payments provided for in the Bond Legislation are hereby irrevocably pledged, in the manner provided herein, to such payments as they become due, and for the other purposes provided in the Bond Legislation.

Section 7.04. Initial Schedule of Rates and Charges. The Issuer has obtained any and all approvals of rates and charges required by State law and has taken any other action required to establish and impose such rates and charges, with all requisite appeal periods having expired without successful appeal. Such rates and charges shall be sufficient to comply with the requirements of the Loan Agreement. The initial schedule of rates and charges for the services of the facilities of the System shall be as set forth in the sewer rate ordinance of the Issuer enacted January 13, 2004, which rates are incorporated herein by reference as a part hereof.

So long as the Series 2004 A Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation and in compliance with the Loan Agreement. In the event the Series 2004 A Bonds shall prove to be insufficient to produce the required sums set forth in this

Bond Legislation and the Loan Agreement, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges and take all such actions necessary to provide funds sufficient to produce the required sums set forth in this Bond Legislation and the Loan Agreement.

Section 7.05. Sale of the System. So long as the Series 2004 A Bonds are outstanding and except as otherwise required by law or with the written consent of the Authority and the Council, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall, with respect to the Series 2004 A Bonds, immediately be remitted to the Commission for deposit in the Series 2004 A Bonds Sinking Fund, and, with the written permission of the Authority, or in the event the Authority is no longer a Bondholder, the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2004 A Bonds. Any balance remaining after the payment of the Series 2004 A Bonds and interest, if any, thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined in the manner provided herein to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor is not in excess of \$10,000, the Issuer shall, by resolution duly adopted, determine that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and may then provide for the sale of such property. The proceeds of any such sale shall be deposited in the Renewal and Replacement Fund. If the amount to be received from such sale, lease or other disposition of said property shall be in excess of \$10,000 but not in excess of \$50,000, the Issuer shall first, in writing, determine upon consultation with the Consulting Engineers that such property comprising a part of the System is no longer necessary, useful or profitable in the operation thereof, and may then, if it be so advised, by resolution duly adopted, authorize such sale, lease or other disposition of such property in accordance with the laws of the State. The proceeds derived from any such sale, lease or other disposition of such property, in excess of \$10,000 and not in excess of \$50,000, shall be deposited in the Renewal and Replacement Fund. The payment of such proceeds into the Renewal and Replacement Fund shall not reduce the amounts required to be paid into said funds by other provisions of this Bond Legislation.

No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom shall be in excess of \$50,000 and insufficient to pay all Bonds then Outstanding without the prior approval and consent in writing of the Holders of the Series 2004 A Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Series 2004 A Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2004 A Bonds. All obligations issued by the Issuer after the issuance of the Series 2004 A Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2004 A Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2004 A Bonds, and the interest, if any, thereon, upon any of the income and revenues of the System pledged for payment of the Series 2004 A Bonds and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

The Issuer shall give the Authority and the Council prior written notice of its issuance of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project, or any other obligations related to the Project or the System.

Section 7.07. Additional Parity Bonds. No additional Parity Bonds payable out of the revenues of the System, shall be issued after the issuance of the Series 2004 A Bonds pursuant to this Ordinance, without the prior written consent of the Authority and the Council and without complying with the conditions and requirements herein provided.

All Parity Bonds issued hereafter shall be on a parity in all respects with the Series 2004 A Bonds.

No Parity Bonds shall be issued except for the purposes of financing the costs of design, acquisition and construction of additions, betterments or improvements to the System or refunding the Bonds issued pursuant hereto, or both such purposes.

No such Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Recorder a written statement by Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustments hereinafter provided for, from the System during any 12 consecutive months within the 18 months immediately preceding the date of the actual issuance of such additional Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity Bonds, if any, shall be not less than 115% of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

- (1) The Bonds then Outstanding;
- (2) Any Parity Bonds theretofore issued pursuant to the provisions contained in this Bond Legislation then Outstanding; and
- (3) The Parity Bonds then proposed to be issued.

The "estimated average increased annual Net Revenues to be received in each of the 3 succeeding years," as that term is used in the computation provided in the above paragraph, shall refer only to the increased Net Revenues estimated to be derived from (a) the improvements to be financed by such Parity Bonds and (b) any increase in rates enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to the date of issuance of such Parity Bonds and shall not exceed the amount to be stated in a certificate of the Independent Certified Public Accountants, which shall be filed in the office of the Recorder of the Issuer prior to the issuance of such Parity Bonds.

The Net Revenues actually derived from the System during the 12-consecutive-month period hereinabove referred to may be adjusted by adding to such Net Revenues such additional Net Revenues which would have been received, in the opinion of the Independent Certified Public Accountants, as stated in a certificate filed with the Recorder, on account of increased rates, rentals, fees and charges for the System enacted by the Issuer, the time for appeal of which shall have expired (without successful appeal) prior to issuance of such Parity Bonds.

All the covenants and other provisions of this Bond Legislation (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Series 2004 A Bonds and the Holders of any Parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. All the Bonds issued on a parity, regardless of the time or times

of their issuance, shall rank equally with respect to their lien on the Net Revenues of the System, and their source of and security for payment from said Net Revenues, without preference of any Bond over any other. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Bond Legislation required for and on account of such Parity Bonds, in addition to the payments required for Bonds theretofore issued pursuant to this Bond Legislation.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien on the revenues of the System of which is subject to the prior and superior lien of the Series 2004 A Bonds on such revenues. Any such subordinate bonds, notes, certificates or other obligations shall be payable from the Net Revenues remaining after all payments required to be made in accordance with this Bond Legislation have first been paid. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or equally, as to lien and source of and security for payment from such revenues, with the Series 2004 A Bonds except in the manner and under the conditions provided in this section.

No Parity Bonds shall be issued at any time, however, unless all of the payments into the respective funds and accounts provided for in this Bond Legislation on account of the Series 2004 A Bonds then Outstanding, and any other payments provided for in this Bond Legislation, shall have been made in full as required to the date of issuance of the Parity Bonds and the Issuer is then in full compliance with all the covenants, agreements and terms of this Bond Legislation and every ordinance supplemental thereto, or shall have fully corrected any delinquency or deficiency in such payments.

Section 7.08. Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the Council, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the Council such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the Council, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

The Issuer shall file with the Authority and the Council, or any other original purchaser of the Series 2004 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2004 A Bonds, requesting the same, an annual report containing the following:

- (A) A statement of Gross Revenues, Operating Expenses, Net Revenues and Surplus Revenues derived from and relating to the System.
- (B) A balance sheet statement showing all deposits in all the funds and accounts provided for in this Bond Legislation and the status of all said funds and accounts.
- (C) The amount of any bonds, notes or other obligations outstanding.

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit Act, or any successor thereof, to the extent legally required, and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2004 A Bonds and shall submit the report to the Authority and the Council, or any other original purchaser of the Series 2004 A Bonds. Such audit report submitted to the Authority and the Council shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of

the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

The Issuer shall permit the Authority or the Council, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the Issuer shall also provide the Authority and the Council, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the Council with respect to the System pursuant to the Act.

Section 7.09.      Rates. Prior to the issuance of the Series 2004 A Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Recorder of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System, (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2004 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2004 A Bonds; provided that, in the event that amounts equal to or in excess of the reserve requirement are on deposit respectively in the Series 2004 A Bonds Reserve Account and reserve accounts for obligations on a parity with the Series 2004 A Bonds, are funded at least at the requirement therefor, such balance each year need only equal at least 110% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2004 A Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2004 A Bonds. In any event, the Issuer shall not reduce the rates or charges for services set forth in the rate ordinance currently in effect.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 30 days following a determination of the Issuer that less than the above-required coverage exists or in the event that the annual audit report shows less than the

above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually, at least 45 days preceding the beginning of each Fiscal Year, prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year and shall submit a copy of such budget to the Authority and the Council within 30 days of adoption thereof. No expenditures for the operation and maintenance of the System shall be made in any Fiscal Year in excess of the amounts provided therefor in such budget without a written finding and recommendation by a registered professional engineer, which finding and recommendation shall state in detail the purpose of and necessity for such increased expenditures for the operation and maintenance of the System, and no such increased expenditures shall be made until the Issuer shall have approved such finding and recommendation by a resolution duly adopted. No increased expenditures in excess of 10% of the amount of such budget shall be made except upon the further certificate of a registered professional engineer that such increased expenditures are necessary for the continued operation of the System. The Issuer shall mail copies of such annual budget and all resolutions authorizing increased expenditures for operation and maintenance to the Authority, the Council and to any Holder of any Bonds who shall file his or her address with the Issuer and request in writing that copies of all such budgets and resolutions be furnished him or her and shall make available such budgets and all resolutions authorizing increased expenditures for operation and maintenance of the System at all reasonable times to the Authority, the Council and any Holder of any Bonds or anyone acting for and in behalf of such Holder of any Bonds.

Commencing on the date contracts are executed for the acquisition and construction of the Project and for 2 years following the completion of the Project, the Issuer shall each month complete a "Monthly Financial Report," a form of which is attached to the Loan Agreement, and forward a copy of such report to the Authority and the Council by the 10th day of each month.

Section 7.11. Engineering Services and Operating Personnel. The Issuer will obtain a certificate of the Consulting Engineers in the form attached to the Loan Agreement, stating, among other things, that the Project has been or will be constructed in accordance with the approved plans, specifications and designs as submitted to the Authority and the Council, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the Council is sufficient to pay the costs of acquisition and construction of the Project, and all permits required by federal and state laws for construction of the Project have been obtained.

The Issuer shall provide and maintain competent and adequate engineering services satisfactory to the Authority and the Council covering the supervision and inspection of the development and construction of the Project and bearing the responsibility of assuring

that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, the Council and the Issuer at the completion of construction that construction of the Project is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

The Issuer shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of the Loan Agreement.

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

Section 7.13.      Enforcement of Collections. The Issuer will diligently enforce and collect all fees, rentals or other charges for the services and facilities of the System, and take all steps, actions and proceedings for the enforcement and collection of such fees, rentals or other charges which shall become delinquent to the full extent permitted or authorized by the Act, the rules and regulations of the Public Service Commission of West Virginia and other laws of the State of West Virginia.

Whenever any fees, rates, rentals or other charges for the services and facilities of the System shall remain unpaid for a period of 30 days after the same shall become due and payable, the property and the owner thereof, as well as the user of the services and facilities, shall be delinquent until such time as all such rates and charges are fully paid. To the extent authorized by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, rates, rentals and other charges, if not paid, when due, shall become a lien on the premises served by the System. The Issuer further covenants and agrees that, it will, to the full extent permitted by law and the rules and regulations promulgated by the Public Service Commission of West Virginia, discontinue and shut off the services of the System, and any services and facilities of the water system, if so owned by the Issuer to all users of the services of the System delinquent in payment of charges for the services of the System and will not restore such services of either system until all delinquent charges for the services of the System, plus reasonable interest and penalty charges for the restoration of service, have been fully paid and shall take all further actions to enforce collections to the maximum extent permitted by law or, if the waterworks facilities are not owned by the Issuer, the Issuer will, to the extent allowed by law, use diligent efforts to enter into a similar termination agreement with the provider of such water, subject to any required approval of such agreement by the Public Service Commission of West Virginia and all rules, regulations and orders of the Public Service Commission of West Virginia.

Section 7.14.      No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be

established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer, and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2004 A Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

(1) FIRE, LIGHTNING, VANDALISM, MALICIOUS MISCHIEF AND EXTENDED COVERAGE INSURANCE, on all above-ground insurable portions of the System in an amount equal to the greater of the fair appraised value or the actual cost thereof. In time of war the Issuer will also carry and maintain insurance to the extent available against the risks and hazards of war. In the event of any damage to or destruction of any portion of the System, the proceeds of all such insurance policies shall be placed in the Renewal and Replacement Fund and used only for the repair or reconstruction of such damages or destroyed portion or for the other purposes provided herein for the Renewal and Replacement Fund. The Issuer will itself, or will require each contractor and subcontractor to, obtain and maintain builder's risk insurance (fire and extended coverage) to protect the interests of the Issuer, the Authority, the prime contractor and all subcontractors as their respective interests may appear, in accordance with the Loan Agreement, during construction of the Project on a 100% basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Issuer, the prime contractor and subcontractors, as their interests may appear.

(2) PUBLIC LIABILITY INSURANCE, with limits of not less than \$1,000,000 per occurrence to protect the Issuer from claims for bodily injury and/or death and not less than \$500,000 per occurrence from claims for damage to property of others which may arise from the operation of the System, and insurance with the same limits to protect the Issuer from claims arising out of operation or ownership of motor vehicles of or for the System.

(3) WORKER'S COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND

PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of not less than 100% of the amount of any construction contract and to be required of each contractor dealing directly with the Issuer and such payment bonds will be filed with the Clerk of the County Commission of the County in which such work is to be performed prior to commencement of construction of any additions, extensions or improvements for the System in compliance with West Virginia Code, Section 38-2-39.

(4) FIDELITY BONDS will be provided as to every officer and employee of the Board or the Issuer having custody of the revenues or of any other funds of the System, in an amount at least equal to the total funds in the custody of any such person at any one time.

(5) FLOOD INSURANCE, if the System facilities are or will be located in designated special flood or mudslide-prone areas and to the extent available at reasonable cost to the Issuer.

(6) BUSINESS INTERRUPTION INSURANCE, to the extent available at reasonable cost to the Issuer.

B. The Issuer shall require all contractors engaged in the construction of the Project to furnish a performance bond and a payment bond, each in an amount equal to 100% of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract. The Issuer shall verify such bonds prior to commencement of construction.

The Issuer shall also require all contractors engaged in the construction of the Project to carry such worker's compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project; provided that the amounts and terms of such coverage are satisfactory to the Authority and the Council, and the Issuer shall verify such insurance prior to commencement of construction. In the event the Loan Agreement so requires, such insurance shall be made payable to the order of the Authority, the Issuer, the prime contractor and all subcontractors, as their interests may appear.

Section 7.16. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State

Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

Any such house, dwelling or building from which emanates sewage or water-borne waste matter and which is not so connected with the System is hereby declared and found to be a hazard to the health, safety, comfort and welfare of the inhabitants of the Issuer and a public nuisance which shall be abated to the extent permitted by law and as promptly as possible by proceedings in a court of competent jurisdiction.

Section 7.17. Completion of Project; Permits and Orders. The Issuer will complete the Project as promptly as possible and operate and maintain the System as a revenue-producing utility in good condition and in compliance with all federal and state requirements and standards.

The Issuer has obtained all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals from the Public Service Commission of West Virginia and the Council necessary for the acquisition and construction of the Project and the operation of the System and all approvals for the issuance of the Series 2004 A Bonds required by State law, with all appeal periods having expired without successful appeal.

Section 7.18. Compliance with Loan Agreement and Law. The Issuer shall perform, satisfy and comply with all the terms and conditions of the Loan Agreement and the Act. Notwithstanding anything herein to the contrary, the Issuer will provide the Council with copies of all documents submitted to the Authority. The Issuer also agrees to comply with all applicable laws, rules and regulations issued by the Authority, the Council or other state, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.19. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2004 A Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2004 A Bonds during the term thereof is, under the terms of the

Series 2004 A 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 property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2004 A Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2004 A Bonds during the term thereof is, under the terms of the Series 2004 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2004 A Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the Project, or if the Series 2004 A Bonds are for the purpose of financing more than one project, a portion of the Project, and shall not exceed the proceeds used for the governmental use of that portion of the Project to which such Private Business Use is related, all of the foregoing to be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 2004 A Bonds are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2004 A Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2004 A Bonds and the interest thereon, including, without limitation, the information return required under Section 149(e) of the Code, if necessary.

E. FURTHER ACTIONS. The Issuer will take any and all actions that may be required of it (including, without limitation, those deemed necessary by the Authority) so that the interest on the Series 2004 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions (including, without limitation, those deemed necessary by the Authority), the result of which would adversely affect such exclusion.

Section 7.20. Securities Law Compliance. The Issuer will provide the Authority, in a timely manner, with any and all information that may be requested of it (including its annual audit report, financial statements, related information and notices of changes in usage and customer base) so that the Authority may comply with the provisions of SEC Rule 15c2-12 (17 CFR Part 240).

Section 7.21. Contracts; Public Releases. A. The Issuer shall, simultaneously with the delivery of the Series 2004 A Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

B. The Issuer shall submit all proposed change orders to the Council for written approval. The Issuer shall obtain the written approval of the Council before expending any proceeds of the Series 2004 A Bonds held in "contingency" as set forth in the schedule attached to the certificate of the Consulting Engineer. The Issuer shall also obtain the written approval of the Council before expending any proceeds of the Series 2004 A Bonds made available due to bid or construction or project underruns.

C. The Issuer shall list the funding as being provided by the Council and the Authority in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any ground breaking or dedication of the Project.

## ARTICLE VIII

### INVESTMENT OF FUNDS

Section 8.01.        Investments. Any monies held as a part of the funds and accounts created by this Bond Legislation, other than the Revenue Fund, shall be invested and reinvested by the Commission, the Depository Bank, or such other bank or national banking association holding such fund or account, as the case may be, at the written direction of the Issuer in any Qualified Investments to the fullest extent possible under applicable laws, this Bond Legislation, the need for such monies for the purposes set forth herein and the specific restrictions and provisions set forth in this Section 8.01.

Any investment shall be held in and at all times deemed a part of the fund or account in which such monies were originally held, and the interest accruing thereon and any profit or loss realized from such investment shall be credited or charged to the appropriate fund or account. The investments held for any fund or account shall be valued at the lower of cost or then current market value, or at the redemption price thereof if then redeemable at the option of the holder, including the value of accrued interest and giving effect to the amortization of discount, or at par if such investment is held in the "Consolidated Fund." The Commission, the Depository Bank, or such other bank or national banking association, as the case may be, shall sell and reduce to cash a sufficient amount of such investments whenever the cash balance in any fund or account is insufficient to make the payments required from such fund or account, regardless of the loss on such liquidation. The Depository Bank or such other bank or national banking association, as the case may be, may make any and all investments permitted by this section through its own investment or trust department and shall not be responsible for any losses from such investments, other than for its own negligence or willful misconduct.

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2004 A Bonds are Outstanding and as long thereafter as necessary to assure the exclusion of interest, if any, on the Series 2004 A Bonds from gross income for federal income tax purposes.

Section 8.02.      Non-Arbitrage. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 2004 A Bonds which would cause the Series 2004 A Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a federal information return with respect to the Series 2004 A Bonds) so that the interest on the Series 2004 A Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.03.      Small Issuer Exemption from Rebate. In accordance with Section 148(f)(4)(D) of the Code, the Issuer covenants that it is a governmental unit with general taxing powers; that the Series 2004 A Bonds are not private activity bonds as defined in Section 141 of the Code; that 95% or more of the Net Proceeds of the Series 2004 A Bonds are to be used for local governmental activities of the Issuer (or of a governmental unit the jurisdiction of which is entirely within the jurisdiction of the Issuer); and that the aggregate face amount of all the tax-exempt bonds (other than private activity bonds as defined in Section 141 of the Code) issued by the Issuer during the calendar year in which the Series 2004 A Bonds are issued are not and will not exceed \$5,000,000, determined in accordance with Section 148(f)(4)(D) of the Code and the Regulations promulgated thereunder. For purposes of this Section 8.03 and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section 8.03 and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this Section 8.03 and Section 148(f)(4)(D) of the Code to any other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefitting thereby shall be treated as one issuer.

Notwithstanding the foregoing, if in fact the Issuer is subject to the rebate requirements of Section 148(f) of the Code and not exempted from such requirements, the Issuer covenants to make, or cause to be made, all rebate calculations, computations and payments in the time, manner and as required in Section 148(f) of the Code and Regulations from time to time in effect and applicable to the Series 2004 A Bonds and otherwise covenants and agrees to comply with the provisions of such Section 148(f) of the Code and Regulations from time to time in effect and applicable to the Series 2004 A Bonds. In the event of a failure to pay the correct rebate amount, the Issuer will pay, from any lawful sources available therefor, to the United States such rebate amount, plus a penalty equal to 50% of the rebate amount not paid when required to be paid, plus interest on that amount, unless waived. The Issuer shall obtain a waiver from the Internal Revenue Service, if necessary, and take any other actions necessary to maintain the exclusion of interest on the

Series 2004 A Bonds from gross income for federal income tax purposes. In order to provide for the administration of this paragraph, the Issuer may provide for the employment of independent attorneys, accountants and consultants compensated on such reasonable basis as the Issuer may deem appropriate.

The Issuer shall furnish to the Authority, annually, and at such time as it is required to perform its rebate calculations under the Code, a certificate with respect to its rebate calculations and, at any time, any additional information relating thereto as may be requested by the Authority. In addition, the Issuer shall cooperate with the Authority in preparing any required rebate calculations and in all other respects in connection with rebates and hereby consents to the performance of all matters in connection with such rebates by the Authority at the expense of the Issuer.

The Issuer shall submit to the Authority within 15 days following the end of each Bond Year a certified copy of its rebate calculation and certificate with respect thereto or, if the Issuer qualifies for the small governmental issue exception to rebate, or any other exception thereto, then the Issuer shall submit to the Authority a certificate stating that it is exempt from such rebate provisions and that no event has occurred to its knowledge during the Bond Year which would make the Series 2004 A Bonds subject to rebate. The Issuer shall also furnish to the Authority, at any time, such additional information relating to rebate as may be reasonably requested by the Authority including information with respect to earnings on all funds constituting "gross proceeds" of the Series 2004 A Bonds (as such term "gross proceeds" is defined in the Code).

## ARTICLE IX

### DEFAULT AND REMEDIES

Section 9.01.      Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2004 A Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest, if any, on any Series 2004 A Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions on its part relating to the Series 2004 A Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2004 A Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or

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

Section 9.02.      Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners.

Section 9.03.      Appointment of Receiver. Any Registered Owner of a Bond may, by proper legal action, compel the performance of the duties of the Issuer under the Bond Legislation and the Act, including, the completion of the Project and after commencement of operation of the System, the making and collection of sufficient rates and charges for services rendered by the System and segregation of the revenues therefrom and the application thereof. If there be any Event of Default with respect to such Bonds, any Registered Owner of a Bond shall, in addition to all other remedies or rights, have the right by appropriate legal proceedings to obtain the appointment of a receiver to administer the System or to complete the acquisition and construction of the Project on behalf of the Issuer,

with power to charge rates, rentals, fees and other charges sufficient to provide for the payment of Operating Expenses of the System, the payment of the Bonds and interest and the deposits into the funds and accounts hereby established, and to apply such rates, rentals, fees, charges or other revenues in conformity with the provisions of this Bond Legislation and the Act.

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

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

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

Any receiver appointed as provided herein shall hold and operate the System in the name of the Issuer and for the joint protection and benefit of the Issuer and Registered Owners of the Bonds. Such receiver shall have no power to sell, assign, mortgage or otherwise dispose of any assets of any kind or character belonging or pertaining to the System, but the authority of such receiver shall be limited to the completion of the Project and the possession, operation and maintenance of the System for the sole purpose of the protection of both the Issuer and Registered Owners of such Bonds and the curing and making good of any Event of Default with respect thereto under the provisions of this Bond Legislation, and the title to and ownership of said System shall remain in the Issuer, and no court shall have any jurisdiction to enter any order or decree permitting or requiring such receiver to sell, assign, mortgage or otherwise dispose of any assets of the System.

## ARTICLE X

### PAYMENT OF BONDS

Section 10.01. Payment of Bonds. If the Issuer shall pay or there shall otherwise be paid, to the Holders of the Series 2004 A Bonds, the principal of and interest due or to become due thereon, if any, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2004 A Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest on the Series 2004 A Bonds from gross income for federal income tax purposes.

## ARTICLE XI

### MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2004 A Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2004 A Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2004 A Bonds shall be made without the consent in writing of the Registered Owners of the Series 2004 A Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2004 A Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2004 A Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest on the Series 2004 A Bonds from gross income of the holders thereof.

Section 11.02. Bond Legislation Constitutes Contract. The provisions of the Bond Legislation shall constitute a contract between the Issuer and the Registered Owners of the Bonds, and no change, variation or alteration of any kind of the provisions of the Bond Legislation shall be made in any manner, except as in this Bond Legislation provided.

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2004 A Bonds.

Section 11.04. Headings, Etc. The headings and catchlines of the articles, sections and subsections hereof are for convenience of reference only, and shall not affect in any way the meaning or interpretation of any provision hereof.

Section 11.05. Conflicting Provisions Repealed. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 11.06.      Covenant of Due Procedure, Etc. The Issuer covenants that all acts, conditions, things and procedures required to exist, to happen, to be performed or to be taken precedent to and in the adoption of this Ordinance do exist, have happened, have been performed and have been taken in regular and due time, form and manner as required by and in full compliance with the laws and Constitution of the State of West Virginia applicable thereto; and that the Mayor, the Recorder and members of the Governing Body were at all times when any actions in connection with this Ordinance occurred and are duly in office and duly qualified for such office.

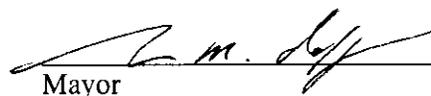
Section 11.07.      Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Section 11.08.      Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in *The Brooke County Review*, a newspaper published and of general circulation in the Town of Bethany, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2004 A Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Passed on First Reading:              January 13, 2004

Passed on Second Reading:              February 10, 2004

Passed on Final Reading  
Following Public  
Hearing:                                      March 9, 2004

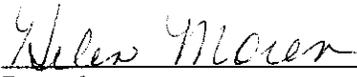
  
\_\_\_\_\_  
Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Council of the TOWN OF BETHANY on the 9th day of March, 2004.

Dated: February 22, 2005.

[SEAL]

  
\_\_\_\_\_  
Recorder

02/09/05  
072720.00002

EXHIBIT A

Loan Agreement included in bond transcript as Document No. 3

TOWN OF BETHANY

Sewer Revenue Bonds, Series 2005A  
(West Virginia Infrastructure Fund)

SUPPLEMENTAL RESOLUTION

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2005A (WEST VIRGINIA INFRASTRUCTURE FUND), OF THE TOWN OF BETHANY; APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; CHANGING THE SERIES DESIGNATION; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

WHEREAS, the council (the "Governing Body") of the Town of Bethany (the "Issuer") has duly and officially adopted and enacted a bond ordinance, effective March 9, 2004 (the "Bond Ordinance"), entitled:

ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2003, AND ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE TOWN OF BETHANY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF BETHANY OF NOT MORE THAN \$3,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS

AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

WHEREAS, capitalized terms used herein and not otherwise defined herein shall have the same meaning set forth in the Bond Ordinance when used herein;

WHEREAS, the Bond Ordinance provides for the issuance of Sewer Revenue Bonds, Series 2004 A (West Virginia Infrastructure Fund), of the Issuer (the "Bonds"), in an aggregate principal amount not to exceed \$3,000,000, and has authorized the execution and delivery of the loan agreement relating to the Bonds, including all schedules and exhibits attached thereto, by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council") (the "Loan Agreement"), all in accordance with Chapter 16, Article 13 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), and in the Bond Ordinance it is provided that the form of the Loan Agreement and the exact principal amount, date, maturity date, redemption provision, interest rate, interest and principal payment dates, sale price and other terms of the Bonds should be established by a supplemental resolution pertaining to the Bonds; and that other matters relating to the Bonds be herein provided for;

WHEREAS, the Sewer Revenue Bonds, Series 2004 A (West Virginia Infrastructure Fund), were not issued in 2004, but will be issued in 2005;

WHEREAS, the Governing Body desires to redesignate the Sewer Revenue Bonds, Series 2004 A (West Virginia Infrastructure Fund), as the Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund) (the "Bonds" or the "Series 2005 A Bonds");

WHEREAS, the Loan Agreement has been presented to the Issuer at this meeting;

WHEREAS, the Bonds are proposed to be purchased by the Authority pursuant to the Loan Agreement;

WHEREAS, the Governing Body deems it essential and desirable that this supplemental resolution (the "Supplemental Resolution") be adopted, that the Bonds be redesignated, that the Loan Agreement be approved and ratified by the Issuer, that the exact principal amount, the date, the maturity date, the redemption provision, the interest rate, the interest and principal payment dates and the sale price of the Bonds be fixed hereby in the manner stated herein, and that other matters relating to the Bonds be herein provided for;

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BODY OF TOWN OF BETHANY:

Section 1. The Issuer does hereby authorize the redesignation of the Sewer Revenue Bonds, Series 2004 A (West Virginia Infrastructure Fund), as the Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund).

Section 2. Pursuant to the Bond Ordinance and the Act, this Supplemental Resolution is adopted and there are hereby authorized and ordered to be issued the Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), of the Issuer, originally represented by a single Bond, numbered AR-1, in the principal amount of \$1,250,000. The Series 2005 A Bonds shall be dated the date of delivery thereof, shall finally mature June 1, 2026 and shall bear interest at the rate of 3% per annum. The principal of and the interest on the Series 2005 A Bonds shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2006, and maturing June 1, 2026, and in the amounts as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Series 2005 A Bonds. The Series 2005 A Bonds shall be subject to redemption upon the written consent of the Authority and the Council, and upon payment of the redemption premium, if any, and otherwise in compliance with the Loan Agreement, so long as the Authority shall be the registered owner of the Series 2005 A Bonds.

Section 3. All other provisions relating to the Bonds and the text of the Bonds shall be in substantially the form provided in the Bond Ordinance.

Section 4. The Issuer does hereby authorize, approve, ratify and accept the Loan Agreement, a copy of which is incorporated herein by reference, and the execution and delivery of the Loan Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, directed, ratified and approved. The Issuer hereby affirms all covenants and representations made in the Loan Agreement and in the applications to the Council and the Authority. The price of the Bonds shall be 100% of par value, there being no interest accrued thereon, provided that the proceeds of the Bonds shall be advanced from time to time as requisitioned by the Issuer.

Section 5. The Issuer does hereby appoint and designate Huntington National Bank, Charleston, West Virginia, to serve as Registrar (the "Registrar") for the Bonds under the Bond Ordinance and does approve and accept the Registrar's Agreement to be dated the date of delivery of the Bonds, by and between the Issuer and the Registrar, and the execution and delivery of the Registrar's Agreement by the Mayor, and the performance of the obligations contained therein, on behalf of the Issuer, are hereby authorized, approved and directed.

Section 6. The Issuer does hereby appoint and designate the West Virginia Municipal Bond Commission, Charleston, West Virginia, to serve as Paying Agent for the Bonds under the Bond Ordinance.

Section 7. The Issuer does hereby appoint and designate WesBanco Bank, Wellsburg, West Virginia, to serve as Depository Bank under the Bond Ordinance.

Section 8. Series 2005 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2005 A Bonds Sinking Fund, as capitalized interest.

Section 9. Series 2005 A Bonds proceeds in the amount of \$-0- shall be deposited in the Series 2005 A Bonds Reserve Account.

Section 10. Series 2005 A Bonds proceeds in the amount of \$224,233.93 shall be paid to Progressive Bank, N.A., to pay in full the outstanding principal of and interest on the Prior Notes at closing.

Section 11. The balance of the proceeds of the Series 2005 A Bonds shall be deposited in or credited to the Series 2005 A Bonds Construction Trust Fund as received from the Council from time to time for payment of the costs of the Project, including, without limitation, costs of issuance of the Bonds and related costs.

Section 12. The Mayor and the Recorder are hereby authorized and directed to execute and deliver such other documents and certificates required or desirable in connection with the Bonds hereby and by the Bond Ordinance approved and provided for, to the end that the Bonds may be delivered on or about February 22, 2005, to the Authority pursuant to the Loan Agreement.

Section 13. The refunding of the Prior Notes, the acquisition and construction of the Project and the financing thereof in part with proceeds of the Bonds are in the public interest, serve a public purpose of the Issuer and will promote the health, welfare and safety of the residents of the Issuer.

Section 14. The Issuer does hereby approve and authorize all contracts relating to the financing, acquisition and construction of the Project.

Section 15 The Issuer hereby determines to invest all monies in the funds and accounts established by the Bond Ordinance held by the Depository Bank until expended, in repurchase agreements or time accounts, secured by a pledge of Government Obligations, and therefore, the Issuer hereby directs the Depository Bank to take such actions as may be necessary to cause such monies to be invested in such repurchase agreements or time accounts until further directed in writing by the Issuer. Monies in the Series 2005 A Bonds Sinking Fund and the Series 2005 A Bonds Reserve Account shall be invested by the West Virginia Municipal Bond Commission in the West Virginia Consolidated Fund.

Section 16. The Issuer shall not permit at any time or times any of the proceeds of the Bonds or any other funds of the Issuer to be used directly or indirectly in a manner which would result in the exclusion of the Bonds from the treatment afforded by Section 103(a) of the Internal Revenue Code of 1986, as amended, and any regulations promulgated thereunder or under any predecessor thereto (the "Code"), by reason of the classification of the Bonds as "private activity bonds" within the meaning of the Code. The Issuer will take all actions necessary to comply with the Code and Treasury Regulations promulgated or to be promulgated thereunder.

Section 17. The Issuer is a governmental unit with general taxing powers to finance operations of or facilities of the nature of the Project and the System; no part of the Bonds are private activity bonds; 95% or more of the net proceeds of the Bonds are to be used for local governmental activities of the Issuer; and the Issuer reasonably expects to issue less than \$5,000,000 aggregate principal face amount of tax-exempt obligations (other than private activity bonds) during the calendar year 2005, being the calendar year in which the Bonds are to be issued. For purposes of this Section and for purposes of applying Section 148(f)(4)(D) of the Code, the Issuer and all entities which issue obligations on behalf of the Issuer shall be treated as one issuer; all obligations issued by a governmental unit to make loans to other governmental units with general taxing powers not subordinate to such unit shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code, be treated as not issued by such unit; all obligations issued by a subordinate entity shall, for purposes of applying this Section and Section 148(f)(4)(D) of the Code to each other entity to which such entity is subordinate, be treated as issued by such other entity; and an entity formed (or, to the extent provided by the Secretary, as set forth in the Code, availed of) to avoid the purposes of such Section 148(f)(4)(D) of the Code and all other entities benefitting thereby shall be treated as one issuer.

Section 18. Pursuant to Section 11.01 of the Bond Ordinance the Issuer hereby approves the following amendment to Section 7.08 of the Bond Ordinance:

Section 7.08.      Books; Records and Audit. The Issuer shall keep complete and accurate records of the cost of acquiring the Project site and the costs of acquiring, constructing and installing the Project. The Issuer shall permit the Authority and the Council, or their agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at all reasonable times for the purpose of audit and examination. The Issuer shall submit to the Authority and the Council such documents and information as they may reasonably require in connection with the acquisition, construction and installation of the Project, the operation and maintenance of the System and the administration of the loan or any grants or other sources of financing for the Project.

The Issuer shall permit the Authority and the Council, or their agents and representatives, to inspect all records pertaining to the operation and maintenance of the System at all reasonable times following completion of construction of the Project and commencement of operation thereof, or, if the Project is an improvement to an existing system, at any reasonable time following commencement of construction.

The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

The Issuer shall file with the Authority and the Council, or any other original purchaser of the Series 2004 A Bonds, and shall mail in each year to any Holder or Holders of the Series 2004 A Bonds, requesting the same, an annual report containing the following:

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

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

(C) The amount of any bonds, notes or other obligations outstanding.

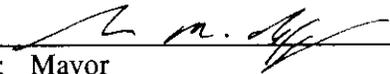
The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants in compliance with the applicable OMB Circular, or any successor thereof, and the Single Audit Act, or any successor thereof, to the extent legally required, and shall mail upon request, and make available generally, the report of the Independent Certified Public Accountants, or a summary thereof, to any Holder or Holders of the Series 2004 A Bonds and shall submit the report to the Authority and the Council, or any other original purchaser of the Series 2004 A Bonds. Such audit report submitted to the Authority and the Council shall include a statement ~~that the Issuer is in compliance with the terms and provisions of the Act, the Loan Agreement and this Bond Legislation and that~~ that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

Subject to the terms, conditions and provisions of the Loan Agreement and the Act, the Issuer has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared by the Consulting Engineers. All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Issuer.

The Issuer shall permit the Authority or the Council, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times. Prior to, during and after completion of construction and commencement of operation of the Project, the Issuer shall also provide the Authority and the Council, or their agents and representatives, with access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the Council with respect to the System pursuant to the Act.

Section 19. This Supplemental Resolution shall be effective immediately following adoption hereof.

Adopted this 8th day of February, 2005.

By:   
Its: Mayor

CERTIFICATION

Certified a true copy of a Supplemental Resolution duly adopted by the Council of the Town of Bethany on the 8th day of February, 2005.

Dated: February 22, 2005.

[SEAL]



\_\_\_\_\_  
Recorder

02/08/05  
072227.00002

IC-1  
(11/01/04)

LOAN AGREEMENT

THIS LOAN AGREEMENT, made and entered into in several counterparts, by and between the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY, a governmental instrumentality and body corporate of the State of West Virginia (the "Authority"), acting on behalf of the WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL (the "Council"), and the governmental agency designated below (the "Governmental Agency").

TOWN OF BETHANY  
(Governmental Agency)

W I T N E S S E T H:

WHEREAS, pursuant to the provisions of Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (the "Act"), the Authority is empowered upon request of the Council to make loans to governmental agencies for the acquisition or construction of projects by such governmental agencies, subject to such provisions and limitations as are contained in the Act;

WHEREAS, the Governmental Agency constitutes a governmental agency as defined by the Act;

WHEREAS, the Governmental Agency is authorized and empowered by the statutes of the State to acquire, construct, improve, operate and maintain a project, as defined by the Act, and to finance the cost of acquisition and construction of the same by borrowing money to be evidenced by revenue bonds issued by the Governmental Agency;

WHEREAS, the Governmental Agency intends to construct, is constructing or has constructed such a project at the location and as more particularly described and set forth in the Application, as hereinafter defined (the "Project");

WHEREAS, the Governmental Agency has completed and filed with the Authority an Application for a Construction Loan with attachments and exhibits and an Amended Application for a Construction Loan also with attachments and exhibits (together, as further revised and supplemented, the "Application"), which Application is incorporated herein by this reference; and

WHEREAS, having reviewed the Application and made all findings required by the Act and having available sufficient funds therefor, the Council has authorized the Authority to lend the Governmental Agency the amount set forth on Schedule X attached hereto and incorporated herein by reference, through the purchase of revenue bonds of the Governmental Agency with money in the Infrastructure Fund, subject to the Governmental Agency's satisfaction of certain legal and other requirements of the Council's loan program (the "Program") as hereinafter set forth.

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

## ARTICLE I

### Definitions

1.1 Except where the context clearly indicates otherwise, the terms "Authority," "cost," "Council," "governmental agency," "project," "waste water facility" and "water facility" have the definitions and meanings ascribed to them in the Act.

1.2 "Authority" means the West Virginia Water Development Authority, which is expected to be the original purchaser of the Bonds, acting in its administrative capacity pursuant to Section 10 of the Act and upon authorization from the Council.

1.3 "Consulting Engineers" means the professional engineer, licensed by the State, designated in the Application and any qualified successor thereto; provided, however, when a Loan is made for a Project financed, in part, by the Office of Abandoned Mine Lands, "Consulting Engineers" shall mean the West Virginia Department of Environmental Protection, or any successor thereto.

1.4 "Infrastructure Fund" means the West Virginia Infrastructure Fund established in accordance with Section 9 of the Act.

1.5 "Loan" means the loan to be made by the Authority to the Governmental Agency through the purchase of Local Bonds, as hereinafter defined, pursuant to this Loan Agreement.

1.6 "Local Act" means the official action of the Governmental Agency required by Section 4.1 hereof, authorizing the Local Bonds.

1.7 "Local Bonds" means the revenue bonds to be issued by the Governmental Agency pursuant to the provisions of the Local Statute, as hereinafter defined, to evidence the Loan and to be purchased by the Authority, all in accordance with the provisions of this Loan Agreement.

1.8 "Local Statute" means the specific provisions of the Code of West Virginia, 1931, as amended, pursuant to which the Local Bonds are issued.

1.9 "Operating Expenses" means the reasonable, proper and necessary costs of operation and maintenance of the System, as hereinafter defined, as should normally and regularly be included as such under generally accepted accounting principles.

1.10 "Project" means the project hereinabove referred to, to be constructed or being constructed by the Governmental Agency in whole or in part with the net proceeds of the Local Bonds.

1.11 "System" means the project owned by the Governmental Agency, of which the Project constitutes all or to which the Project constitutes an improvement, and any improvements thereto hereafter constructed or acquired from any sources whatsoever.

1.12 Additional terms and phrases are defined in this Loan Agreement as they are used.

## ARTICLE II

### The Project and the System

2.1 The Project shall generally consist of the construction and acquisition of the facilities described in the Application, to be, being or having been constructed in accordance with plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers, the Authority and Council having found, to the extent applicable, that the Project is consistent with the Act.

2.2 Subject to the terms, conditions and provisions of this Loan Agreement and the Local Act, the Governmental Agency has acquired, or shall do all things necessary to acquire, the proposed site of the Project and shall do, is doing or has done all things necessary to construct the Project in accordance with the plans, specifications and designs prepared for the Governmental Agency by the Consulting Engineers.

2.3 All real estate and interests in real estate and all personal property constituting the Project and the Project site heretofore or hereafter acquired shall at all times be and remain the property of the Governmental Agency, subject to any mortgage lien or other security interest as is provided for in the Local Statute unless a sale or transfer of all or a portion of said property or any interest therein is approved by the Authority and Council.

2.4 The Governmental Agency agrees that the Authority and the Council and their duly authorized agents shall have the right at all reasonable times to enter upon the Project site and Project facilities and to examine and inspect the same. The Governmental

Agency further agrees that the Authority and the Council and their duly authorized agents and representatives shall, prior to, during and after completion of construction and commencement of operation of the Project, have such rights of access to the System site and System facilities as may be reasonably necessary to accomplish all of the powers and rights of the Authority and the Council with respect to the System pursuant to the pertinent provisions of the Act.

2.5 The Governmental Agency shall keep complete and accurate records of the cost of acquiring the Project site and the costs of constructing, acquiring and installing the Project. The Governmental Agency shall permit the Authority and the Council, acting by and through their directors or their duly authorized agents and representatives, to inspect all books, documents, papers and records relating to the Project and the System at any and all reasonable times for the purpose of audit and examination, and the Governmental Agency shall submit to the Authority and the Council such documents and information as they may reasonably require in connection with the construction, acquisition and installation of the Project, the operation and maintenance of the System and the administration of the Loan or of any State and federal grants or other sources of financing for the Project.

2.6 The Governmental Agency agrees that it will permit the Authority and the Council and their agents and representatives to have access to the records of the Governmental Agency pertaining to the operation and maintenance of the System at any reasonable time following completion of construction of the Project and commencement of operation thereof or if the Project is an improvement to an existing system at any reasonable time following commencement of construction.

2.7 The Governmental Agency shall require that each construction contractor furnish a performance bond and a payment bond, each in an amount at least equal to one hundred percent (100%) of the contract price of the portion of the Project covered by the particular contract as security for the faithful performance of such contract and shall verify or have verified such bonds prior to commencement of construction.

2.8 The Governmental Agency shall require that each of its contractors and all subcontractors maintain, during the life of the construction contract, workers' compensation coverage, public liability insurance, property damage insurance and vehicle liability insurance in amounts and on terms satisfactory to the Council and the Authority and shall verify or have verified such insurance prior to commencement of construction. Until the Project facilities are completed and accepted by the Governmental Agency, the Governmental Agency or (at the option of the Governmental Agency) the contractor shall maintain builder's risk insurance (fire and extended coverage) on a one hundred percent (100%) basis (completed value form) on the insurable portion of the Project, such insurance to be made payable to the order of the Authority, the Governmental Agency, the prime contractor and all subcontractors, as their interests may appear. If facilities of the System which are detrimentally affected by flooding are or will be located in designated special flood or mudslide-prone areas and if flood insurance is available at a reasonable cost, a flood insurance policy must be obtained by the Governmental Agency on or before the Date

of Loan Closing, as hereinafter defined, and maintained so long as any of the Local Bonds is outstanding. Prior to commencing operation of the Project, the Governmental Agency must also obtain, and maintain so long as any of the Local Bonds are outstanding, business interruption insurance if available at a reasonable cost.

2.9 The Governmental Agency shall provide and maintain competent and adequate engineering services satisfactory to the Council and the Authority covering the supervision and inspection of the development and construction of the Project, and bearing the responsibility of assuring that construction conforms to the plans, specifications and designs prepared by the Consulting Engineers, which have been approved by all necessary governmental bodies. Such engineer shall certify to the Authority, the Council and the Governmental Agency at the completion of construction that construction is in accordance with the approved plans, specifications and designs, or amendments thereto, approved by all necessary governmental bodies.

2.10 The Governmental Agency shall at all times provide operation and maintenance of the System in compliance with any and all State and federal standards. The Governmental Agency shall employ qualified operating personnel properly certified by the State to operate the System during the entire term of this Loan Agreement.

2.11 The Governmental Agency hereby covenants and agrees to comply with all applicable laws, rules and regulations issued by the Council, the Authority or other State, federal or local bodies in regard to the construction of the Project and operation, maintenance and use of the System.

2.12 The Governmental Agency, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project, shall each month complete a Monthly Financial Report, the form of which is attached hereto as Exhibit C and incorporated herein by reference, and forward a copy by the 10<sup>th</sup> of each month to the Authority and Council.

### ARTICLE III

#### Conditions to Loan; Issuance of Local Bonds

3.1 The agreement of the Authority and Council to make the Loan is subject to the Governmental Agency's fulfillment, to the satisfaction of the Authority and the Council, of each and all of those certain conditions precedent on or before the delivery date for the Local Bonds, which shall be the date established pursuant to Section 3.4 hereof. Said conditions precedent are as follows:

(a) The Governmental Agency shall have performed and satisfied all of the terms and conditions to be performed and satisfied by it in this Loan Agreement;

(b) The Governmental Agency shall have authorized the issuance of and delivery to the Authority of the Local Bonds described in this Article III and in Article IV hereof;

(c) The Governmental Agency shall either have received bids or entered into contracts for the construction of the Project which are in an amount and otherwise compatible with the plan of financing described in the Application; provided that, if the Loan will refund an interim construction financing, the Governmental Agency must either be constructing or have constructed its Project for a cost and as otherwise compatible with the plan of financing described in the Application; and, in either case, the Authority and the Council shall have received a certificate of the Consulting Engineers to such effect, the form of which certificate is attached hereto as Exhibit A;

(d) The Governmental Agency shall have obtained all permits required by the laws of the State and the federal government necessary for the construction of the Project, and the Authority and the Council shall have received a certificate of the Consulting Engineers to such effect;

(e) The Governmental Agency shall have obtained all requisite orders of and approvals from the Public Service Commission of West Virginia (the "PSC") and the Council necessary for the construction of the Project and operation of the System, with all requisite appeal periods having expired without successful appeal, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority and the Council, to such effect;

(f) The Governmental Agency shall have obtained any and all approvals for the issuance of the Local Bonds required by State law, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority, to such effect;

(g) The Governmental Agency shall have obtained any and all approvals of rates and charges required by State law and shall have taken any other action required to establish and impose such rates and charges (imposition of such rates and charges is not, however, required to be effective until completion of construction of the Project), with all requisite appeal periods having expired without successful appeal, and the Authority and the Council shall have received an opinion of counsel to the Governmental Agency, which may be local counsel to the Governmental Agency, bond counsel or special PSC counsel but must be satisfactory to the Authority and the Council, to such effect;

(h) Such rates and charges for the System shall be sufficient to comply with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof, and the Authority and the Council shall have received a certificate of the accountant for the Governmental Agency, or such other person or firm experienced in the finances of governmental agencies and satisfactory to the Authority and the Council, to such effect; and

(i) The net proceeds of the Local Bonds, together with all moneys on deposit or to be simultaneously deposited (or, with respect to proceeds of grant anticipation notes or other indebtedness for which a binding purchase contract has been entered, to be deposited on a date certain) and irrevocably pledged thereto and the proceeds of grants irrevocably committed therefor, shall be sufficient to pay the costs of construction and acquisition of the Project as set forth in the Application, and the Authority shall have received a certificate of the Consulting Engineers, or such other person or firm experienced in the financing of projects and satisfactory to the Authority and the Council, to such effect, such certificate to be in form and substance satisfactory to the Authority and the Council, and evidence satisfactory to the Authority and the Council of such irrevocably committed grants.

3.2 Subject to the terms and provisions of this Loan Agreement, the rules and regulations promulgated by the Authority, the Council or any other appropriate State agency and any applicable rules, regulations and procedures promulgated from time to time by the federal government, it is hereby agreed that the Authority shall make the Loan to the Governmental Agency and the Governmental Agency shall accept the Loan from the Authority, and in furtherance thereof it is agreed that the Governmental Agency shall sell to the Authority and the Authority shall make the Loan by purchasing the Local Bonds in the principal amount and at the price set forth in Schedule X hereto. The Local Bonds shall have such further terms and provisions as described in Article IV hereof.

3.3 The Loan shall be secured and shall be repaid in the manner hereinafter provided in this Loan Agreement.

3.4 The Local Bonds shall be delivered to the Authority, at the offices of the Authority, on a date designated by the Governmental Agency by written notice to the Authority, which written notice shall be given not less than ten (10) business days prior to the date designated; provided, however, that if the Authority is unable to accept delivery on the date designated, the Local Bonds shall be delivered to the Authority on a date as close as possible to the designated date and mutually agreeable to the Authority, the Council and the Governmental Agency. The date of delivery so designated or agreed upon is hereinafter referred to as the "Date of Loan Closing." Notwithstanding the foregoing, the Date of Loan Closing shall in no event occur more than ninety (90) days after the date of execution of this Loan Agreement by the Authority or such later date as is agreed to in writing by the Council.

3.5 The Governmental Agency understands and acknowledges that it is one of several governmental agencies which have applied to the Council for loans from the

Infrastructure Fund to finance projects and that the obligation of the Authority to make any such loan is subject to the Council's authorization and the Governmental Agency's fulfilling all of the terms and conditions of this Loan Agreement on or prior to the Date of Loan Closing. The Governmental Agency specifically recognizes that the Authority will not purchase the Local Bonds unless and until sufficient funds are available in the Infrastructure Fund to purchase all the Local Bonds and that, prior to execution of this Loan Agreement, the Authority may commit to and purchase the revenue bonds of other governmental agencies for which it has sufficient funds available.

#### ARTICLE IV

##### Local Bonds; Security for Loan; Repayment of Loan; Interest on Loan; Fees and Charges

4.1 The Governmental Agency shall, as one of the conditions of the Authority to make the Loan, authorize the issuance of and issue the Local Bonds pursuant to an official action of the Governmental Agency in accordance with the Local Statute, which shall, as adopted or enacted, contain provisions and covenants in substantially the form as follows, unless the specific provision or covenant is modified or waived by the Council:

(a) That the gross revenues of the System shall always be used for purposes of the System. Such gross revenues shall be used monthly, in the order of priority listed below:

(i) to pay Operating Expenses of the System;

(ii) to the extent not otherwise limited by any outstanding loan resolution, indenture or other act or document and beginning on the date set forth in Schedule X, to provide debt service on the Local Bonds by depositing in a sinking fund one-third (1/3) of the interest payment next coming due on the Local Bonds and one-third (1/3) of the principal payment next coming due on the Local Bonds and, beginning three (3) months prior to the first date of payment of principal of the Local Bonds, if the reserve account for the Local Bonds (the "Reserve Account") was not funded from proceeds of the Local Bonds or otherwise concurrently with the issuance thereof (which, with an approving opinion of bond counsel to the Governmental Agency, may be with a letter of credit or surety) in an amount equal to the maximum amount of principal and interest which will come due on the Local Bonds in the then current or any succeeding year (the "Reserve Requirement"), by depositing in the Reserve Account an amount not less than one-twelfth (1/12) of one-tenth (1/10) of the Reserve Requirement or, if the Reserve Account has been so funded (whether by Local Bond proceeds, monthly deposits or otherwise), any amount necessary to maintain the Reserve Account at the Reserve Requirement;

(iii) to create a renewal and replacement, or similar, fund in an amount equal to two and one-half percent (2-1/2%) of the gross revenues from the System, exclusive of any payments into the Reserve Account, for the purpose of improving or making emergency repairs or replacements to the System or eliminating any deficiencies in the Reserve Account; and

(iv) for other legal purposes of the System, including payment of debt service on other obligations junior, subordinate and inferior to the Local Bonds.

Provided, that if the Governmental Agency has existing outstanding indebtedness which has greater coverage or renewal and replacement fund requirements, then the greater requirements will prevail until said existing indebtedness is paid in full.

(b) Covenants substantially as follows:

(i) That the Local Bonds shall be secured by a pledge of either the gross or net revenues of the System, as more fully set forth in Schedule X attached hereto and in the Local Act;

(ii) That the schedule of rates or charges for the services of the System shall be sufficient to provide funds which, along with other revenues of the System, will pay all Operating Expenses and leave a balance each year equal to at least one hundred fifteen percent (115%) of the maximum amount required in any year for debt service on the Local Bonds and all other obligations secured by a lien on or payable from the revenues of the System prior to or on a parity with the Local Bonds or, if the Reserve Account is funded (whether by Local Bond proceeds, monthly deposits or otherwise) at an amount equal to the Reserve Requirement and any reserve account for any such prior or parity obligations is funded at least at the requirement therefor, equal to at least one hundred ten percent (110%) of the maximum amount required in any year for debt service on the Local Bonds and any such prior or parity obligations;

(iii) That the Governmental Agency shall complete the Project and operate and maintain the System in good condition;

(iv) That, except as otherwise required by State law or with the written consent of the Council and the Authority, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to pay fully all the Local Bonds outstanding, with further restrictions on the disposition of portions of the System as are normally contained in such covenants;

(v) That the Governmental Agency shall not issue any other obligations payable from the revenues of the System which rank prior to, or equally, as to lien and security with the Local Bonds, except parity bonds which shall only be issued if net revenues of the System prior to issuance of such parity bonds, plus reasonably projected

revenues from rate increases and the improvements to be financed by such parity bonds, shall not be less than one hundred fifteen percent (115%) of the maximum debt service in any succeeding year on all Local Bonds and parity bonds theretofore and then being issued and on any obligations secured by a lien on or payable from the revenues of the System prior to the Local Bonds and with the prior written consent of the Authority and the Council; provided, however, that additional parity bonds may be issued to complete the Project, as described in the Application as of the date hereof, without regard to the foregoing;

(vi) That the Governmental Agency will carry such insurance as is customarily carried with respect to works and properties similar to the System, including those specified by Section 2.8 hereof;

(vii) That the Governmental Agency will not render any free services of the System;

(viii) That the Authority may, by proper legal action, compel the performance of the duties of the Governmental Agency under the Local Act, including the making and collection of sufficient rates or charges for services rendered by the System, and shall also have, in the event of a default in payment of principal of or interest on the Local Bonds, the right to obtain the appointment of a receiver to administer the System or construction of the Project, or both, as provided by law;

(ix) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, all delinquent rates and charges, if not paid when due, shall become a lien on the premises served by the System;

(x) That, to the extent legally allowable, the Governmental Agency will not grant any franchise to provide any services which would compete with the System;

(xi) That the Governmental Agency shall annually cause the records of the System to be audited by an independent certified public accountant or independent public accountant and shall submit the report of said audit to the Authority and the Council, which report shall include a statement that notes whether the results of tests disclosed instances of noncompliance that are required to be reported under government auditing standards and, if they are, describes the instances of noncompliance and the audited financial statements shall include a statement that notes whether the Governmental Agency's revenues are adequate to meet its Operating Expenses and debt service and reserve requirements;

(xii) That the Governmental Agency shall annually adopt a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding fiscal year and shall submit a copy of such budget to the Authority and the Council within 30 days of adoption thereof;

(xiii) That, to the extent authorized by the laws of the State and the rules and regulations of the PSC, prospective users of the System shall be required to connect thereto;

(xiv) That the proceeds of the Local Bonds, advanced from time to time, must (a) be deposited in a construction fund, which, except as otherwise agreed to in writing by the Authority, shall be held separate and apart from all other funds of the Governmental Agency and on which the owners of the Local Bonds shall have a lien until such proceeds are applied to the construction of the Project (including the repayment of any incidental interim financing) and/or (b) be used to pay (or redeem) bond anticipation notes or other interim financing of such Governmental Agency, the proceeds of which were used to finance the construction of the Project; provided that, with the prior written consent of the Authority and the Council, the proceeds of the Local Bonds may be used to fund all or a portion of the Reserve Account, on which the owner of the Local Bonds shall have a lien as provided herein;

(xv) That, as long as the Authority is the owner of any of the Local Bonds, the Governmental Agency may not redeem any Local Bonds by it without the written consent of the Authority and the Council and otherwise in compliance with this Loan Agreement;

(xvi) That the West Virginia Municipal Bond Commission (the "Commission") shall serve as paying agent for the Local Bonds;

(xvii) That the Governmental Agency shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required interest, principal and reserve account payment. The Governmental Agency shall complete the Monthly Payment Form, attached hereto as Exhibit D and incorporated herein by reference, and submit a copy of said form along with a copy of the check or electronic transfer to the Authority by the 5th day of such calendar month;

(xviii) That, unless it qualifies for an exception to the provisions of Section 148 of the Internal Revenue Code of 1986, as amended, which exception shall be set forth in an opinion of bond counsel, the Governmental Agency will furnish to the Authority, annually, at such time as it is required to perform its rebate calculations under the Internal Revenue Code of 1986, as amended, a certificate with respect to its rebate calculations and, at any time, any additional information requested by the Authority;

(xix) That the Governmental Agency shall take any and all action, or shall refrain from taking any action regarding the use of the proceeds of the Local Bonds, as shall be deemed necessary by the Authority to maintain the exclusion from gross income for federal income tax purposes of interest on the State's general obligation bonds or any bonds secured by the Local Bonds;

(xx) That the Governmental Agency shall have obtained the certificate of the Consulting Engineer in the form attached hereto as Exhibit A, to the effect that the Project has been or will be constructed in accordance with the approved plans, specifications and design as submitted to the Authority and the Council, the Project is adequate for the purposes for which it was designed, the funding plan as submitted to the Authority and the Council is sufficient to pay the costs of acquisition and construction of the Project and all permits required by federal and State laws for construction of the Project have been obtained;

(xxi) That the Governmental Agency shall, to the full extent permitted by applicable law and the rules and regulations of the PSC, terminate the services of any water facility owned by it to any customer of the System who is delinquent in payment of charges for services provided by the System and will not restore the services of the water facility until all delinquent charges for the services of the System have been fully paid or, if the water facility is not owned by the Governmental Agency, then the Governmental Agency shall enter into a termination agreement with the water provider;

(xxii) That the Governmental Agency shall furnish to the Authority such information with respect to earnings on all funds constituting "gross proceeds" of the Local Bonds (as that term is defined in the Internal Revenue Code of 1986, as amended) from time to time as the Authority may request;

(xxiii) That the Governmental Agency shall submit all proposed change orders to the Council for written approval. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds held in "contingency" as set forth in the final Schedule B attached to the certificate of the Consulting Engineer. The Governmental Agency shall obtain the written approval of the Council before expending any proceeds of the Local Bonds available due to bid/construction/project underruns;

(xxiv) That the Governmental Agency shall list the funding provided by the Authority and the Council in any press release, publication, program bulletin, sign or other public communication that references the Project, including but not limited to any program document distributed in conjunction with any groundbreaking or dedication of the Project; and

(xxv) That, unless it qualifies for an exception, the Governmental Agency shall comply with all the requirements of Chapter 21, Article 1C of the Code of West Virginia, 1931, as amended (the "West Virginia Jobs Act") and shall require its contractors and subcontractors to comply with the West Virginia Jobs Act. The Governmental Agency shall provide the Council and the Authority with a certificate stating that (I) the Governmental Agency will comply with all the requirements of the West Virginia Jobs Act; (II) the Governmental Agency has included the provisions of the West Virginia Jobs Act in each contract and subcontract for the Project; (III) the Governmental Agency has received or will receive, prior to entering into contracts or subcontracts, from each contractor or subcontractor a certificate demonstrating compliance with Section 4 of the

West Virginia Jobs Act or waiver certificates from the West Virginia Division of Labor (“DOL”); and (IV) the Governmental Agency will file with the DOL and the Council copies of the waiver certificates and certified payrolls or comparable documents that include the number of employees, the county and state wherein the employees reside and their occupation, following the procedures established by the DOL. The monthly requisitions submitted to the Council shall also certify that the Governmental Agency is monitoring compliance by its contractors and subcontractors and that the required information has been submitted.

The Governmental Agency hereby represents and warrants that the Local Act has been or shall be duly adopted in compliance with all necessary corporate and other action and in accordance with applicable provisions of law. All legal matters incident to the authorization, issuance, validity, sale and delivery of the Local Bonds shall be approved without qualification by recognized bond counsel acceptable to the Authority in substantially the form of legal opinion attached hereto as Exhibit B.

4.2 The Loan shall be secured by the pledge and assignment by the Governmental Agency, as effected by the Local Act, of the fees, charges and other revenues of the Governmental Agency from the System as further set forth by and subject only to such reservations and exceptions as are described in Schedules X and Y hereto or are otherwise expressly permitted in writing by the Authority and the Council.

4.3 The principal of the Loan shall be repaid by the Governmental Agency on the days and in the years provided in Schedule X hereto. Interest payments on the Loan shall be made by the Governmental Agency on a quarterly basis as provided in said Schedule X.

4.4 The Loan shall bear interest from the date and at the rate or rates per annum set forth on Schedule X hereto. In no event shall the interest rate on or the net interest cost of the Local Bonds exceed any statutory limitation with regard thereto.

4.5 The Local Bonds shall be delivered to the Authority in fully registered form, transferable and exchangeable as provided in the Local Act at the expense of the Governmental Agency. Anything to the contrary herein notwithstanding, the Local Bonds may be issued in one or more series, as reflected by Schedule X hereto.

4.6 The Governmental Agency agrees to expend the net proceeds of the Local Bonds for the Project within 3 years of the issuance of the bonds which are the source of money used to purchase the Local Bonds, unless otherwise agreed to by the Council.

## ARTICLE V

### Certain Covenants of the Governmental Agency; Imposition and Collection of User Charges; Payments To Be Made by Governmental Agency to the Authority

5.1 The Governmental Agency hereby irrevocably covenants and agrees to comply with all of the terms, conditions and requirements of this Loan Agreement and the Local Act. The Governmental Agency hereby further irrevocably covenants and agrees that, as one of the conditions of the Authority to make the Loan, it has fixed and collected, or will fix and collect, the rates, fees and other charges for the use of the System and will take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and in compliance with the provisions of Subsections 4.1(a) and 4.1(b)(ii) hereof.

5.2 In the event, for any reason, the schedule of rates, fees and charges initially established for the System in connection with the Local Bonds shall prove to be insufficient to produce the required sums set forth in the Local Act and this Loan Agreement, the Governmental Agency hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates, fees and charges (or where applicable, immediately file with the PSC for a rate increase) and take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Local Act and this Loan Agreement.

5.3 In the event the Governmental Agency defaults in the payment due to the Authority pursuant to this Loan Agreement, the amount of such default shall bear interest at the interest rate of the installment of the Loan next due, from the date of the default until the date of the payment thereof.

5.4 The Governmental Agency hereby irrevocably covenants and agrees with the Authority that, in the event of any default hereunder by the Governmental Agency, the Authority may exercise any or all of the rights and powers granted under the Act and State law, including, without limitation, the right to an appointment of a receiver.

## ARTICLE VI

### Other Agreements of the Governmental Agency

6.1 The Governmental Agency hereby warrants and represents that all information provided to the Authority and the Council in this Loan Agreement, in the Application or in any other application or documentation with respect to financing the Project was at the time, and now is, true, correct and complete, and such information does

not omit any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. Prior to the Authority's making the Loan and receiving the Local Bonds, the Authority and the Council shall have the right to cancel all or any of their obligations under this Loan Agreement if (a) any representation made to the Authority and the Council by the Governmental Agency in connection with the Loan shall be incorrect or incomplete in any material respect or (b) the Governmental Agency has violated any commitment made by it in its Application or in any supporting documentation or has violated any of the terms of the Act or this Loan Agreement.

6.2 The Governmental Agency hereby covenants that it will rebate any amounts required by Section 148 of the Internal Revenue Code of 1986, as amended, and will take all steps necessary to make any such rebates. In the event the Governmental Agency fails to make any such rebates as required, then the Governmental Agency shall pay any and all penalties, obtain a waiver from the Internal Revenue Service and take any other actions necessary or desirable to preserve the exclusion from gross income for federal income tax purposes of interest on the Local Bonds.

6.3 Notwithstanding Section 6.2, the Authority may at any time, in its sole discretion, cause the rebate calculations prepared by or on behalf of the Governmental Agency to be monitored or cause the rebate calculations for the Governmental Agency to be prepared, in either case at the expense of the Governmental Agency.

6.4 The Governmental Agency hereby agrees to give the Authority and the Council prior written notice of the issuance by it of any other obligations to be used for the System, payable from the revenues of the System or from any grants for the Project or otherwise related to the Project or the System.

6.5 The Governmental Agency hereby agrees to file with the Authority and the Council upon completion of acquisition and construction of the Project a schedule in substantially the form of Amended Schedule B to the Application, setting forth the actual costs of the Project and sources of funds therefor.

## ARTICLE VII

### Miscellaneous

7.1 Additional definitions, additional terms and provisions of the Loan and additional covenants and agreements of the Governmental Agency, if any, may be set forth in Schedule Z attached hereto and incorporated herein by reference, with the same effect as if contained in the text of this Loan Agreement.

7.2 Schedules X and Y shall be attached to this Loan Agreement by the Authority as soon as practicable after the Date of Loan Closing is established and shall be

approved by an official action of the Governmental Agency supplementing the Local Act, a certified copy of which official action shall be submitted to the Authority and the Council.

7.3 The Authority shall take all actions required by the Council in making and enforcing this Loan Agreement.

7.4 If any provision of this Loan Agreement shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this Loan Agreement, and this Loan Agreement shall be construed and enforced as if such invalid or unenforceable provision had not been contained herein.

7.5 This Loan Agreement may be executed in one or more counterparts, any of which shall be regarded for all purposes as an original and all of which constitute but one and the same instrument. Each party agrees that it will execute any and all documents or other instruments and take such other actions as may be necessary to give effect to the terms of this Loan Agreement.

7.6 No waiver by either party of any term or condition of this Loan Agreement shall be deemed or construed as a waiver of any other terms or conditions, nor shall a waiver of any breach be deemed to constitute a waiver of any subsequent breach, whether of the same or of a different section, subsection, paragraph, clause, phrase or other provision of this Loan Agreement.

7.7 This Loan Agreement supersedes all prior negotiations, representations and agreements between the parties hereto relating to the Loan and constitutes the entire agreement between the parties hereto in respect thereof.

7.8 The Authority acknowledges that certain terms and requirements in this Loan Agreement may not be applicable when the Project is financed in part by the West Virginia Department of Environmental Protection, Office of Abandoned Mine Lands and under that circumstance those terms and requirements are specifically waived or modified as agreed to by the Authority and set forth in the Local Act.

7.9 By execution and delivery of this Loan Agreement, notwithstanding the date hereof, the Governmental Agency specifically recognizes that it is hereby agreeing to sell its Local Bonds to the Authority and that such obligation may be specifically enforced or subject to a similar equitable remedy by the Authority.

7.10 This Loan Agreement shall terminate upon the earlier of:

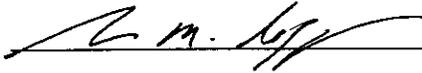
- (i) the end of ninety (90) days after the date of execution hereof by the Authority or such later date as is agreed to in writing by the Council if the Governmental Agency has failed to deliver the Local Bonds to the Authority;

- (ii) termination by the Authority and the Council pursuant to Section 6.1 hereof; or
- (iii) payment in full of the principal of and interest on the Loan and of any fees and charges owed by the Governmental Agency to the Authority, acting on behalf of the Council.

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

TOWN OF BETHANY

(SEAL)

By: 

Its: Mayor

Date: February 8, 2005

Attest:

  
Its: Recorder

WEST VIRGINIA WATER  
DEVELOPMENT AUTHORITY

(SEAL)

By: 

Its: Director

Date: February 8, 2005

Attest:

  
Its: Secretary-Treasurer

000832/00466  
02/07/05

EXHIBIT A

FORM OF CERTIFICATE OF CONSULTING ENGINEER

\_\_\_\_\_  
(Issuer)

\_\_\_\_\_  
(Name of Bonds)

I, \_\_\_\_\_, Registered Professional Engineer, West Virginia License No. \_\_\_\_\_, of \_\_\_\_\_, Consulting Engineers, \_\_\_\_\_, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of \_\_\_\_\_ to the \_\_\_\_\_ system (the "Project") of \_\_\_\_\_ (the "Issuer"), to be constructed primarily in \_\_\_\_\_ County, West Virginia, which acquisition and construction are being permanently financed in part by the above-captioned bonds (the "Bonds") of the Issuer. Capitalized words not defined herein shall have the same meanings set forth in the bond \_\_\_\_\_ adopted or enacted by the Issuer on \_\_\_\_\_, and the Loan Agreement by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), dated \_\_\_\_\_.

2. The Bonds are being issued for the purposes of (i) \_\_\_\_\_, and (ii) paying certain issuance and other costs in connection therewith.

3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by [DEP/BPH/PSC] and any change orders approved by the Issuer, the Council and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least \_\_\_\_\_ years if properly operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B attached hereto as Exhibit A and my

firm<sup>1</sup> has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the [DEP/BPH/PSC] and the bid forms provided to the bidders contain all critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and operation of the System; (ix) as of the effective date thereof, <sup>2</sup>the rates and charges for the System as adopted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project set forth in the Schedule B attached hereto and approved by the Council; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Costs of Financing" for the Project.

WITNESS my signature and seal on this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

[SEAL]

\_\_\_\_\_  
By: \_\_\_\_\_  
West Virginia License No. \_\_\_\_\_

\_\_\_\_\_  
<sup>1</sup>If another responsible party, such as the Issuer's attorney, reviews the insurance and payment bonds, then insert the following: [and in reliance upon the opinion of \_\_\_\_\_, Esq.] and delete "my firm has ascertained that".

<sup>2</sup>If the Rule 42 Exhibit and/or rate structure was prepared by an accountant, then insert the following: "In reliance upon the certificate of \_\_\_\_\_ of even date herewith," at the beginning of (ix).

EXHIBIT B

OPINION OF BOND COUNSEL FOR GOVERNMENTAL AGENCY

[To Be Dated as of Date of Loan Closing]

West Virginia Infrastructure and  
Jobs Development Council  
300 Summers Street, Suite 980  
Charleston, West Virginia 25301

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311

Ladies and Gentlemen:

We are bond counsel to \_\_\_\_\_ (the  
"Governmental Agency"), a \_\_\_\_\_.

We have examined a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated \_\_\_\_\_, \_\_\_\_\_, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Governmental Agency and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and (ii) the issue of a series of revenue bonds of the Governmental Agency, dated \_\_\_\_\_, \_\_\_\_\_ (the "Local Bonds"), to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Local Bonds are issued in the principal amount of \$\_\_\_\_\_, in the form of one bond, registered as to principal and interest to the Authority, with interest and principal payable quarterly on March 1, June 1, September 1 and December 1 of each year, beginning \_\_\_\_\_, 1, \_\_\_\_\_, and ending \_\_\_\_\_, 1, \_\_\_\_\_, as set forth in the "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Local Bonds.

The Local Bonds are issued for the purposes of (i) \_\_\_\_\_, and  
(ii) paying certain issuance and other costs in connection therewith.

We have also examined the applicable provisions of \_\_\_\_\_ of the Code of West Virginia, 1931, as amended (the "Local Statute"), and the bond \_\_\_\_\_ duly adopted or enacted by the Governmental Agency on \_\_\_\_\_, as supplemented by the supplemental resolution duly adopted

by the Governmental Agency on \_\_\_\_\_ (collectively, the "Local Act"), pursuant to and under which Local Statute and Local Act the Local Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Local Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Local Act and the Loan Agreement.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Governmental Agency and is a valid and binding special obligation of the Governmental Agency, enforceable in accordance with the terms thereof.

2. The Loan Agreement inures to the benefit of the Authority and the Council and cannot be amended so as to affect adversely the rights of the Authority or the Council or diminish the obligations of the Governmental Agency without the consent of the Authority and the Council.

3. The Governmental Agency is a duly organized and validly existing \_\_\_\_\_, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Local Act and to issue and sell the Local Bonds, all under the Local Statute and other applicable provisions of law.

4. The Local Act and all other necessary orders and resolutions have been legally and effectively adopted or enacted by the Governmental Agency and constitute valid and binding obligations of the Governmental Agency, enforceable against the Governmental Agency in accordance with their terms. The Local Act contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Local Bonds have been duly authorized, issued, executed and delivered by the Governmental Agency to the Authority and are valid, legally enforceable and binding special obligations of the Governmental Agency, payable from the net or gross revenues of the System set forth in the Local Act and secured by a first lien on and pledge of the net or gross revenues of the System, all in accordance with the terms of the Local Bonds and the Local Act.

6. The Local Bonds are, by statute, exempt \_\_\_\_\_, and under existing statutes and court decisions of the United States of America, as presently written and applied, the interest on the Local Bonds is excludable from the gross income of the recipients thereof for federal income tax purposes.

No opinion is given herein as to the effect upon enforceability of the Local Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Local Bond numbered R-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

EXHIBIT C

MONTHLY FINANCIAL REPORT

Name of Governmental Agency \_\_\_\_\_  
 Name of Bond Issue(s) \_\_\_\_\_  
 Type of Project \_\_\_\_\_ Water \_\_\_\_\_ Wastewater \_\_\_\_\_  
 Fiscal Year \_\_\_\_\_ Report Month \_\_\_\_\_

<u>Item</u>	<u>Current Month</u>	<u>Total Year To Date</u>	<u>Budget Year To Date</u>	<u>Budget Year To Date Minus Total Year To Date</u>
1. Gross Revenues	_____	_____	_____	_____
2. Operating Expenses	_____	_____	_____	_____
3. Bond Payments:				
<u>Type of Issue</u>				
Clean Water SRF	_____	_____	_____	_____
Drinking Water TRF	_____	_____	_____	_____
Infrastructure Fund	_____	_____	_____	_____
Water Development Authority	_____	_____	_____	_____
Rural Utilities Service	_____	_____	_____	_____
Economic Development Administration	_____	_____	_____	_____
Other (Identify)	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
4. Renewal and Replacement Fund Deposits	_____	_____	_____	_____

\_\_\_\_\_  
 Name of Person Completing Form

\_\_\_\_\_  
 Address

\_\_\_\_\_  
 Telephone

## INSTRUCTIONS FOR COMPLETING MONTHLY FINANCIAL REPORT

- Item 1 You will need a copy of the current fiscal year budget adopted by the Governmental Agency to complete Items 1 and 2. In Item 1, provide the amount of actual **Gross Revenues** for the current month and the total amount year-to-date in the respective columns. Divide the budgeted annual Gross Revenues by 12. For example, if Gross Revenues of \$1,200 are anticipated to be received for the year, each month the base would be increased by \$100 ( $\$1,200/12$ ). This is the incremental amount for the Budget Year-to-Date column.
- Item 2 Provide the amount of actual **Operating Expenses** for the current month and the total amount year-to-date in the respective columns. Any administrative fee should be included in the Operating Expenses. Divide the budgeted annual Operating Expenses by 12. For example, if Operating Expenses of \$900 are anticipated to be incurred for the year, each month the base would be increased by \$75 ( $\$900/12$ ). This is the incremental amount for the Budget Year-to-Date column.
- Item 3 Provide the **Bond Payments (principal, interest and reserve account)** for all the outstanding bonds of the Governmental Agency according to the source of funding. For example, Clean Water State Revolving Fund loan from Department of Environmental Protection, Drinking Water Treatment Revolving Fund loan from Bureau for Public Health, Infrastructure Fund loan from Infrastructure and Jobs Development Council, or a loan from the Water Development Authority, etc.
- Item 4 Provide the amount deposited into the **Renewal and Replacement Fund** each month. This amount is equal to 2.5% of Gross Revenues minus the total reserve account payments included in Item 3. If Gross Revenues are \$1,200, then \$30 (2.5% of \$1,200), LESS the amount of all reserve account payments in Item 3 should be deposited into the Renewal and Replacement Fund. The money in the Renewal and Replacement Fund should be kept separate and apart from all other funds of the Governmental Agency.

**The Governmental Agency must complete the Monthly Financial Report and forward it to the Water Development Authority by the 10<sup>th</sup> day of each month, commencing on the date contracts are executed for the acquisition or construction of the Project and for two years following the completion of acquisition or construction of the Project.**

EXHIBIT D

MONTHLY PAYMENT FORM

West Virginia Water Development Authority  
180 Association Drive  
Charleston, WV 25311

Re: [Name of bond issue]

Ladies and Gentlemen:

The following deposits were made to the West Virginia Municipal Bond Commission on behalf of [Name of Governmental Agency] on [Date].

Sinking Fund:

Interest \$\_\_\_\_\_

Principal \$\_\_\_\_\_

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

Reserve Account: \$\_\_\_\_\_

Witness my signature this \_\_\_\_ day of \_\_\_\_\_.

[Name of Governmental Agency]

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

Enclosure: copy of check(s)

## SCHEDULE X

### DESCRIPTION OF LOCAL BONDS

Principal Amount of Local Bonds	<u>\$1,250,000</u>
Purchase Price of Local Bonds	<u>\$1,250,000</u>

The Local Bonds shall bear no interest from the date of delivery to June 1, 2006. Commencing June 1, 2006, interest on the Local Bonds will accrue at the rate of 3% per annum. Commencing September 1, 2006, interest on and principal of the Local Bonds are payable quarterly. Quarterly payments will be made on March 1, June 1, September 1 and December 1 of each year as set forth on the Schedule Y attached hereto and incorporated herein by reference.

The Governmental Agency shall submit its payments monthly to the Commission which will make quarterly payments to the Authority at such address as is given to the Commission in writing by the Authority.

The Local Bonds are fully registered in the name of the Authority as to interest, if any, and principal and the Local Bonds shall grant the Authority a first lien on the gross or net revenues of the Governmental Agency's system as provided in the Local Act.

The Governmental Agency may prepay the Local Bonds in full at any time at the price of par but only with the Council's written consent. The Governmental Agency shall request approval from the Authority and Council in writing of any proposed debt which will be issued by the Governmental Agency on a parity with the Local Bonds which request must be filed at least 60 days prior to the intended date of issuance.

As of the date of the Loan Agreement, the Local Bonds are on a parity as to liens, pledge and source of and security for payment with the following obligations of the Governmental Agency:

None.

SCHEDULE Y

**\$1,250,000**

Town of Bethany

3% Interest Rate, 20 Years

Closing Date: February 22, 2005

**Debt Service Schedule**

Part 1 of 3

Date	Principal	Coupon	Interest	Total P+I
03/01/2005	-	-	-	-
06/01/2005	-	-	-	-
09/01/2005	-	-	-	-
12/01/2005	-	-	-	-
03/01/2006	-	-	-	-
06/01/2006	-	-	-	-
09/01/2006	11,460.26	3.000%	9,375.00	20,835.26
12/01/2006	11,546.22	3.000%	9,289.05	20,835.27
03/01/2007	11,632.81	3.000%	9,202.45	20,835.26
06/01/2007	11,720.06	3.000%	9,115.21	20,835.27
09/01/2007	11,807.96	3.000%	9,027.30	20,835.26
12/01/2007	11,896.52	3.000%	8,938.75	20,835.27
03/01/2008	11,985.74	3.000%	8,849.52	20,835.26
06/01/2008	12,075.64	3.000%	8,759.63	20,835.27
09/01/2008	12,166.20	3.000%	8,669.06	20,835.26
12/01/2008	12,257.45	3.000%	8,577.81	20,835.26
03/01/2009	12,349.38	3.000%	8,485.88	20,835.26
06/01/2009	12,442.00	3.000%	8,393.26	20,835.26
09/01/2009	12,535.32	3.000%	8,299.95	20,835.27
12/01/2009	12,629.33	3.000%	8,205.93	20,835.26
03/01/2010	12,724.05	3.000%	8,111.21	20,835.26
06/01/2010	12,819.48	3.000%	8,015.78	20,835.26
09/01/2010	12,915.63	3.000%	7,919.64	20,835.27
12/01/2010	13,012.49	3.000%	7,822.77	20,835.26
03/01/2011	13,110.09	3.000%	7,725.18	20,835.27
06/01/2011	13,208.41	3.000%	7,626.85	20,835.26
09/01/2011	13,307.48	3.000%	7,527.79	20,835.27
12/01/2011	13,407.28	3.000%	7,427.98	20,835.26
03/01/2012	13,507.84	3.000%	7,327.43	20,835.27
06/01/2012	13,609.15	3.000%	7,226.12	20,835.27
09/01/2012	13,711.22	3.000%	7,124.05	20,835.27
12/01/2012	13,814.05	3.000%	7,021.21	20,835.26
03/01/2013	13,917.65	3.000%	6,917.61	20,835.26
06/01/2013	14,022.04	3.000%	6,813.23	20,835.27
09/01/2013	14,127.20	3.000%	6,708.06	20,835.26
12/01/2013	14,233.16	3.000%	6,602.11	20,835.27
03/01/2014	14,339.90	3.000%	6,495.36	20,835.26
06/01/2014	14,447.45	3.000%	6,387.81	20,835.26
09/01/2014	14,555.81	3.000%	6,279.45	20,835.26
12/01/2014	14,664.98	3.000%	6,170.29	20,835.27
03/01/2015	14,774.97	3.000%	6,060.30	20,835.27
06/01/2015	14,885.78	3.000%	5,949.49	20,835.27
09/01/2015	14,997.42	3.000%	5,837.84	20,835.26
12/01/2015	15,109.90	3.000%	5,725.36	20,835.26

**\$1,250,000**

Town of Bethany

3% Interest Rate, 20 Years

Closing Date: February 22, 2005

**Debt Service Schedule**

Part 2 of 3

Date	Principal	Coupon	Interest	Total P+I
03/01/2016	15,223.23	3.000%	5,612.04	20,835.27
06/01/2016	15,337.40	3.000%	5,497.86	20,835.26
09/01/2016	15,452.43	3.000%	5,382.83	20,835.26
12/01/2016	15,568.32	3.000%	5,266.94	20,835.26
03/01/2017	15,685.09	3.000%	5,150.18	20,835.27
06/01/2017	15,802.72	3.000%	5,032.54	20,835.26
09/01/2017	15,921.25	3.000%	4,914.02	20,835.27
12/01/2017	16,040.65	3.000%	4,794.61	20,835.26
03/01/2018	16,160.96	3.000%	4,674.30	20,835.26
06/01/2018	16,282.17	3.000%	4,553.10	20,835.27
09/01/2018	16,404.28	3.000%	4,430.98	20,835.26
12/01/2018	16,527.32	3.000%	4,307.95	20,835.27
03/01/2019	16,651.27	3.000%	4,183.99	20,835.26
06/01/2019	16,776.15	3.000%	4,059.11	20,835.26
09/01/2019	16,901.98	3.000%	3,933.29	20,835.27
12/01/2019	17,028.74	3.000%	3,806.52	20,835.26
03/01/2020	17,156.46	3.000%	3,678.81	20,835.27
06/01/2020	17,285.13	3.000%	3,550.13	20,835.26
09/01/2020	17,414.77	3.000%	3,420.50	20,835.27
12/01/2020	17,545.38	3.000%	3,289.89	20,835.27
03/01/2021	17,676.97	3.000%	3,158.29	20,835.26
06/01/2021	17,809.55	3.000%	3,025.72	20,835.27
09/01/2021	17,943.12	3.000%	2,892.15	20,835.27
12/01/2021	18,077.69	3.000%	2,757.57	20,835.26
03/01/2022	18,213.27	3.000%	2,621.99	20,835.26
06/01/2022	18,349.87	3.000%	2,485.39	20,835.26
09/01/2022	18,487.50	3.000%	2,347.77	20,835.27
12/01/2022	18,626.15	3.000%	2,209.11	20,835.26
03/01/2023	18,765.85	3.000%	2,069.41	20,835.26
06/01/2023	18,906.59	3.000%	1,928.67	20,835.26
09/01/2023	19,048.39	3.000%	1,786.87	20,835.26
12/01/2023	19,191.26	3.000%	1,644.01	20,835.27
03/01/2024	19,335.19	3.000%	1,500.07	20,835.26
06/01/2024	19,480.20	3.000%	1,355.06	20,835.26
09/01/2024	19,626.31	3.000%	1,208.96	20,835.27
12/01/2024	19,773.50	3.000%	1,061.76	20,835.26
03/01/2025	19,921.80	3.000%	913.46	20,835.26
06/01/2025	20,071.22	3.000%	764.05	20,835.27
09/01/2025	20,221.75	3.000%	613.51	20,835.26
12/01/2025	20,373.42	3.000%	461.85	20,835.27
03/01/2026	20,526.22	3.000%	309.05	20,835.27
06/01/2026	20,680.16	3.000%	155.10	20,835.26
<b>Total</b>	<b>\$1,250,000.00</b>	<b>-</b>	<b>\$416,821.13</b>	<b>\$1,666,821.13</b>

SCHEDULE Z

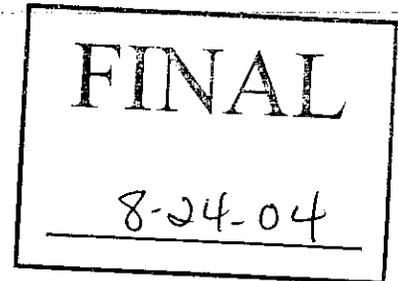
None.

**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

**Entered: August 4, 2004**

CASE NO. 04-0510-S-CN

BETHANY SANITARY BOARD,  
a municipally operated sewer utility, Bethany, Brooke County.  
Application for a certificate of convenience  
and necessity to construct certain additions and  
improvements to the existing sewer system.



**RECOMMENDED DECISION**

On April 6, 2004, Bethany Sanitary Board (Bethany), a municipally operated public sewer utility, filed an application under *West Virginia Code* §24-2-11 for a certificate of public convenience and necessity to construct certain additions, improvements and extensions to its existing sewer system. Bethany, which estimated that construction will cost approximately \$2,000,000, will finance the project with a \$2,000,000 loan from the West Virginia Infrastructure and Jobs Development Council (WVIJDC) bearing interest at a rate not to exceed 3% for a term not to exceed 20 years. Bethany has enacted an ordinance to increase its rates and charges to cover the additional operating and maintenance (O&M) expenses and additional debt service requirements necessitated by the project. These rates are to become effective once Bethany commences constructing the project.

On April 12, 2004, the Commission directed that Bethany publish the Notice of Filing detailing the elements of the proposed project and setting forth the rates enacted to support the project. The Notice of Filing provided a 30-day protest period and provided that, if no protests were received within the 30-day period, the Commission may waive formal hearing and grant the certificate based upon its review of the evidence submitted with the application. On April 30, 2004, Bethany submitted a publication affidavit indicating that it had published the Notice of Filing as directed in *The Brooke County Review* on April 22, 2004. No protests were filed during the 30-day protest period, which expired on May 24, 2004, since May 22, 2004 was a Saturday.

On May 10, 2004, Staff Attorney Meyishi Blair, Esquire, submitted the Initial Joint Staff Memorandum, attaching the May 7, 2004 Initial Internal Memorandum from Supervisor David Accord, Water and Wastewater Division, and from Technical Analyst Audra Blackwell, Engineering Division, indicating that, once it had completed its investigation, Commission Staff would submit a final substantive recommendation.

On May 26, 2004, the Commission entered the Commission Referral Order, referring this case to the Division of Administrative Law Judges (ALJ Division) for decision on or before November 3, 2004.

On July 7, 2004, Staff Attorney Blair submitted the Final Joint Staff Memorandum, without a substantive recommendation, explaining that she was filing the Memorandum in order to meet Staff's filing deadline and that Staff would submit a final recommendation as soon as it completed its review.

Responding to all of the above, on July 14, 2004, the ALJ issued a Procedural Order adopting a procedural schedule to process and resolve this matter, including a Tuesday, August 24, 2004 hearing date.

On July 23, 2004, Staff Attorney Blair submitted the Final Joint Staff Memorandum, attaching the July 12, 2004 Final Internal Memorandum from Utilities Analyst Supervisor Accord and Technical Analyst Blackwell. Together, these Memoranda comprise Commission Staff's final recommendation. Commission Staff reported that Bethany's existing sewer system is aged and needs substantial repairs and improvements. The proposed improvements, which will address the significant combined sewer overflows that result from groundwater and storm water inflows, has been granted West Virginia Department of Health Permit No. 15,915. The West Virginia Department of Culture and History has concluded that the project will not disturb any archeological deposits. The proposed project's plans and specifications conform to general engineering requirements and Commission rules and regulations. Staff opined that the proposed financing for the project, a \$2,000,000 WVIJDC loan bearing interest at a rate not to exceed 3% for a term not to exceed 20 years, is reasonable. The application includes a commitment letter from the WVIJDC. The annual debt payment on principal and interest is \$134,440. The loan also requires Bethany to fund a 10% service reserve, or \$13,444, and a renewal and replacement reserve equal to 2.5% of operating revenues, or \$5,719. Bethany plans to pay off its existing bond anticipation note in the amount of \$225,000 as part of the project, i.e., converting short-term financing, obtained to cover part of the engineering for the project, to long-term financing. On January 13, 2004, Bethany enacted an ordinance that increased operating revenues by 110.64%, which will cover all operation and maintenance (O&M) expenses and the debt service required by the project. After the project is operational, Bethany will have a cash flow surplus of \$7,615 and a debt service coverage of 119.92%. Staff opined that the public convenience and necessity require the project; that it is financially feasible; that the Commission should grant the application; and that the financing for the project should be approved.

On August 2, 2004, Bethany submitted a letter concurring with Commission Staff's final recommendation and requesting that the ALJ cancel the hearing scheduled to convene on August 24, 2004.

## DISCUSSION

Having considered all of the above, since no dispute remains to be resolved in this proceeding, the ALJ will consider the parties to have waived their rights under *West Virginia Code* §24-1-9(b) to file proposed findings of fact and conclusions of law, or briefs, in this proceeding, or to a hearing. Since entering this Recommended Decision obviates the necessity for the procedural schedule established by the July 14, 2004 Procedural Order, including the Tuesday, August 24, 2004 hearing date, the ALJ canceled the procedural schedule by a separate Order issued on this same date.

The ALJ holds that, since Bethany's existing sewer system is aged and needs substantial repairs and improvements; since the proposed improvements, which will address the significant combined sewer overflows that result from groundwater and storm water inflows, has been granted West Virginia Department of Health Permit No. 15,915; since the West Virginia Department of Culture and History has concluded that the project will not disturb any archeological deposits; since the proposed project's plans and specifications conform to general engineering requirements and Commission rules and regulations; and since Commission Staff opined that the application should be granted, the public convenience and necessity require the project and the application should be granted. Also, since Staff opined that the proposed financing for the project, a \$2,000,000 WVIJDC loan bearing interest at a rate not to exceed 3% for a term not to exceed 20 years, is reasonable; since the application includes a commitment letter from the WVIJDC; since, on January 13, 2004, Bethany enacted an ordinance that increased operating revenues by 110.64%, which will cover all O&M expenses and the debt service required by the project; since, after the project is operational, Bethany will have a cash flow surplus of \$7,615 and a debt service coverage of 119.92%; and since Staff opined that the project is financially feasible, the ALJ will approve the financing for the project, provided that, should the scope or the financing for the project change for any reason, Bethany will have to obtain separate prior Commission approval before commencing construction.

## FINDINGS OF FACT

1. Bethany Sanitary Board filed an application under *West Virginia Code* §24-2-11 for a certificate of public convenience and necessity to construct certain additions, improvements and extensions to its existing sewer system. Bethany, which estimated that construction will cost approximately \$2,000,000, will finance the project with a WVIJDC \$2,000,000 loan bearing interest at a rate not to exceed 3% for a term not to exceed 20 years. Bethany has enacted an ordinance to increase its rates and charges to cover the additional O&M expenses and additional debt service requirements necessitated by the project. These rates are to become effective once Bethany commences constructing the project. (See, April 6, 2004 application).

2. Bethany's existing sewer system is aged and needs substantial repairs and improvements. The proposed improvements, which will address the significant combined sewer overflows that result from groundwater and storm water inflows, has been granted West Virginia Department of Health Permit No. 15,915. The West Virginia Department of Culture and History has concluded that the project will not disturb any archeological deposits. The proposed project's plans

and specifications conform to general engineering requirements and Commission rules and regulations. (See, July 23, 2004 Final Joint Staff Memorandum, with attachment).

3. Staff opined that the proposed financing for the project, a \$2,000,000 WVIJDC loan bearing interest at a rate not to exceed 3% for a term not to exceed 20 years, is reasonable. (See, July 23, 2004 Final Joint Staff Memorandum, with attachment).

4. The application includes a commitment letter from the WVIJDC. (See, July 23, 2004 Final Joint Staff Memorandum, with attachment).

5. The annual debt payment on principal and interest is \$134,440. The loan also requires Bethany to fund a 10% service reserve, or \$13,444, and a renewal and replacement reserve equal to 2.5% of operating revenues, or \$5,719. Bethany plans to pay off its existing bond anticipation note in the amount of \$225,000 as part of the project, i.e., converting short-term financing, obtained to cover part of the engineering for the project, to long-term financing. (See, July 23, 2004 Final Joint Staff Memorandum, with attachment).

6. On January 13, 2004, Bethany enacted an ordinance that increased operating revenues by 110.64%, which will cover all O&M expenses and the debt service required by the project. After the project is operational, Bethany will have a cash flow surplus of \$7,615 and a debt service coverage of 119.92%. (See, July 23, 2004 Final Joint Staff Memorandum, with attachment).

7. Staff opined that the public convenience and necessity require the project; that it is financially feasible; that the Commission should grant the application; and that the financing for the project should be approved. (See, July 23, 2004 Final Joint Staff Memorandum, with attachment).

8. Bethany concurred with Commission Staff's final recommendation and requested that the ALJ cancel the hearing scheduled to convene on August 24, 2004. (See, August 2, 2004 letter).

### **CONCLUSIONS OF LAW**

1. For all of the reasons set forth in Finding of Fact Nos. 2, 7 and 8, it is reasonable to conclude that the public convenience and necessity require the project and to approve the application.

2. For all of the reasons set forth in Finding of Fact Nos. 3 through 7, it is reasonable to approve the proposed financing for the project.

3. It is also reasonable to require that, should the scope or the financing for the project change for any reason, Bethany shall obtain separate prior Commission approval before commencing construction.

## ORDER

IT IS, THEREFORE, ORDERED that the application filed with the Commission on April 6, 2004, by the Bethany Sanitary Board under *West Virginia Code* §24-2-11 for a certificate of public convenience and necessity to construct certain additions, improvements and extensions to its existing sewer system, be, and hereby is, granted.

IT IS FURTHER ORDERED that the proposed financing for the project, comprised of a \$2,000,000 WVIJDC loan bearing interest at a rate not to exceed 3% for a term not to exceed 20 years, be, and hereby is, approved.

IT IS FURTHER ORDERED that, should the scope or the financing for the project change for any reason, Bethany shall obtain separate prior Commission approval before commencing construction.

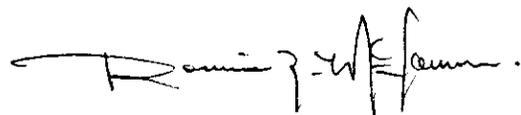
IT IS FURTHER ORDERED that this matter be, and hereby is, removed from the Commission's docket of open cases.

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

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

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

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



**Ronnie Z. McCann**

Deputy Chief Administrative Law Judge

RZM:s  
040510ab.wpd



**PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

At a session of the PUBLIC SERVICE COMMISSION OF WEST VIRGINIA in the City of Charleston on the 15<sup>th</sup> day of February, 2005.

CASE NO. 04-0510-S-CN (REOPENED)

BETHANY SANITARY BOARD,  
a municipally operated sewer utility, Bethany, Brooke  
County

Application for a certificate of convenience  
and necessity to construct certain additions and  
improvements to the existing sewer system.

**COMMISSION ORDER**

By Recommended Decision entered August 4, 2004 (Final August 24, 2004), the Bethany Sanitary Board was granted a certificate of convenience and necessity to construct certain additions, improvements and extensions to its existing sewer system. Proposed financing was also approved for the project, consisting of a \$2,000,000 West Virginia Infrastructure and Jobs Development Council (WVIJDC) loan bearing interest at a rate not to exceed 3%, for a term not to exceed 20 years.

On January 12, 2005, the Bethany Sanitary Board and the Town of Bethany (collectively referred to as Bethany) filed a petition to reopen this case for approval of the "phasing" of the previously approved project construction. As bids were higher than anticipated, Bethany has proposed to construct the project in two phases, the first being improvements to the collection system and the installation of "rip rap" around the sewer lagoon (as requested by DEP) (Phase I). Bethany now seeks approval of Phase I, at a total project cost of \$1,250,500. Phase I is to be financed through a \$1,250,500 WVIJDC loan and does not require a rate increase above the rate ordinance previously enacted by the Town.

Although it does not seek approval of Phase II, Bethany explained that the second phase would include the upgrade of the wastewater treatment plant (Phase II), at a total

project cost of \$1,722,600. Bethany indicated it is in the process of seeking grant monies to finance the unfunded portion of Phase II and upon receipt of such a commitment, it will reopen this case for further approval.

Bethany requested that the Commission enter an Order by February 15, 2005, so as to avoid the expiration of bids and the possible resulting increase in construction costs.

Staff filed its Final Joint Staff Memorandum on February 8, 2005, noting that there were no remaining technical or financial issues. Staff explained that the rates for the improvements have already been passed by ordinance and the current filing results in less borrowing than previously approved in the original filing. Thus, Staff indicated that Phase I does not require any rate increase above the rate ordinance previously enacted by Bethany. With regard to the public interest, Staff stated the following:

There are no public interest issues in need of protection as the change in the scope of the project, that is, the rip rap installation represents approximately only about 10% of the total project cost for Phase I. The DEP has determined that the rip rap is needed and Staff has voiced no objection thereto. The advertisement for the original certificate application stated, among other things, that the application was being sought in order to construct certain 'improvements' to the existing sewer system. Thus, no additional publication is required as the installation of rip rap is reasonably within the scope of the originally advertised certificate application.

Staff therefore recommended that the Commission approve the request to divide the previously approved project into two phases and approve the request for only Phase I at a total project cost of \$1,250,500 to be financed through a \$1,250,500 WVIJDC loan at 3% interest for 20 years.

### DISCUSSION

For the reasons discussed by Bethany and Staff, the Commission will approve Bethany's request to divide the previously approved project into two phases. Approval will also be granted for Phase I, at a total project cost of \$1,250,500, to be financed through a \$1,250,500 WVIJDC loan at 3% interest for 20 years.

The Commission acknowledges that Bethany does not currently seek approval of Phase II of the project and has indicated that it is in the process of seeking grant monies to finance the unfunded portion of Phase II. Bethany shall at that time petition the Commission to reopen this case for further approval.

### **FINDINGS OF FACT**

1. By Recommended Decision entered August 4, 2004 (Final August 24, 2004), Bethany was granted a certificate of convenience and necessity to construct certain additions, improvements and extensions to its existing sewer system. Proposed financing was also approved for the project, consisting of a \$2,000,000 WVIJDC loan bearing interest at a rate not to exceed 3%, for a term not to exceed 20 years.

2. On January 12, 2005, Bethany filed a petition to reopen this case for approval of the "phasing" of the previously approved project construction and approval of Phase I, at a total project cost of \$1,250,500. Phase I is to be financed through a \$1,250,500 WVIJDC loan and does not require a rate increase above the rate ordinance previously enacted by the Town.

3. On February 8, 2005, Staff filed its Final Joint Staff Memorandum and recommended that the Commission approve the request to phase the previously approved project into two phases and approve the request for only Phase I at a total project cost of \$1,250,50 to be financed through a \$1,250,500 WVIJDC loan at 3% interest for 20 years.

### **CONCLUSIONS OF LAW**

1. It is reasonable to approve Bethany's request to divide the previously approved project into two phases.

2. It is reasonable to approve the request for only Phase I at a total project cost of \$1,250,500 to be financed through a \$1,250,500 WVIJDC loan at 3% interest for 20 years.

### **ORDER**

IT IS, THEREFORE, ORDERED that the Bethany Sanitary Board and the Town of Bethany's petition to reopen is hereby granted.

IT IS FURTHER ORDERED that Bethany's request for approval of Phase I of the project, as described herein, is hereby granted.

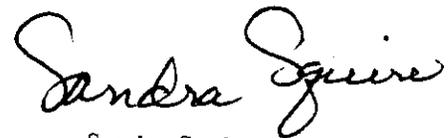
IT IS FURTHER ORDERED that Bethany's petition for approval for Phase I to be financed through a \$1,250,500 WVIJDC loan at 3% interest for 20 years is hereby granted.

IT IS FURTHER ORDERED that in the event of any change to the funding, terms of financing, plans, or scope of the approved project, Bethany shall petition the Commission to reopen this proceeding for approval of the same.

IT IS FURTHER ORDERED that, upon entry hereof, this proceeding shall be removed from the Commission's active docket of cases.

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

A True Copy, Teste:



Sandra Squire  
Executive Secretary

TBS/ljm  
040510ca.wpd

# West Virginia Infrastructure & Jobs Development Council

**Public Members:**

Russell L. Isaacs, Chairman  
Cottageville  
Dwight Calhoun  
Petersburg  
C. R. "Rennie" Hill, III  
Beckley  
Timothy Stranko  
Morgantown

300 Summers Street, Suite 980  
Charleston, West Virginia 25301  
Telephone: (304) 558-4607  
Facsimile: (304) 558-4609

Katy Mallory, PE  
Executive Secretary

Katy.Mallory@verizon.net

October 1, 2003

The Honorable Sven DeJong  
Mayor, Town of Bethany  
P.O. Box U  
Bethany, West Virginia 26032

Re: Town of Bethany  
Sewer Project 2002S-667

Dear Mayor DeJong:

The West Virginia Infrastructure and Jobs Development Council (the "Infrastructure Council") has reviewed the Town of Bethany's (the "Town") revised preliminary application regarding its proposed project to make wastewater treatment plant improvements, separate storm sewer and rehabilitate the collection system.

Based on the findings of the Sewer Technical Review Committee, the Infrastructure Council has determined that the Project is technically feasible within the guidelines of the Infrastructure and Jobs Development Act. The Town should carefully review the enclosed comments of the Sewer Technical Review Committee as the Town may need to address certain issues raised in said comments as it proceeds with the Project.

Upon consideration of the revised preliminary application, the Infrastructure Council, at its October 1, 2003 meeting voted to offer the Town a binding commitment for an Infrastructure Fund loan of \$2,000,000 (3%, 20 years) to finance this Project. Please note that this binding commitment offer is contingent on the Infrastructure Council's 2003 Revenue Bonds being issued which is proposed to be completed in October, 2003.

In order to receive the proposed binding commitment the Town must adhere to a certain project schedule. Please contact Katy Mallory at 558-4607 by November 1, 2003 to establish the necessary schedule and finalize the proposed binding commitment.

Sincerely,



Russell L. Isaacs

**Enclosure**

cc: Mike Johnson, DEP (w/o enclosure)  
Region XI Planning & Development Council  
Cerrone Associates, Inc.

TOWN OF BETHANY

Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

CROSS-RECEIPT FOR BONDS AND BOND PROCEEDS

On this 22nd day of February, 2005, the undersigned authorized representative of the West Virginia Water Development Authority (the "Authority"), for and on behalf of the Authority, and the undersigned Mayor of the Town of Bethany (the "Issuer"), for and on behalf of the Issuer, hereby certify as follows:

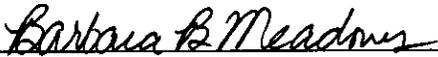
1. On the date hereof, the Authority received the Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), of the Issuer, in the principal amount of \$1,250,000, numbered R-1, issued as a single, fully registered Bond, and dated February 22, 2005 (the "Series 2005 A Bonds").

2. At the time of such receipt, the Series 2005 A Bonds had been executed by the Mayor and the Recorder of the Issuer by their respective manual signatures, and the official seal of the Issuer had been affixed upon the Bonds.

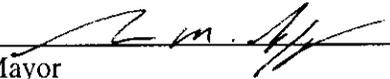
3. The Issuer has received and hereby acknowledges receipt from the Authority, as the original purchaser of the Series 2005 A Bonds, of the sum of \$255,440, being a portion of the principal amount of the Series 2005 A Bonds. The balance of the principal amount of the Series 2005 A Bonds will be advanced by the Authority and the West Virginia Infrastructure and Jobs Development Council to the Issuer as acquisition and construction of the Project progresses.

Dated as of the day and year first above written.

WEST VIRGINIA WATER DEVELOPMENT  
AUTHORITY

  
Authorized Representative

TOWN OF BETHANY

  
Mayor

02/08/05  
072227.00002

TOWN OF BETHANY

Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

DIRECTION TO AUTHENTICATE AND DELIVER BONDS

The Huntington National Bank  
as Bond Registrar  
Charleston, West Virginia

Ladies and Gentlemen:

On this 22nd day of February, 2005, there are delivered to you herewith:

(1) Bond No. AR-1, constituting the entire original issue of the Town of Bethany Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), in the principal amount of \$1,250,000, dated February 22, 2005 (the "Bonds"), executed by the Mayor and the Recorder of the Town of Bethany (the "Issuer") and bearing the official seal of the Issuer, authorized to be issued under and pursuant to a Bond Ordinance duly enacted by the Issuer on March 9, 2004, and a Supplemental Resolution duly adopted by the Issuer on February 8, 2005 (collectively, the "Bond Legislation");

(2) A copy of the Bond Legislation authorizing the above-described Bonds, duly certified by the Recorder of the Issuer;

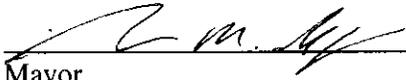
(3) Executed counterparts of the loan agreement for the Series 2005 A Bonds, dated February 22, 2005 (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council ("Council"); and

(4) An executed opinion of nationally recognized bond counsel regarding the validity of the Loan Agreement and the Bonds.

You are hereby requested and authorized to deliver the Bonds to the Authority upon payment to the Issuer of the sum of \$255,440, representing a portion of the principal amount of the Bonds. Prior to such delivery of the Bonds, you will please cause the Bonds to be authenticated and registered by an authorized officer, as Bond Registrar, in accordance with the form of Certificate of Authentication and Registration thereon.

Dated as of the day and year first above written.

TOWN OF BETHANY

  
\_\_\_\_\_  
Mayor

02/08/05  
072227.00002

CH635155.1

**SPECIMEN**

UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
TOWN OF BETHANY  
SEWER REVENUE BONDS, SERIES 2005 A  
(WEST VIRGINIA INFRASTRUCTURE FUND)

No. AR-1

\$1,250,000

KNOW ALL MEN BY THESE PRESENTS: That the TOWN OF BETHANY, a municipal corporation and political subdivision of the State of West Virginia in Brooke County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the WEST VIRGINIA WATER DEVELOPMENT AUTHORITY (the "Authority") or registered assigns the sum of ONE MILLION TWO HUNDRED FIFTY THOUSAND DOLLARS (\$1,250,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in quarterly installments on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2006, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference. The interest on this Bond at the rate per annum set forth on said Exhibit B, shall be payable quarterly on March 1, June 1, September 1 and December 1 of each year, commencing September 1, 2006, as set forth on said EXHIBIT B.

Principal installments of this Bond are payable in any coin or currency which, on the respective dates of payment of such installments, is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of the West Virginia Municipal Bond Commission, Charleston, West Virginia (the "Paying Agent"). The interest on this Bond is payable by check or draft of the Paying Agent mailed to the registered owner hereof at the address as it appears on the books of The Huntington National Bank, Charleston, West Virginia, as registrar (the "Registrar"), on the 15th day of the month next preceding an interest payment date, or by such other method as shall be mutually agreeable so long as the Authority is the registered owner hereof.

This Bond may be redeemed prior to its stated date of maturity in whole or in part, but only with the express written consent of the Authority and the West Virginia Infrastructure and Jobs Development Council (the "Council), and upon the terms and conditions prescribed by, and otherwise in compliance with, the Loan Agreement by and between the Issuer and the Authority, on behalf of the Council, dated February 22, 2005.

This Bond is issued (i) to pay in full the entire outstanding principal of and all accrued interest on the Issuer's Sewerage System Bond Anticipation Notes, Series 2003 (the "Prior Notes"); (ii) to pay the costs of acquisition and construction of certain additions,

betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (iii) to pay certain costs of issuance of the Bonds and related costs. The existing public sewerage system of the Issuer, the Project, and any further additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 and Chapter 31, Article 15A of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on March 9, 2004, and a Supplemental Resolution duly adopted by the Issuer on February 8, 2005 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

**UPON THE REFUNDING OF THE PRIOR NOTES, THE ISSUER WILL HAVE NO BONDS OR OBLIGATIONS OTHER THAN THIS BOND WHICH IS SECURED BY NET REVENUES OF THE SYSTEM.**

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System and from monies in the Reserve Account created under the Bond Legislation for the Bonds (the "Series 2005 A Bonds Reserve Account"), and unexpended proceeds of the Bonds. Such Net Revenues shall be sufficient to pay the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon, except from said special fund provided from the Net Revenues, the monies in the Series 2005 A Bonds Reserve Account and unexpended proceeds of the Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with the Bonds; provided however, that so long as there exists in the Series 2005 A Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Bonds in the then current or succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with the Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the

registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

Subject to the registration requirements set forth herein, this Bond is transferable, as provided in the Bond Legislation, only upon the books of the Registrar (as defined in the Bond Legislation) by the registered owner, or by its attorney duly authorized in writing, upon the surrender of this Bond, together with a written instrument of transfer satisfactory to the Registrar, duly executed by the registered owner or its attorney duly authorized in writing.

Subject to the registration requirements set forth herein, this Bond, under the provision of the Act is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia.

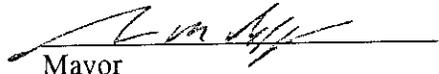
All money received from the sale of this Bond, after reimbursement and repayment of all amounts advanced for preliminary expenses as provided by law and the Bond Legislation, shall be applied solely to payment of the costs of the Project and costs of issuance described in the Bond Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the registered owner of this Bond.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and in the issuance of this Bond do exist, have happened, and have been performed in due time, form and manner as required by law, and that the amount of this Bond, together with all other obligations of the Issuer, does not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia and that a sufficient amount of the Net Revenues of the System has been pledged to and will be set aside into said special fund by the Issuer for the prompt payment of the principal of and interest on this Bond.

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

IN WITNESS WHEREOF, the TOWN OF BETHANY has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Bond to be dated February 22, 2005.

[SEAL]

  
Mayor

**SPECIMEN**

ATTEST:

  
\_\_\_\_\_  
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2005 A Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: February 22, 2005.

THE HUNTINGTON NATIONAL BANK,  
as Registrar

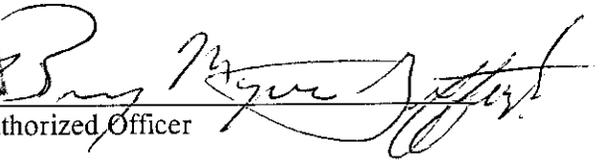
**SPECIMEN**   
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

AMOUNT	DATE	AMOUNT	DATE
(1)\$ 255,440	February 22, 2005	(19)\$	
(2)\$		(20)\$	
(3)\$		(21)\$	
(4)\$		(22)\$	
(5)\$		(23)\$	
(6)\$		(24)\$	
(7)\$		(25)\$	
(8)\$		(26)\$	
(9)\$		(27)\$	
(10)\$		(28)\$	
(11)\$		(29)\$	
(12)\$		(30)\$	
(13)\$		(31)\$	
(14)\$		(32)\$	
(15)\$		(33)\$	
(16)\$		(34)\$	
(17)\$		(35)\$	
(18)\$		(36)\$	
	TOTAL	\$	<u>                    </u>

EXHIBIT B

## Debt Service Schedule

Date	Principal	Coupon	Interest	Total P+I
03/01/2005	-	-	-	-
06/01/2005	-	-	-	-
09/01/2005	-	-	-	-
12/01/2005	-	-	-	-
03/01/2006	-	-	-	-
06/01/2006	-	-	-	-
09/01/2006	11,460.26	3.000%	9,375.00	20,835.26
12/01/2006	11,546.22	3.000%	9,289.05	20,835.27
03/01/2007	11,632.81	3.000%	9,202.45	20,835.26
06/01/2007	11,720.06	3.000%	9,115.21	20,835.27
09/01/2007	11,807.96	3.000%	9,027.30	20,835.26
12/01/2007	11,896.52	3.000%	8,938.75	20,835.27
03/01/2008	11,985.74	3.000%	8,849.52	20,835.26
06/01/2008	12,075.64	3.000%	8,759.63	20,835.27
09/01/2008	12,166.20	3.000%	8,669.06	20,835.26
12/01/2008	12,257.45	3.000%	8,577.81	20,835.26
03/01/2009	12,349.38	3.000%	8,485.88	20,835.26
06/01/2009	12,442.00	3.000%	8,393.26	20,835.26
09/01/2009	12,535.32	3.000%	8,299.95	20,835.27
12/01/2009	12,629.33	3.000%	8,205.93	20,835.26
03/01/2010	12,724.05	3.000%	8,111.21	20,835.26
06/01/2010	12,819.48	3.000%	8,015.78	20,835.26
09/01/2010	12,915.63	3.000%	7,919.64	20,835.27
12/01/2010	13,012.49	3.000%	7,822.77	20,835.26
03/01/2011	13,110.09	3.000%	7,725.18	20,835.27
06/01/2011	13,208.41	3.000%	7,626.85	20,835.26
09/01/2011	13,307.48	3.000%	7,527.79	20,835.27
12/01/2011	13,407.28	3.000%	7,427.98	20,835.26
03/01/2012	13,507.84	3.000%	7,327.43	20,835.27
06/01/2012	13,609.15	3.000%	7,226.12	20,835.27
09/01/2012	13,711.22	3.000%	7,124.05	20,835.27
12/01/2012	13,814.05	3.000%	7,021.21	20,835.26
03/01/2013	13,917.65	3.000%	6,917.61	20,835.26
06/01/2013	14,022.04	3.000%	6,813.23	20,835.27
09/01/2013	14,127.20	3.000%	6,708.06	20,835.26
12/01/2013	14,233.16	3.000%	6,602.11	20,835.27
03/01/2014	14,339.90	3.000%	6,495.36	20,835.26
06/01/2014	14,447.45	3.000%	6,387.81	20,835.26
09/01/2014	14,555.81	3.000%	6,279.45	20,835.26
12/01/2014	14,664.98	3.000%	6,170.29	20,835.27
03/01/2015	14,774.97	3.000%	6,060.30	20,835.27
06/01/2015	14,885.78	3.000%	5,949.49	20,835.27
09/01/2015	14,997.42	3.000%	5,837.84	20,835.26
12/01/2015	15,109.90	3.000%	5,725.36	20,835.26

Date	Principal	Coupon	Interest	Total P+I
03/01/2016	15,223.23	3.000%	5,612.04	20,835.27
06/01/2016	15,337.40	3.000%	5,497.86	20,835.26
09/01/2016	15,452.43	3.000%	5,382.83	20,835.26
12/01/2016	15,568.32	3.000%	5,266.94	20,835.26
03/01/2017	15,685.09	3.000%	5,150.18	20,835.27
06/01/2017	15,802.72	3.000%	5,032.54	20,835.26
09/01/2017	15,921.25	3.000%	4,914.02	20,835.27
12/01/2017	16,040.65	3.000%	4,794.61	20,835.26
03/01/2018	16,160.96	3.000%	4,674.30	20,835.26
06/01/2018	16,282.17	3.000%	4,553.10	20,835.27
09/01/2018	16,404.28	3.000%	4,430.98	20,835.26
12/01/2018	16,527.32	3.000%	4,309.95	20,835.27
03/01/2019	16,651.27	3.000%	4,183.99	20,835.26
06/01/2019	16,776.15	3.000%	4,059.11	20,835.26
09/01/2019	16,901.98	3.000%	3,933.29	20,835.27
12/01/2019	17,028.74	3.000%	3,806.52	20,835.26
03/01/2020	17,156.46	3.000%	3,678.81	20,835.27
06/01/2020	17,285.13	3.000%	3,550.13	20,835.26
09/01/2020	17,414.77	3.000%	3,420.50	20,835.27
12/01/2020	17,545.38	3.000%	3,289.89	20,835.27
03/01/2021	17,676.97	3.000%	3,158.29	20,835.26
06/01/2021	17,809.55	3.000%	3,025.72	20,835.27
09/01/2021	17,943.12	3.000%	2,892.15	20,835.27
12/01/2021	18,077.69	3.000%	2,757.57	20,835.26
03/01/2022	18,213.27	3.000%	2,621.99	20,835.26
06/01/2022	18,349.87	3.000%	2,485.39	20,835.26
09/01/2022	18,487.50	3.000%	2,347.77	20,835.27
12/01/2022	18,626.15	3.000%	2,209.11	20,835.26
03/01/2023	18,765.85	3.000%	2,069.41	20,835.26
06/01/2023	18,906.59	3.000%	1,928.67	20,835.26
09/01/2023	19,048.39	3.000%	1,786.87	20,835.26
12/01/2023	19,191.26	3.000%	1,644.01	20,835.27
03/01/2024	19,335.19	3.000%	1,500.07	20,835.26
06/01/2024	19,480.20	3.000%	1,355.06	20,835.26
09/01/2024	19,626.31	3.000%	1,208.96	20,835.27
12/01/2024	19,773.50	3.000%	1,061.76	20,835.26
03/01/2025	19,921.80	3.000%	913.46	20,835.26
06/01/2025	20,071.22	3.000%	764.05	20,835.27
09/01/2025	20,221.75	3.000%	613.51	20,835.26
12/01/2025	20,373.42	3.000%	461.85	20,835.27
03/01/2026	20,526.22	3.000%	309.05	20,835.27
06/01/2026	20,680.16	3.000%	155.10	20,835.26

<b>Total</b>	<b>\$1,250,000.00</b>	<b>-</b>	<b>\$416,821.13</b>	<b>\$1,666,821.13</b>
--------------	-----------------------	----------	---------------------	-----------------------

Accrued Interest from 02/22/2005 to 02/22/2005	(47,812.50)
Bond Year Dollars	\$15,487.79
Average Life	12.390 Years
Average Coupon	2.6912891%
Net Interest Cost (NIC)	2.6912891%
True Interest Cost (TIC)	3.0199636%
Bond Yield for Arbitrage Purposes	3.0199636%
All Inclusive Cost (AIC)	3.0199636%

**IRS Form 8038**

Net Interest Cost	3.0000001%
-------------------	------------

Weighted Average Maturity

12.390 Years

(Form of)

ASSIGNMENT

FOR VALUE RECEIVED the undersigned sells, assigns, and transfers unto

\_\_\_\_\_

\_\_\_\_\_ the within Bond and does hereby irrevocably constitute and appoint \_\_\_\_\_, Attorney to transfer the said Bond on the books kept for registration of the within Bond of the said Issuer with full power of substitution in the premises.

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

**SPECIMEN**

\_\_\_\_\_

In the presence of:

\_\_\_\_\_

02/08/05  
072227.00002

February 22, 2005

Town of Bethany  
Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

Town of Bethany  
Bethany, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

West Virginia Infrastructure and Jobs Development Council  
Charleston, West Virginia

Ladies and Gentlemen:

We have served as bond counsel to the Town of Bethany (the "Issuer"), a municipal corporation and political subdivision of the State of West Virginia in connection with its \$1,250,000 Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated the date hereof (the "Bonds").

We have examined the law and a certified copy of proceedings and other papers relating to the authorization of (i) a loan agreement dated February 22, 2005, including all schedules and exhibits attached thereto (the "Loan Agreement"), between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), and (ii) the Bonds to be purchased by the Authority in accordance with the provisions of the Loan Agreement. The Bonds are issued in the principal amount of \$1,250,000, in the form of one bond, registered as to principal and interest to the Authority, with interest at the rate of 3% per annum, with principal installments and interest payable quarterly on March 1, June 1, September 1, and December 1 of each year, beginning September 1, 2006, and maturing June 1, 2026, all as set forth in "Schedule Y" attached to the Loan Agreement and incorporated in and made a part of the Bonds.

The Bonds are issued for the purposes of (i) paying in full the entire outstanding principal of and all accrued interest on the Issuer's Sewerage System Bond Anticipation Notes, Series 2003; (ii) paying a portion of the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (iii) paying certain issuance and others costs in connection therewith.

We have also examined the applicable provisions of Chapter 16, Article 13 and Chapter 31, Article 15A of the Code of West Virginia, 1931, as amended (collectively, the "Act"), and the bond ordinance duly enacted by the Issuer on March 9, 2004, as supplemented by the supplemental resolution duly adopted by the Issuer on February 8, 2005 (collectively, the "Bond Legislation"), pursuant to and under which Act and Bond Legislation the Bonds are authorized and issued, and the Loan Agreement has been undertaken. The Bonds are subject to redemption prior to maturity to the extent, at the time, under the conditions and subject to the limitations set forth in the Bond Legislation and the Loan Agreement. All capitalized terms used herein and not defined herein shall have the same meanings set forth in the Bond Legislation.

In connection with the issuance of the Bonds, the Issuer has executed a Certificate as to Arbitrage, dated as of the date hereof (the "Certificate as to Arbitrage"), which, among other things, sets forth restrictions on the investment and expenditure of the Bond proceeds and earnings thereon, to ensure that the arbitrage requirements of the Internal Revenue Code of 1986, as amended, and regulations thereunder (collectively, the "Code"), necessary to establish and maintain the excludability of interest on the Bonds from gross income for federal income tax purposes, are and will continue to be met.

Based upon the foregoing and upon our examination of such other documents as we have deemed necessary, we are of the opinion as follows:

1. The Loan Agreement has been duly authorized by and executed on behalf of the Issuer and is a valid and binding special obligation of the Issuer enforceable in accordance with the terms thereof.
2. The Loan Agreement inures to the benefit of the Authority and Council and cannot be amended so as to affect adversely the rights of the Authority or the Council or diminish the obligations of the Issuer without the consent of the Authority and the Council.
3. The Issuer is a duly organized and presently existing municipal corporation and political subdivision of the State of West Virginia, with full power and authority to acquire and construct the Project, to operate and maintain the System, to adopt or enact the Bond Legislation and to issue and sell the Bonds, all under the Act and other applicable provisions of law.
4. The Bond Legislation and all other necessary ordinances and resolutions have been legally and effectively adopted or enacted by the Issuer and constitute valid and binding obligations of the Issuer enforceable against the Issuer in accordance with their terms. The Bond Legislation contains provisions and covenants substantially in the form of those set forth in Section 4.1 of the Loan Agreement.

5. The Bonds have been duly authorized, issued, executed and delivered by the Issuer to the Authority and are valid, legally enforceable and binding special obligations of the Issuer, payable from the Net Revenues of the System and secured by a first lien on and pledge of the Net Revenues of the System, all in accordance with the terms of the Bonds and the Bond Legislation.

6. Under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the interest on the Bonds (a) is excludable from gross income of the owners thereof for federal income tax purposes pursuant to the Code and (b) is not an item of tax preference for purposes of the federal alternative minimum tax imposed upon individuals and corporations under the Code. It should be noted, however, that interest on the Bonds is included in the adjusted current earnings of certain corporations for purposes of computing the alternative minimum tax that may be imposed with respect to corporations. The opinions set forth above are subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code that must be satisfied subsequent to issuance of the Bonds for interest thereon to be or continue to be excludable from gross income for federal income tax purposes and all certifications, covenants and representations which may affect the excludability from gross income of the interest on the Bonds set forth in the Bond Legislation and the Certificate as to Arbitrage, and other certificates delivered in connection with the issuance of the Bonds. Failure to comply with certain of such Code provisions or such certifications, covenants and representations could cause the interest on the Bonds to be includable in gross income retroactive to the date of issuance of the Bonds. We express no opinion regarding other federal tax consequences arising with respect to the Bonds.

7. Based upon the certifications of the Issuer set forth in the Certificate as to Arbitrage and under existing laws, regulations, rulings and judicial decisions of the United States of America, as presently written and applied, the proceeds of the Bonds are not subject to the arbitrage rebate requirements set forth in Section 148(f) of the Code. The opinion set forth above is subject to the condition that the Issuer comply, on a continuing basis, with all requirements of the Code relating to the applicable exceptions to rebate. The Issuer has covenanted to comply with all such requirements. Failure to comply with such requirements could cause proceeds of the Bonds to be subject to such arbitrage rebate requirements retroactive to the date of issuance of the Bonds.

8. The Bonds and all interest thereon are, under the Act, exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

9. The Issuer's Sewerage System Bond Anticipation Notes, Series 2003 (the "Prior Notes") have been paid within the meaning and with the effect expressed in the Prior Ordinance, and the covenants, agreements and other obligations of the Issuer to the holders and owners of the Prior Notes have been satisfied and discharged. In rendering the opinion set forth in this paragraph, we have relied upon the Receipt of Payment from Progressive Bank, N.A., certifying that it has received full payment of the entire outstanding principal of and all interest accrued on the Prior Notes on the date hereof.

Town of Bethany, et al.  
Page 4

No opinion is given herein as to the effect upon enforceability of the Bonds of bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights or in the exercise of judicial discretion in appropriate cases.

We have examined the executed and authenticated Bond numbered AR-1, and in our opinion the form of said bond and its execution and authentication are regular and proper.

Very truly yours,

  
STEPTOE & JOHNSON PLLC

02/09/05  
072227.00002

CH635156.1

JACKSON LAW OFFICE  
ECHO MANOR  
1031 NATIONAL ROAD  
WHEELING, WEST VIRGINIA 26003-5709  
304-243-5440

FRANK A. JACKSON

FAX 304-243-5439  
EMAIL: fjacksonlaw@juno.com

February 22, 2005

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311

West Virginia Infrastructure and Jobs Development Council  
300 Summers Street, Suite 980  
Charleston, West Virginia 25301

Steptoe & Johnson PLLC  
P.O. Box 1588  
Charleston, West Virginia 25326-1588

Re: Town of Bethany  
Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

Ladies and Gentlemen:

I am solicitor for and counsel to the Town of Bethany, a municipal corporation in Brooke County, West Virginia (the "Issuer"). As such counsel, and per your request, I have examined copies of certain documents in connection with the issuance of sewer revenue bonds (the "Bonds") described above, including the approving opinion of Steptoe & Johnson PLLC, as bond counsel; a loan agreement for the Bonds dated February 22, 2005, including all schedules and exhibits attached thereto (the "Loan Agreement"), by and between the Issuer and the West Virginia Water Development Authority (the "Authority"), on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"); a Bond Ordinance duly enacted by the Issuer on March 9, 2004, as supplemented by a Supplemental Resolution duly adopted by the Issuer on February 8, 2005 (collectively, the "Bond Legislation"); a Petition of the Sanitary Board duly adopted on December 9, 2003, and other documents relating to the Bonds. All capitalized terms used herein and not otherwise defined herein shall have the same meanings as set forth in the Bond Legislation and the Loan Agreement when used herein.

I am of the opinion that:

1. The Issuer has been duly created and is validly existing as a municipal corporation and political subdivision of the State of West Virginia. The Mayor, Recorder, the members of the Council of the Issuer and the members of the Sanitary Board have been duly and properly elected or appointed, as applicable, have taken the requisite oaths, and are authorized to act on behalf of the Issuer in their respective capacities. The Sanitary Board has been duly created by the Issuer and is validly existing as a sanitary board under the Act.

2. The Loan Agreement has been duly authorized, executed and delivered by the Issuer and, assuming due authorization, execution and delivery by the Authority, constitutes a valid and binding agreement of the Issuer, enforceable in accordance with its terms.

3. The Bond Legislation has been duly adopted and enacted by the Issuer and is in full force and effect.

4. The execution and delivery of the Bonds and the Loan Agreement and the consummation of the transactions contemplated by the Bonds, the Loan Agreement and the Bond Legislation, and the carrying out of the terms thereof, do not and will not, in any material respect, conflict with or constitute, on the part of the Issuer, a breach of or default under any ordinance, order, resolution, agreement or other instrument to which the Issuer is a party or by which the Issuer or its properties are bound, nor do they or will they conflict with any existing law, regulation, court order or consent decree to which the Issuer is subject.

5. The Issuer has received all orders and approvals from the Public Service Commission of West Virginia, including the Final Order and the Commission Order entered on August 24, 2004, and February 15, 2005, respectively, in Case No. 04-0510-S-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of the Final Order has expired prior to the date hereof. The time for appeal of the Commission Order has not expired prior to the date hereof, but the parties to such Order have indicated that they do not intend to appeal the Order. Both Orders are in full force and effect.

6. The Issuer has received all permits, licenses, approvals, consents, exemptions, orders, certificates and authorizations necessary for the issuance of the Bonds, the acquisition and construction of the Project, the operation of the System and the imposition of rates and charges for use of the System, including, without limitation, the receipt of all requisite orders and approvals from the West Virginia Department of Environmental Protection, the West Virginia Bureau of Public Health, the West Virginia Infrastructure and Jobs Development Council and the Public Service Commission of West Virginia, and has taken any other action required for the imposition of such rates and charges, including, without limitation, the enactment of an ordinance prescribing such rates and charges.

7. To the best of my knowledge, there is no litigation, action, suit, proceeding or investigation at law or in equity before or by any court, public board or body, pending or threatened, wherein an unfavorable decision, ruling or finding would adversely affect the transactions contemplated by the Bonds, the Loan Agreement, the Bond Legislation, the acquisition and construction of the Project, the operation of the System, the validity of the Bonds, the collection of the Gross Revenues or the pledge of the Net Revenues for the payment of the Bonds.

Further, prior to the execution of construction contracts by the Issuer, I will verify that all successful bidders have made required provisions for all insurance coverage and for payment and performance bonds, and I will verify such insurance policies or binders and such bonds for accuracy. I will also verify that such contracts, surety bonds and policies (i) are in compliance with the contracts; (ii) are adequate in form, substance and amount to protect the various interests of the Issuer; (iii) have been executed by duly authorized representatives of the proper parties; (iv) meet the requirements of the Act, the Bond Legislation and the Loan Agreement; and (v) constitute valid and legally binding obligations of the parties thereto in accordance with the terms, conditions and provisions thereof.

I express no opinion with respect to the possible effects upon the subject transactions of bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights and remedies of creditors generally or of general principles of equity, whether applied by a court of law or equity.

All counsel to this transaction may rely upon this opinion as if it were specifically addressed to them, but apart from the addressees and such counsel, no other person is entitled to rely upon or to assert any legal rights based upon this opinion. The addressees and such counsel may rely on this opinion only for the purposes contemplated by the transaction documents.

Very truly yours,



F. A. JACKSON

FAJ:cs

Bethany\sewerrevenuebonds.opn

JACKSON LAW OFFICE  
ECHO MANOR  
1031 NATIONAL ROAD  
WHEELING, WEST VIRGINIA 26003-5709  
304-243-5440

FRANK A. JACKSON

FAX 304-243-5439  
E-MAIL: fjacksonlaw@juno.com

February 22, 2005

West Virginia Water Development Authority  
180 Association Drive  
Charleston, West Virginia 25311

West Virginia Infrastructure and Jobs Development Council  
300 Summers Street, Suite 980  
Charleston, West Virginia 25301

Steptoe & Johnson, PLLC  
P.O. Box 1588  
Charleston, West Virginia 25326-1588

Re: Town of Bethany  
Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)  
(Final) Opinion of Title \_\_\_\_\_

Ladies and Gentlemen:

I am solicitor for and counsel to the Town of Bethany, a municipal corporation in Brooke County, West Virginia (the "Issuer"). As counsel I have advised the Issuer in connection with a pending Sewer System Improvements Project (the "Project") and related matters, including matters of title and the issuance of certain sewer revenue bonds, described above. I previously submitted a preliminary title opinion in this matter, dated August 9, 2004, and I now provide this final title opinion on behalf of the Issuer to satisfy the requirements of the West Virginia Infrastructure and Jobs Development Council for the Project. Please be advised of the following:

1. I have investigated and ascertained the location of and am familiar with the legal descriptions of the necessary sites, including rights-of-way and/or other easements, required for the Project as set forth in the plans for the Project prepared by Cerrone Associates, Inc., Consulting Engineers, the engineers for the Project.

2. I have examined the indices and related records in the Office of the Clerk of the County Commission of Brooke County, West Virginia, the county in which the Project is to be

West Virginia Water Development Authority et al.

February 22, 2005

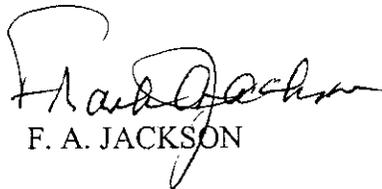
Page 2

located, and in my opinion, the Issuer has or has now acquired sufficient title, estate or other interest in all of the necessary site components for the Project, including all rights-of-way and/or other easements, to assure undisturbed use and possession of such components for purposes of constructing, operating and maintaining the Project for its estimated life.

3. All deeds for all rights-of-way, other easements and other interests which have been acquired by the Issuer in connection with the Project have been duly recorded in the said county clerk's office to protect such title, estate and other interests of the Issuer.

All counsel to the pending transaction may rely upon this opinion as if it were specifically addressed to them, but apart from the addressees and such counsel, no other person is entitled to rely upon or to assert any legal rights based upon this opinion. The addressees and such counsel may rely on this opinion only for the purposes contemplated by the transaction documents.

Very truly yours,



F. A. JACKSON

FAJ:cs

Bethany\sewerbondsrealestate.opn

TOWN OF BETHANY

Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

GENERAL CERTIFICATE OF ISSUER AND ATTORNEY ON:

1. TERMS
2. NO LITIGATION
3. GOVERNMENTAL APPROVALS AND BIDDING
4. NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS
5. CERTIFICATION OF COPIES OF DOCUMENTS
6. INCUMBENCY AND OFFICIAL NAME
7. LAND AND RIGHTS-OF-WAY
8. MEETINGS, ETC.
9. CONTRACTORS' INSURANCE, ETC.
10. LOAN AGREEMENT
11. RATES
12. SIGNATURES AND DELIVERY
13. BOND PROCEEDS; OTHER FUNDS
14. PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE
15. PUBLIC SERVICE COMMISSION ORDERS
16. SPECIMEN BOND
17. CONFLICT OF INTEREST
18. PROCUREMENT OF ENGINEERING SERVICES
19. COMPLIANCE WITH WEST VIRGINIA JOBS ACT
20. EXECUTION OF COUNTERPARTS

We, the undersigned MAYOR and RECORDER of the Town of Bethany in Brooke County, West Virginia (the "Issuer"), and the undersigned COUNSEL to the ISSUER, hereby certify on this the 22nd day of February, 2005, in connection with the Issuer's Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated the date hereof (the "Bonds" or the "Series 2005 A Bonds"), as follows:

1. TERMS: All capitalized words and terms used in this General Certificate and not otherwise defined herein shall have the same meaning as set forth in the Bond Ordinance of the Issuer duly enacted March 9, 2004, and the Supplemental Resolution duly adopted February 8, 2005 (collectively, the "Bond Legislation").

2. **NO LITIGATION:** No controversy or litigation of any nature is now pending or threatened, restraining, enjoining or affecting in any manner the issuance, sale or delivery of the Bonds, the acquisition and construction of the Project, the operation of the System, the receipt of any grants, or in any way contesting or affecting the validity of the Bonds, or any proceedings of the Issuer taken with respect to the issuance or sale of the Bonds, the pledge or application of the Net Revenues or any other moneys or security provided for the payment of the Bonds or the existence or the powers of the Issuer insofar as they relate to the authorization, sale and issuance of the Bonds, the acquisition and construction of the Project, the operation of the System, the collection of the Gross Revenues or the pledge of Net Revenues as security for the Bonds.

3. **GOVERNMENTAL APPROVALS AND BIDDING:** All applicable approvals, permits, exemptions, consents, authorizations, registrations and certificates required by law for the acquisition and construction of the Project, the operation of the System, the imposition of rates and charges, and the issuance of the Bonds have been duly and timely obtained and remain in full force and effect. Competitive bids for the acquisition and construction of the Project have been solicited in accordance with Chapter 5, Article 22, Section 1 of the West Virginia Code of 1931, as amended, which bids remain in full force and effect.

4. **NO ADVERSE FINANCIAL CHANGE; INDEBTEDNESS:** There has been no adverse change in the financial condition of the Issuer since the approval, execution and delivery by the Issuer of the Loan Agreement. The Issuer has met all conditions prescribed in the Loan Agreement. The Issuer has or can provide the financial, institutional, legal and managerial capabilities necessary to complete the Project.

The Sewerage System Bond Anticipation Notes, Series 2003 (the "Series 2003 Notes") will be refunded by the proceeds of the Series 2005 A Bonds.

Upon issuance of the Series 2005 A Bonds and payment in full of the Series 2003 Notes, the Issuer will have no other outstanding debt secured by revenues of the System.

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

Bond Ordinance

Supplemental Resolution

Loan Agreement

Public Service Commission Orders

Infrastructure and Jobs Development Council Approval

Charter and Rules of Procedure

Oaths of Office of Officers and Councilmembers

Ordinance Creating Sanitary Board and Oaths of Office of Officers

Petition of Sanitary Board

Sewer Rate Ordinance

Affidavit of Publication of Sewer Rate Ordinance and Notice of Public Hearing

Minutes on Adoption and Enactment of Sewer Rate Ordinance

Affidavit of Publication of Abstract of Bond Ordinance and Notice of Public Hearing

Minutes on Adoption and Enactment of Bond Ordinance and Adoption of Supplemental Resolution and First Draw Resolution

NPDES Permit and Health Permit

Evidence of Insurance

Receipt of Payment of Series 2003 Notes

Receipt of Payment of Step I Loan

6. **INCUMBENCY AND OFFICIAL NAME:** The proper corporate title of the Issuer is the "Town of Bethany." The Issuer is a municipal corporation in Brooke County and is presently existing under the laws of, and a political subdivision of, the State of West Virginia. The governing body of the Issuer is its council, consisting of a Mayor, a Recorder and 5 councilmembers, all duly elected or appointed, as applicable, qualified and acting, and whose names and dates of commencement and termination of current terms of office are as follows:

<u>Name</u>		<u>Date of Commencement of Office</u>	<u>Date of Termination of Office</u>
Sven M. de Jong	- Mayor	July 1, 2003	June 30, 2005
Helen Moren	- Recorder	July 1, 2003	June 30, 2005
Debra Hull	- Councilmember	July 1, 2003	June 30, 2005
Gary Williamson	- Councilmember	July 1, 2003	June 30, 2005
Jay Eisenhower	- Councilmember	July 1, 2003	June 30, 2005
James Forrester	- Councilmember	July 1, 2003	June 30, 2005
Patrick Sutherland	- Councilmember	July 1, 2003	June 30, 2005

The names of the duly appointed, qualified and acting members of the Sanitary Board of the Issuer are as follows:

Chairman	-	Sven M. de Jong
Member	-	Frank Dorsch, P.E.
Member	-	Tom Falcom

The duly appointed and acting Counsel to the Issuer is Frank A. Jackson, Esquire, in Wheeling, West Virginia.

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

8. MEETINGS, ETC.: All actions, ordinances, resolutions, orders and agreements taken by and entered into by or on behalf of the Issuer in any way connected with the issuance of the Bonds and the acquisition, construction and financing of the Project or the operation of the System were authorized or adopted at regular or special meetings of the Governing Body of the Issuer duly and regularly called and held pursuant to the Rules of Procedure of the Governing Body and all applicable statutes, including, particularly and without limitation, Chapter 6, Article 9A of the West Virginia Code of 1931, as amended, and a quorum of duly elected or appointed, as applicable, qualified and acting members of the Governing Body was present and acting at all times during all such meetings. All notices required to be posted and/or published were so posted and/or published.

9. **CONTRACTORS' INSURANCE, ETC.:** All contractors have been required to maintain Worker's Compensation, public liability and property damage insurance, and builder's risk insurance where applicable, in accordance with the Bond Legislation. All insurance for the System required by the Bond Legislation and Loan Agreement is in full force and effect.

10. **LOAN AGREEMENT:** As of the date hereof, (i) the representations of the Issuer contained in the Loan Agreement are true and correct in all material respects as if made on the date hereof; (ii) the Loan Agreement does not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading; (iii) to the best knowledge of the undersigned, no event affecting the Issuer has occurred since the dates of the Loan Agreement which should be disclosed for the purpose for which it is to be used or which it is necessary to disclose therein in order to make the statements and information in the Loan Agreement not misleading; and (iv) the Issuer is in compliance with the Loan Agreement.

11. **RATES:** The Issuer has duly enacted a sewer rate ordinance on January 13, 2004, setting rates and charges for the services of the System. The time for appeal of such sewer rate ordinance has expired prior to the date hereof without any appeal, and such rates are currently effective.

12. **SIGNATURES AND DELIVERY:** On the date hereof, the undersigned Mayor did officially sign all of the Bonds of the aforesaid issue, consisting upon original issuance of a single Bond numbered AR-1, dated the date hereof, by his or her manual signature, and the undersigned Recorder did officially cause the official seal of the Issuer to be affixed upon said Bonds and to be attested by his or her manual signature, and the Registrar did officially authenticate, register and deliver the Bonds to a representative of the Authority as the original purchaser of the Bonds under the Loan Agreement. Said official seal of the Issuer is also impressed above the signatures appearing on this certificate.

13. **BOND PROCEEDS; OTHER FUNDS:** On the date hereof, the Issuer received the sum of \$255,440 from the Authority and the Council, being a portion of the principal amount of the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

14. **PUBLICATION AND PUBLIC HEARING ON BOND ORDINANCE:** Upon adoption of the Bond Ordinance, an abstract thereof, determined by the Governing Body to contain sufficient information as to give notice of the contents thereof, was published once each week for 2 successive weeks, with not less than 6 full days between each publication, the first such publication occurring not less than 10 days before the date stated below for the public hearing, in *The Brooke County Review*, a qualified newspaper of general circulation in the Town of Bethany, there being no newspaper published therein, together with a notice to all persons concerned, stating that the Bond Ordinance had been adopted and that the Issuer contemplated the issuance of the Bonds

described in such Bond Ordinance, stating that any person interested may appear before the Governing Body at the public hearing held at a public meeting of Governing Body on the 9th day of March, 2004, at 7:00 p.m., at the Town Hall, Bethany, West Virginia, and present protests, and stating that a certified copy of the Bond Ordinance was on file at the office of the Recorder of the Issuer for review by interested parties during the office hours of the Issuer. At such hearing all objections and suggestions were heard by the Governing Body and the Bond Ordinance became finally adopted, enacted and effective as of the date of such public hearing, and remains in full force and effect.

15. PUBLIC SERVICE COMMISSION ORDERS: The Issuer has received the Final Order and the Commission Order of the Public Service Commission of West Virginia entered on August 24, 2004, and February 15, 2005, respectively, in Case No. 04-0510-S-CN, granting to the Issuer a certificate of public convenience and necessity for the Project and approving the financing for the Project. The time for appeal of the Final Order has expired prior to the date hereof without any appeal having been filed. The time for appeal of the Commission Order has not expired prior to the date hereof. However, the parties to such Order have stated that they do not intend to appeal such Order. The Issuer hereby certifies that it will not appeal such Order. Both Orders are in full force and effect.

16. SPECIMEN BOND: Delivered concurrently herewith is a true and accurate specimen of the Bond.

17. CONFLICT OF INTEREST: No member, officer or employee of the Issuer or the Sanitary Board has a substantial financial interest, direct, indirect or by reason of ownership of stock in any corporation, in any contract with the Issuer or in the sale of any land, materials, supplies or services to the Issuer or to any contractor supplying the Issuer, relating to the Bonds, the Bond Legislation and/or the Project, including, without limitation, with respect to the Depository Bank. For purposes of this paragraph, a "substantial financial interest" shall include, without limitation, an interest amounting to more than 5% of the particular business enterprise or contract.

18. PROCUREMENT OF ENGINEERING SERVICES: The Issuer has complied in all respects with the requirements of Chapter 5G, Article 1 of the West Virginia Code of 1931, as amended, in the procurement of engineering services to be paid from proceeds of the Bonds.

19. COMPLIANCE WITH WEST VIRGINIA JOBS ACT: Unless it shall hereafter be qualified for an exception, the Issuer shall comply with all the requirements of Chapter 21, Article 1C of the Code of West Virginia, 1931, as amended (the "West Virginia Jobs Act"), and shall require its contractors and subcontractors to comply with the West Virginia Jobs Act. The Issuer hereby certifies to the Council and the Authority that (i) the Issuer will comply with all the requirements of the West Virginia Jobs Act; (ii) the Issuer has included the provisions of the West Virginia Jobs Act in each contract and subcontract for the Project; (iii) the Issuer has received or will receive, prior to entering into contracts or subcontracts, from each contractor or subcontractor a certificate

demonstrating compliance with Section 4 of the West Virginia Jobs Act or waiver certificates from the West Virginia Division of Labor (“DOL”); and (iv) the Issuer will file with the DOL and the Council copies of the waiver certificates and certified payrolls or comparable documents that include the number of employees, the county and state wherein the employees reside and their occupation, following the procedures established by the DOL. The Issuer will also certify in the monthly requisitions submitted to the Council that the Issuer is monitoring compliance by its contractors and subcontractors and that the required information has been submitted. Counsel to the Issuer makes no representation as to the contents of this paragraph.

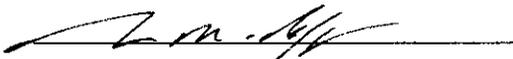
20. EXECUTION OF COUNTERPARTS: This document may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same document.

WITNESS our signatures and the official seal of the TOWN OF BETHANY  
on the day and year first above written.

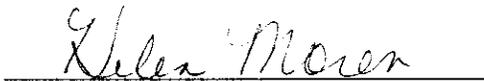
[CORPORATE SEAL]

SIGNATURE

OFFICIAL TITLE



Mayor



Recorder

\_\_\_\_\_

Counsel to the Issuer

02/08/05  
072227.00002

WITNESS our signatures and the official seal of the TOWN OF BETHANY  
on the day and year first above written.

[CORPORATE SEAL]

SIGNATURE

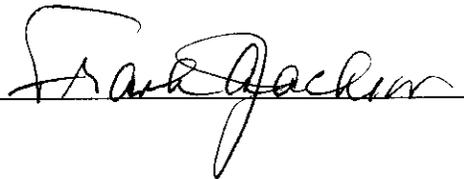
OFFICIAL TITLE

\_\_\_\_\_

Mayor

\_\_\_\_\_

Recorder

\_\_\_\_\_

Counsel to the Issuer

02/08/05  
072227.00002

TOWN OF BETHANY

Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

CERTIFICATE OF ENGINEER

I, Manning Frymier, Registered Professional Engineer, West Virginia License No. 8497 of Cerrone Associates, Inc., Wheeling, West Virginia, hereby certify as follows:

1. My firm is engineer for the acquisition and construction of certain extensions, additions, betterments and improvements (the "Project") to the existing public sewerage system (the "System") of the Town of Bethany (the "Issuer") to be constructed primarily in Brooke County, West Virginia, which acquisition and construction are being permanently financed by the proceeds of the above-captioned bonds (the "Bonds") of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Bond Ordinance enacted by the Issuer on March 9, 2004, as supplemented, and the loan agreement, by and between the Issuer and the West Virginia Water Development Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council ("Council"), dated February 22, 2005 (the "Loan Agreement").

2. The Bonds are being issued for the purposes of (i) paying in full the entire outstanding principal of and all accrued interest on the Issuer's Sewerage System Bond Anticipation Notes, Series 2003 (the "Prior Notes"); (ii) paying the costs of acquisition and construction of the Project; and (iii) paying certain costs of issuance of the Bonds and related costs.

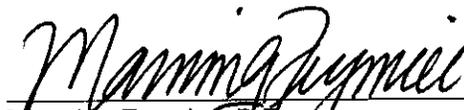
3. To the best of my knowledge, information and belief, (i) within the limits and in accordance with the applicable and governing contractual requirements relating to the Project, the Project will be constructed in general accordance with the approved plans, specifications and designs prepared by my firm and approved by the Council and any change orders approved by the Issuer, the Council and all necessary governmental bodies; (ii) the Project, as designed, is adequate for its intended purpose and has a useful life of at least twenty (20) years, if properly constructed, operated and maintained, excepting anticipated replacements due to normal wear and tear; (iii) the Issuer has received bids for the acquisition and construction of the Project which are in an amount and otherwise compatible with the plan of financing set forth in the Schedule B, attached hereto as Exhibit A and the Issuer's counsel, Frank A. Jackson, Esquire, has ascertained that all successful bidders have made required provisions for all insurance and payment and performance bonds and that such insurance policies or binders and such bonds have been verified for accuracy; (iv) the successful bidders received any and all addenda to the original bid documents; (v) the bid documents relating to the Project reflect the Project as approved by the Council and the bid

forms provided to the bidders contain the critical operational components of the Project; (vi) the successful bids include prices for every item on such bid forms; (vii) the uniform bid procedures were followed; (viii) the Issuer has obtained all applicable permits required by the laws of the State of West Virginia and the United States necessary for the acquisition and construction of the Project and the operation of the System; (ix) in reliance upon the certificate of Issuer's certified public accountant, Smith, Cochran & Hicks, as of the effective date thereof, the rates and charges for the System enacted by the Issuer will be sufficient to comply with the provisions of the Loan Agreement; (x) the net proceeds of the Bonds, together with all other moneys on deposit or to be simultaneously deposited and irrevocably pledged thereto and the proceeds of grants, if any, irrevocably committed therefor, are sufficient to pay the costs of acquisition and construction of the Project approved by the Council; and (xi) attached hereto as Exhibit A is the final amended "Schedule B - Final Total Cost of Project, Sources of Funds and Cost of Financing" for the Project.

WITNESS my signature and seal on this 22nd day of February, 2005.

CERRONE ASSOCIATES, INC.

(SEAL)

  
Manning Frymier, P.E.  
West Virginia License No. 8497

02/09/05  
072227.00002

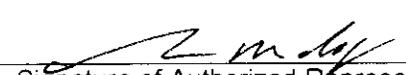
## SCHEDULE B

## TOWN OF BETHANY - PHASE I

## Wastewater Collection System Rehabilitation and Storm Sewer Separation

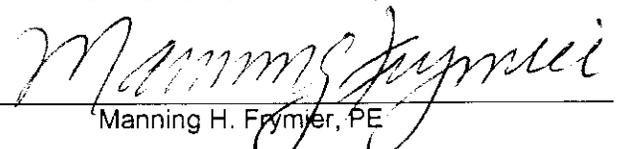
	TOTAL	IJDC LOAN
<b>A. COST OF PROJECT</b>		
1 Construction	738,599	738,599
2 Technical Services - Cerrone		
a. Basic	207,500	207,500
b. Inspection	40,000	40,000
c. Eng. During Construction	35,000	35,000
f. Special Services	23,000	23,000
3 Legal/Fiscal		
a. Legal	15,000	15,000
b. Accounting	5,000	5,000
4 Administrative	0	0
5 Sites & Other Lands	0	0
6 Loan Repayment (Interest During Design)	13,337	13,337
7 Interim Financing Cost	6,000	6,000
8 Miscellaneous	0	0
9 a. Project Contingency	26,064	26,064
b. Rip Rap Project	125,000	125,000
10 TOTAL of Lines 1 through 9	1,234,500	1,234,500
<b>B. COST OF FINANCING</b>		
11 Other Costs	0	0
a. Registrar Fees	500	500
b. Bond Counsel (Steptoe & Johnson)	15,000	15,000
12 Subtotal	15,500	15,500
13 TOTAL PROJECT COST	1,250,000	1,250,000
<b>C. SOURCES OF FUNDS</b>		
14 Federal Grants	0	0
15 State Grants	0	0
16 Other Grants	0	0
17 TOTAL GRANTS (Lines 14 thru 16)	0	0
18 SIZE OF BOND ISSUE	1,250,000	1,250,000

TOWN OF BETHANY


  
Signature of Authorized Representative

Date: 2-8-05

CERRONE ASSOCIATES, INC.


  
Manning H. Frymer, PE

Date: February 7, 2005



Smith, Cochran & Hicks, P.L.L.C.

Certified Public Accountants

Beckley Bridgeport Charleston Montgomery

405 Capitol Street • Suite 908 • Charleston, West Virginia 25301 • 304-345-1151 • Fax 304-346-6731

February 22, 2005

Town of Bethany  
Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

Town of Bethany  
Bethany, West Virginia

West Virginia Water Development Authority  
Charleston, West Virginia

West Virginia Infrastructure and Jobs Development Council  
Charleston, West Virginia

Ladies and Gentlemen:

Based upon the rates and charges set forth in the sewer rate ordinance of the Town of Bethany (the "Issuer"), enacted January 13, 2004, the projected operating expenses and the anticipated customer usage as furnished to us by Cerrone Associates, Inc., it is our opinion that such rates and charges will be sufficient to provide revenues which, together with other revenues of the sewerage system of the Issuer (the "System"), will provide for all Operating Expenses of the System and leave a balance each year equal to at least 115% of the maximum amount required in any year for debt service on the Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund) (the "Bonds"), to be issued in the original aggregate principal amount of \$1,250,000 to the West Virginia Water Development Authority on the date hereof.

Very truly yours,

Smith, Cochran & Hicks, P.L.L.C.

TOWN OF BETHANY

Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

CERTIFICATE AS TO ARBITRAGE

The undersigned Mayor of the Town of Bethany in Brooke County, West Virginia (the "Issuer"), being the official of the Issuer duly charged with the responsibility for the issuance of \$1,250,000 Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund) (the "Bonds") of the Issuer, dated the date hereof hereby certifies as follows:

1. This certificate is being executed and delivered pursuant to Section 148 of the Internal Revenue Code of 1986 and applicable regulations (the "Code"). I am the officer of the Issuer duly charged with the responsibility of issuing the Bonds. I am familiar with the facts, circumstances, and estimates herein certified and duly authorized to execute and deliver this certificate on behalf of the Issuer. Capitalized terms used herein and not otherwise defined herein shall have the same meaning as set forth in the ordinance authorizing the Bonds duly enacted by the Issuer on March 9, 2004 (as supplemented, the "Bond Ordinance").

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

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

4. This certificate is based upon facts, circumstances, estimates and expectations of the Issuer in existence on February 22, 2005, the date on which the Bonds are to be physically delivered in exchange for all or a portion of the principal amount of the Bonds, and to the best of my knowledge and belief, the expectations of the Issuer set forth herein are reasonable.

5. The Bonds were sold on February 22, 2005, to the West Virginia Water Development Authority (the "Authority"), pursuant to a loan agreement dated February 22, 2005, by and between the Issuer and the Authority, on behalf of the West Virginia Infrastructure and Jobs Development Council (the "Council"), for an aggregate purchase price of \$1,250,000 (100% of par), at which time the Issuer received \$255,440, being more than a de minimus amount of the principal of the Bonds. No accrued interest has been or will be paid on the Bonds. The balance of the principal amount of the Bonds will be advanced to the Issuer as acquisition and construction of the Project progresses.

6. The Issuer has covenanted in the Bond Ordinance not to take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Bonds which would cause any of the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code. The Issuer has, therefore, covenanted not to intentionally use any portion of the proceeds of the Bonds to acquire higher yielding investments or to replace funds which were used directly or indirectly to acquire higher yielding investments, except as otherwise allowed under Section 148 of the Code. The Issuer, in the Bond Ordinance, has further covenanted that it will take all actions that may be required of it so that the interest on the Bonds will be and remain excluded from gross income for federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

7. The Bonds are being delivered simultaneously with the delivery of this certificate and are issued for the purposes of (i) paying in full the outstanding principal of and all accrued interest on the Issuer's Sewerage System Bond Anticipation Notes, Series 2003 (the "Prior Notes"); (ii) paying the costs of acquisition and construction of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); and (iii) paying costs of issuance and related costs thereof.

8. Not later than simultaneously with the delivery of the Bonds, the Issuer shall enter into agreements which require the Issuer to expend at least 5% of the net sale proceeds of the Bonds for the construction of the Project, constituting a substantial binding commitment. The acquisition and construction of the Project and the allocation of the net sale proceeds of the Bonds to expenditures of the Project shall commence immediately and shall proceed with due diligence to completion, and with the exception of proceeds constituting capitalized interest, if any, and proceeds deposited in the Reserve Account for the Bonds, if any, all of the proceeds from the sale of the Bonds, together with any investment earnings thereon, will be expended for payment of costs of the Project on or before December 22, 2005. The acquisition and construction of the Project is expected to be completed by October 22, 2005.

9. The total cost of the Project (including all costs of issuance of the Bonds) is estimated at \$1,250,000. Sources and uses of funds for the Project are as follows:

SOURCES

Proceeds of the Series 2005 A Bonds	<u>\$1,250,000</u>
Total Sources	\$1,250,000

USES

Costs of Acquisition and Construction of the Project	\$1,010,766.07
Payment in Full of Series 2003 BAN	\$224,233.93
Costs of Issuance	<u>15,000.00</u>
Total Uses	\$1,250,000.00

The total amount of the costs of the Project is estimated to be at least equal to the gross proceeds of the Bonds. Except for the proceeds of the Bonds, no other funds of the Issuer will be available to meet costs of the Project, which would constitute "replacement proceeds" within the meaning of Treas. Reg. § 1.148-1(c), inasmuch as (i) the Issuer does not reasonably expect that the term of the Bonds is longer than is reasonably necessary for the governmental purposes of the Issuer, (ii) the weighted average maturity of the Bonds does not exceed 120% of the average reasonably expected economic life of the Project, and (iii) there are no amounts that have a sufficiently direct nexus to the Bonds or to the governmental purpose of 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.

10. Pursuant to Article V of the Bond Ordinance, the following special funds or accounts have been created:

- (1) Revenue Fund;
- (2) Renewal and Replacement Fund;
- (3) Series 2005 A Bonds Construction Trust Fund;
- (4) Rebate Fund;
- (5) Series 2005 A Bonds Sinking Fund; and

(6) Series 2005 A Bonds Reserve Account.

11. Pursuant to Article VI of the Bond Ordinance, the proceeds of the Bonds will be deposited as follows:

(1) Proceeds of the Bonds in the amount of \$224,233.93 shall be paid to Progressive Bank, N.A., to pay in full the outstanding principal of and interest on the Prior Notes.

(2) Proceeds of the Bonds in the amount of \$-0- will be deposited in the Series 2005 A Bonds Sinking Fund as capitalized interest and applied to payment of interest on the Series 2005 A Bonds during acquisition and construction of the Project and for not more than six months thereafter.

(3) Series 2005 A Bonds proceeds in the amount of \$-0- will be deposited in the Series 2005 A Bonds Reserve Account.

(4) The balance of the proceeds of the Series 2005 A Bonds will be deposited in the Series 2005 A Bonds Construction Trust Fund as received from time to time and applied solely to payment of costs of the Project, including costs of issuance of the Series 2005 A Bonds and related costs.

Amounts in the Series 2005 A Bonds Construction Trust Fund, if invested, will be invested without yield limitation for a period necessary to complete the Project, not to exceed 3 years, except as otherwise set forth herein. All of such monies are necessary for such purpose.

Except for "preliminary expenditures" as defined in Treasury Regulation §1.150 - 2(f)(2), none of the proceeds of the Bonds will be used to reimburse the Issuer for costs of the Project previously incurred and paid by the Issuer with its own or other funds.

12. Monies held in the Series 2005 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Series 2005 A Bonds and will not be available to meet costs of acquisition and construction of the Project. All investment earnings on monies in the Series 2005 A Bonds Sinking Fund and Series 2005 A Bonds Reserve Account, if any, will be withdrawn therefrom and deposited into the Series 2005 A Bonds Construction Trust Fund during construction of the Project, and following completion of the Project, will be deposited, not less than once each year, in the Revenue Fund, and such amounts will be applied as set forth in the Bond Ordinance.

13. Except for the Series 2005 A Bonds Sinking Fund and the Series 2005 A Bonds Reserve Account, there are no other funds or accounts established or held by the Issuer which are reasonably expected to be used to pay debt service on the Series 2005 A Bonds, or which are pledged as collateral for the Series 2005 A Bonds and for which there is a reasonable assurance that amounts therein will be available to pay debt service on the Series 2005 A Bonds if the Issuer encounters financial difficulties. The Issuer does not expect that monies in the Renewal and Replacement Fund will be used or needed for payments upon the Series 2005 A Bonds. Except as provided herein, no funds which have been or will be used to acquire directly or indirectly securities, obligations, annuity contracts, investment-type property or any residential rental property for family units which is not located within the jurisdiction of the Issuer and which is not acquired to implement a court ordered or approved housing desegregation plan producing a yield in excess of the yield on the Series 2005 A Bonds have been or will be pledged to payment of the Series 2005 A Bonds. Less than 10% of the monies received from the sale of the Series 2005 A Bonds, if any, will be deposited in the Series 2005 A Bonds Reserve Account or any other reserve or replacement fund. The amounts deposited in the Series 2005 A Bonds Reserve Account from time to time by the Issuer will not exceed the maximum annual principal of and interest on the Series 2005 A Bonds and will not exceed 125% of average annual principal of and interest on the Series 2005 A Bonds. Amounts in the Series 2005 A Bonds Reserve Account, not to exceed 10% of the proceeds of the Series 2005 A Bonds, if invested, will be invested without yield limitation. The establishment of the Series 2005 A Bonds Reserve Account is required by the Authority, is vital to its purchase of the Series 2005 A Bonds, and is reasonably required to assure payments of debt service on the Series 2005 A Bonds.

Because amounts in the Renewal and Replacement Fund may be expended for other purposes, there is no reasonable assurance that any such amounts would be available to meet debt service if the Issuer encounters financial difficulties; thus, such amounts may be invested without yield limitation.

14. Not later than simultaneously with the delivery of the Bonds, the Issuer shall enter into a contract for the construction of the Project, and the amount to be expended pursuant to such contract exceeds 5% of the net sale proceeds of the Bonds.

15. Work with respect to the acquisition and construction of the Project will proceed with due diligence to completion. The acquisition and construction of the Project is expected to be completed within 8 months of the date hereof.

16. Except for a reasonable temporary period until such proceeds are needed for the purpose for which such Bonds were issued or as otherwise allowed, no portion of the proceeds of the Bonds will be used, directly or indirectly, to acquire higher yielding investments, or to replace funds which were used, directly or indirectly, to acquire higher yielding investments, all within the meaning of Section 148 of the Code.

17. The Issuer will comply with the provisions of the Code, for which the effective date precedes the date of delivery of its Bonds to the Authority.

18. With the exception of the amount deposited in the Series 2005 A Bonds Sinking Fund for payment of interest on the Bonds and the amount deposited in the Series 2005 A Bonds Reserve Account, if any, all of the proceeds of the Series 2005 A Bonds will be expended on the Project within 10 months from the date of issuance thereof.

19. The Issuer does not expect to sell or otherwise dispose of the Project in whole or in part prior to the last maturity date of the Bonds.

20. The Series 2005 A Bonds Sinking Fund (other than the Series 2005 A Bonds Reserve Account therein) is intended primarily to achieve a proper matching of payments of debt service on the Bonds each year. The Series 2005 A Bonds Sinking Fund (other than the Series 2005 A Bonds Reserve Account therein) will be depleted at least once a year except for a reasonable carryover amount not in excess of the greater of 1/12th of annual debt service on the Bonds, or 1 year's interest earnings on the Series 2005 A Bonds Sinking Fund (other than the Series 2005 A Bonds Reserve Account therein). Except as otherwise allowed, any money deposited in the Series 2005 A Bonds Sinking Fund for payment of the principal of or interest on the Bonds (other than the Series 2005 A Bonds Reserve Account therein), will be spent within a 13-month period beginning on the date of receipt and will be invested without yield limitation, and any monies received from the investment of amounts held in the Series 2005 A Bonds Sinking Fund (other than in the Series 2005 A Bonds Reserve Account therein) will be spent within a 1-year period beginning on the date of receipt.

21. The amount designated as cost of issuance of the Bonds consists only of costs which are directly related to and necessary for the issuance of the Bonds.

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

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

24. The original proceeds of the Bonds will not exceed the amount necessary for the purposes of the issue.

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

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

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

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

29. The Issuer shall comply with the yield restriction on the proceeds of the Bonds as set forth in the Code.

30. The Issuer has either (a) funded the Series 2005 A Bonds Reserve Account at the maximum amount of principal and interest which will mature and become due on the Series 2005 A Bonds in the then current or any succeeding year with the proceeds of the Series 2005 A Bonds, or (b) created the Series 2005 A Bonds Reserve Account which will be funded with equal payments made on a monthly basis over a 10-year period until such Series 2005 A Bonds Reserve Account holds an amount equal to the maximum amount of principal and interest which will mature and become due on the Series 2005 A Bonds in the then current or any succeeding year. Monies in the Series 2005 A Bonds Reserve Account and the Series 2005 A Bonds Sinking Fund will be used solely to pay principal of and interest on the Series 2005 A Bonds and will not be available to pay costs of the Project.

31. The Issuer shall submit to the Authority within 15 days following the end of each bond year a certified copy of its rebate calculation or, if the Issuer qualifies for the small governmental issuer exception to rebate, the Issuer shall submit a certificate stating that it is exempt from the rebate provisions and that no event has occurred to its knowledge during the bond year which would make the Bonds subject to rebate.

32. There are no other obligations of the Issuer which (a) are to be issued at substantially the same time as the Bonds, (b) are to be sold pursuant to a common plan of financing together with any of the Bonds and (c) will be paid out of substantially the same source of funds or will have substantially the same claim to be paid out of substantially the same source of funds as any of the Bonds.

33. The transactions contemplated herein do not represent an exploitation of the difference between taxable and tax-exempt interest rates and the execution and delivery of the Bonds is not occurring sooner than otherwise necessary, nor are the Bonds in principal amounts greater than otherwise necessary or to be outstanding longer than otherwise necessary.

34. The Issuer will rebate to the United States the amount, if any, required by the Code and will take all steps necessary to make such rebates. In the event the Issuer fails to make such rebates as required, the Issuer shall pay any and all penalties and obtain a waiver from the Internal Revenue Service in order to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds.

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

36. The Issuer shall file Form 8038-G in a timely fashion with the Internal Revenue Service Center.

42. All proceeds of the Bonds to be used for payment of costs of the Project will be expended for such purposes within 3 years.

43. On the basis of the foregoing, it is not expected that the proceeds of any of the Bonds will be used in a manner that would cause any of the Bonds to be "arbitrage bonds" within the meaning of Section 148 of the Code.

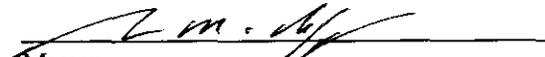
44. To the best of my knowledge, information and belief, there are no other facts, estimates and circumstances which would materially change the expectations herein expressed.

45. Steptoe & Johnson PLLC is entitled to rely upon the representations, expectations, covenants, certifications and statements contained herein in rendering its opinions regarding the tax-exempt status of interest on the Bonds.

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

WITNESS my signature on this 22nd day of February, 2005.

TOWN OF BETHANY

  
Mayor

02/08/05  
072227.00002

AN ACT

(Chap. 513)

Incorporating the Town of Bethany.

Passed April 6, 1853

Be it enacted by the General Assembly that the Town of Bethany in the County of Brooke shall be comprised within the following limits, beginning at a point where the eastern line of the college grounds strikes Buffalo Creek. thence by the said line to Pendleton street. thence by the western line of Pendleton street to Buffalo Creek, by Buffalo Creek to the mouth of Richardson street, Thence by the eastern line of Richardson street to its intersection with Ross street, thence by Ross street to Buffalo Creek, thence by Buffalo Creek to the place of beginning and the said town within the limits aforesaid is hereby made a town corporate by the name and style of "the town of Bethany" and by that name shall have and exercise the powers conferred upon towns by the fifty-fourth chapter of the Code of Virginia and be subject to all the provisions of said Code

The officers of said town shall consist of nine trustees (five of whom can act) who shall compose the counsel and shall hold their offices for one year and until their successors are appointed and a sergeant who shall be elected annually

Isaac Stewart, John Mendel and A. W. Campbell or any two of them are hereby authorized to hold an election on the first Monday in July next agreeably to the aforesaid chapter of the Code of Virginia and annually thereafter on the first Monday in May

This act shall be in force from its passage

The above is a true copy of Chapter 513 of the Acts of the General

- 2 -

Assembly of the Commonwealth of Virginia for the session of 1852-53,  
approved April 6, 1853.

*George R. Nich*  
Clerk of the House of Delegates and  
Keeper of the Rolls of the State.

Richmond, Virginia

June 21, 1966

OATH OF OFFICE

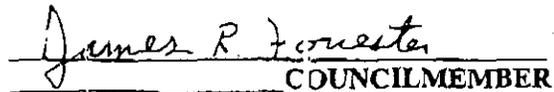
STATE OF WEST VIRGINIA

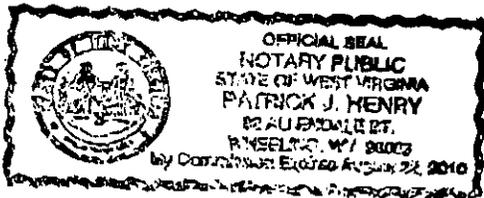
COUNTY OF BROOKE, TO-WIT:

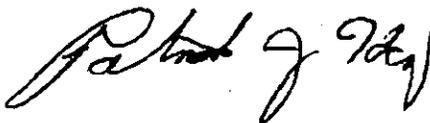
I, SVEN M. DE JONG, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the OFFICE OF MAYOR of the Town of Bethany, West Virginia, to the best of my skill and judgment, so help me God.

  
SVEN M. DE JONG

February Subscribed and sworn to before me in said County and State this 21 day of 2005.

  
COUNCILMEMBER





OATH OF OFFICE

STATE OF WEST VIRGINIA

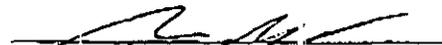
COUNTY OF BROOKE, TO-WIT:

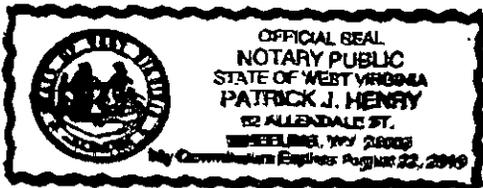
I, **DEBRA HULL**, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the **OFFICE OF COUNCILMEMBER** of the Town of Bethany, West Virginia, to the best of my skill and judgment, so help me God.

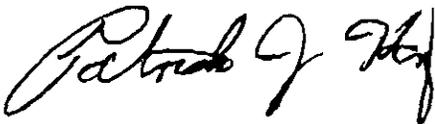


**DEBRA HULL**

Subscribed and sworn to before me in said County and State this 21 day of February, 2005.

  
**SVEN M. DE JONG, MAYOR**



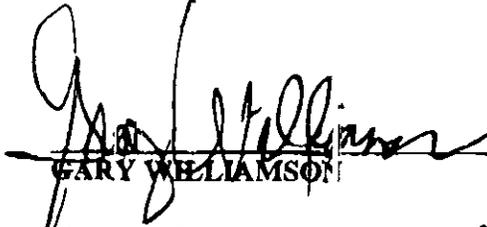


OATH OF OFFICE

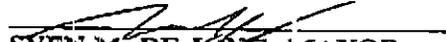
STATE OF WEST VIRGINIA

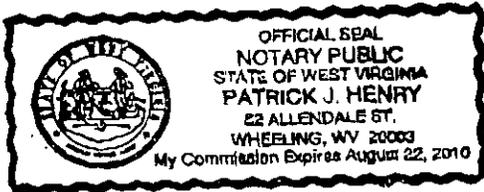
COUNTY OF BROOKE, TO-WIT:

I, GARY WILLIAMSON, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the OFFICE OF COUNCILMEMBER of the Town of Bethany, West Virginia, to the best of my skill and judgment, so help me God.

  
GARY WILLIAMSON

Subscribed and sworn to before me in said County and State this 21 day of February, 2005.

  
SVEN M. DE JONG, MAYOR



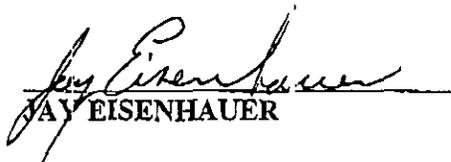


OATH OF OFFICE

STATE OF WEST VIRGINIA

COUNTY OF BROOKE, TO-WIT:

I, JAY EISENHAUER, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the **OFFICE OF COUNCILMEMBER** of the Town of Bethany, West Virginia, to the best of my skill and judgment, so help me God.

  
JAY EISENHAUER

Subscribed and sworn to before me in said County and State this 20 day of February, 2005.

  
SVEN M. DE JONG, MAYOR

OATH OF OFFICE

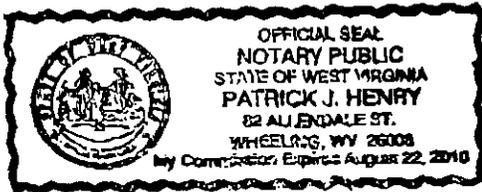
STATE OF WEST VIRGINIA

COUNTY OF BROOKE, TO-WIT:

I, **JAMES FORRESTER**, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the **OFFICE OF COUNCILMEMBER** of the Town of Bethany, West Virginia, to the best of my skill and judgment, so help me God.

James R. Forrester  
**JAMES FORRESTER**

Subscribed and sworn to before me in said County and State this 21 day of February, 2005.



Sven M. De Jong  
**SVEN M. DE JONG, MAYOR**

Patrick J. Henry

**OATH OF OFFICE**

**STATE OF WEST VIRGINIA**

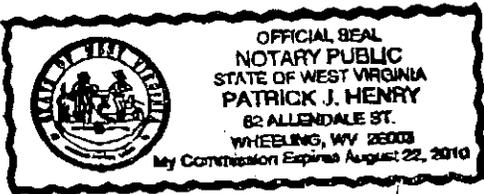
**COUNTY OF BROOKE, TO-WIT:**

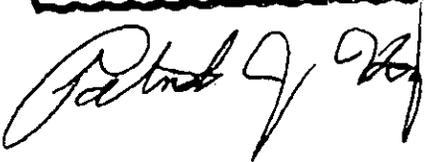
I, **PATRICK SUTHERLAND**, do solemnly swear that I will support the Constitution of the United States and the Constitution of the State of West Virginia, and that I will faithfully discharge the **OFFICE OF COUNCILMEMBER** of the Town of Bethany, West Virginia, to the best of my skill and judgment, so help me God.

  
**PATRICK SUTHERLAND**

Subscribed and sworn to before me in said County and State this 21 day of February, 2005.

  
**SVEN M. DE JONG, MAYOR**





## ORDINANCE NO. 98

### AN ORDINANCE CONTINUING THE MUNICIPAL SANITARY BOARD

WHEREAS the Town of Bethany owns, equips, operates and maintains a municipal sewage works, consisting of a sewage collection system, a sewage treatment plant, intercepting sewers, pumping stations and other appurtenances necessary or useful and convenient for the collection, treatment, purification and disposal, in a sanitary manner, of liquid and solid wastes within its service area;

WHEREAS the West Virginia Code, at Chapter 16, Article 13, provides that the construction, improvement, equipping, custody, operation and maintenance of any such works, and the collection of revenues from such works, shall be under the supervision and control of a sanitary board appointed by the governing body;

NOW, THEREFORE, BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY:

#### ARTICLE I. TITLE

This Ordinance shall be known and may be cited as "The Municipal Sanitary Board Ordinance".

#### ARTICLE II. SANITARY BOARD CONTINUED

Section 1. The municipal sanitary board, previously created, is hereby continued. Such board shall be composed of the Mayor of the municipality and two persons appointed by the Town Council. Except for the Mayor no officer or employee of the municipality, whether holding a paid or unpaid office, shall be eligible to appointment on the sanitary board until at least one year after the expiration of the term of his or her public office. The appointees shall originally be appointed for terms of two and three years respectively, and upon the expiration of each term and each succeeding term, an appointment of a successor shall be made in like manner for a term of three years. Vacancies shall be filled for an unexpired term in the same manner as the original appointment. Each member shall give bond, if any, as may be required by ordinance. The Mayor shall act as chairman of the sanitary board, which shall elect a vice-chairman from its members and which shall also designate a secretary and treasurer, but the secretary and the treasurer may be one and the same and need not be a member or members of the sanitary board. The vice-chairman, secretary and treasurer shall hold office as such at the will of the sanitary board.

Section 2. The members of the sanitary board shall receive compensation for their services, either as a salary or as payments for meetings attended, as the Town Council may determine, and shall be entitled to payment for their reasonable expenses incurred in the performance of their duties. The Town Council shall fix a reasonable compensation of the secretary and treasurer in its discretion, and shall fix the amounts of bond to be given by the treasurer. All compensation, together with the expenses in this section referred to, shall be paid solely from the revenues of the works.

Section 3. The sanitary board shall operate, manage and control the sewage works of the municipality and may order and complete any extensions, betterments and improvements of and to the works that the board may consider expedient, if funds therefore be available or made available as provided by law, and shall establish rules and regulations for the use and operation of the works, and of other sewers, stormwater conduits and drains connected therewith so far as they may affect the operation of such works, and do all things necessary or expedient for the successful operation of such works, including but not limited to those activities necessary to comply with all federal and state requirements, including stormwater and surface runoff water quality improvement activities.

Section 4. The board may employ engineers, architects, inspectors, superintendents, managers, collectors, attorneys and other employees as in its judgment may be necessary in the execution of its powers and duties, and may fix their compensation, all of whom shall do the work as the board shall direct. All compensation and all expenses incurred in carrying out such work shall be paid solely from funds derived from the operation of the sewage works or from the sale of revenue bonds, except necessary preliminary expenses to the extent provided by law, and the board shall not exercise or carry out any authority or power given to it so as to bind the board or the municipality beyond the extent to which money is properly available.

Section 5. The board shall have the power to take all steps and proceedings and to make and enter into all contracts or agreements necessary or incidental to the performance of its duties in the execution of its powers. No contract or agreement with any contractor or contractors for labor and/or material exceeding the sum of \$10,000 shall be made without advertising for bids, which bid shall be publicly opened and an award made to the best bidder, with the power of the board to reject any or all bids. The sanitary board may declare an emergency situation in the event of collector line breaks or vital treatment plant failure and shall be exempted from competitive bidding requirements and enter into direct purchase agreements or contracts for the expenses. Any other contract relating to the financing of the acquisition or construction of any works, or any trust indenture relating to any revenue bonds, shall be approved by the Town Council before the same shall become effective.

Section 6. The treasurer of the sanitary board shall have joint responsibility with the Town Recorder to develop and implement a proper system of internal controls over financial reporting and operations for the sanitary board.

Section 7. It shall be the duty of the sanitary board from time to time to recommend to the Town Council such changes and adjustments to the rates, fees and charges for the use and service of the municipal sewage works as the board may deem appropriate, which rates, fees and charges (i) shall be sufficient in each year for the payment of the proper and reasonable expenses of operation, repair, replacements and maintenance of the works and for the payment of sums required to be paid into bond sinking funds and (ii) shall be just, reasonable, applied without unjust discrimination or preference, and based primarily on the costs of service.

### ARTICLE III. WEST VIRGINIA CODE INCORPORATED

Section 1. The provisions of the West Virginia Code relating to the ownership, acquisition, construction, equipping, operation and maintenance of a sewage works, the collection of revenues from such works, and the establishment and powers of a sanitary board for the supervision and control of such works, and any later amendments thereto, are hereby incorporated by reference into

this Ordinance, as though fully set forth herein, and shall be the enabling authority and guide for all relevant future actions of the Town Council, the sanitary board and all other appropriate persons and groups.

Section 2. The Town of Bethany, its officers and employees shall take such actions as may be necessary, proper, desirable and permissible under the West Virginia Code to secure the prompt and effective operation of the sanitary board, and the Town Council may act by motion or resolution at subsequent meetings of said Council, unless other methods are mandated.

#### ARTICLE IV. SEVERABILITY

Should any provision of this Ordinance or any decision or action of the Town Council or the sanitary board in relation thereto be declared unconstitutional, improper or otherwise inoperative, the remaining provisions shall be retained and remain in effect.

#### ARTICLE V. EFFECTIVE DATE

This Ordinance shall become effective immediately.

/s/ Sven DeJong  
MAYOR

First Reading: December 11, 2001

Second Recording (adopted): January 8, 2002

**ORDINANCE NO. 98A**

**AN ORDINANCE AMENDING ORDINANCE NO. 98,  
RELATING TO THE MUNICIPAL SANITARY BOARD,  
TO PROVIDE ADDITIONAL REQUIREMENTS FOR SANITARY BOARD MEMBERS  
AND TO AUTHORIZE BYLAWS, RULES AND REGULATIONS  
FOR THE GOVERNANCE OF THE SANITARY BOARD**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

FIRST. Article II of Ordinance No. 98, adopted January 8, 2002, relating to the continuation of the municipal sanitary board, is amended by the addition of a new section, section 2A, containing additional requirements for the members of the sanitary board, such section to read in its entirety as follows:

Section 2A. During any period of construction, including the construction of any improvements to works or systems previously completed, one of the members of the sanitary board must be a registered professional engineer. The engineer member of the board need not be a resident of the municipality. After the construction of the new work has been completed, the engineer member may be succeeded by a person not an engineer.

SECOND. Article II of such ordinance is further amended by the addition of another new section, Section 2B, relating to governance, such section to read in its entirety as follows:

Section 2B. The sanitary board shall have power to establish bylaws, rules and regulations for its own government.

THIRD. This ordinance shall become effective immediately upon its adoption.

/s/ Sven DeJong  
MAYOR

First Reading: February 12, 2002

Second Recording (adopted): March 12, 2002

OATHS OF OFFICE OF  
SANITARY BOARD MEMBERS

ON FILE WITH ISSUER

TOWN OF BETHANY

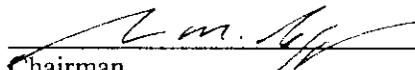
Sewer Revenue Bonds, Series 2004 A  
(West Virginia Infrastructure Fund)

PETITION OF SANITARY BOARD

The Sanitary Board of the Town of Bethany (the "Town") hereby petitions the Council of the Town to enact an ordinance directing that sewer revenue bonds of the Town be issued pursuant to the provisions of Chapter 16, Article 13 and Chapter 31, Article 15 A of the West Virginia Code of 1931, as amended, such bonds to be in an amount not to exceed \$3,000,000, for the purpose of financing certain additions, betterments and improvements to the existing public sewerage system of the Town, together with all necessary appurtenances, and the costs of issuance and related costs.

Directed this 9th day of December, 2003.

TOWN OF BETHANY SANITARY BOARD

  
Chairman

11/10/03  
0722270.00002

**ORDINANCE NO. 118**

**AN ORDINANCE OF THE TOWN OF BETHANY, WEST VIRGINIA,  
AMENDING THE RATES, FEES AND CHARGES FOR USE AND  
SERVICE OF THE MUNICIPAL SEWERAGE AND SEWAGE WORKS,  
OPERATED BY THE BETHANY SANITARY BOARD, AND  
SUPERSEDING ORDINANCE NO. 107, ADOPTED DECEMBER 10, 2002,  
AND ANY OTHER PRIOR INCONSISTENT LEGISLATION**

BE IT ORDAINED BY THE TOWN COUNCIL OF THE TOWN OF BETHANY, WEST VIRGINIA:

Section 1. The rates, fees and charges for the use and service of the municipal sewerage and sewage works, operated by the Bethany Sanitary Board, which rates, fees and charges were established by Ordinance No. 107, adopted December 10, 2002, are hereby superseded, and there are hereby imposed the following rates, fees and charges, to be paid by the owner of each and every lot, parcel of real estate, or building that is connected with and uses such works by or through any part of the sewerage system of the Town of Bethany, or that in any way uses or is served by such works:

\$6.45 per 1,000 gallons of water used (as determined from Ohio County Public Service District water meters, including estimates and minimums based on water meter size).

Section 2. The Bethany Sanitary Board shall cause each customer to be billed on a monthly basis, and there shall be a 10% penalty for payments made later than 20 days after the billing date. The minimum monthly charges will be \$19.35 for sewer customers with metered water supplies and \$29.03 for sewer customers with non-metered water supplies.

Section 3. There shall be a charge of \$100.00 for every residential customer tapping into the Bethany sewerage system and \$500.00 for every commercial customer.

Section 4. A charge of \$20.00 shall apply for reestablishing service whenever the supply of water is turned off for violation of rules and regulations, nonpayment of bills or fraudulent use of water. Such charge shall be paid to the Ohio County Public Service District and not to the Town of Bethany or the Bethany Sanitary Board. Neither the Town of Bethany nor the Bethany Sanitary Board shall make any such charge. The decision to increase or modify such charge shall rest with the Ohio County Public Service District.

Section 5. The Town Council does hereby state its findings, having been advised of its duty to consider such matters, that such rates are just and reasonable, are applied without unjust discrimination or preference, and are based primarily on the costs of providing service.

Section 6. Council finds that after the introduction of this ordinance, but before the ordinance was finally adopted, notice was given of a hearing, at which all the users of the works of the Bethany Sanitary Board and owners of property served or to be served thereby and others interested would have an opportunity to be heard concerning the proposed rates. Such notice was given by the Town Recorder by publication as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 et seq. of the West Virginia Code. The first publication was made at least ten (10) days before the date fixed in such notice for the hearing, and such hearing was held on the date and at the time and place specified in the notice, as provided in §16-13-16 and other relevant sections of the West Virginia Code.

Section 7. Not later than five (5) calendar days following adoption of this ordinance, the Bethany Sanitary Board shall provide notice to its customers of the pending rate change, in one of three (3) ways, as follows:

(i) Notice of the pending rate change may be specified on monthly billing statements of all customers within five days after the adoption of this ordinance; or

(ii) Notice of the pending rate change may be provided to all customers by first class mail within five days after the adoption of this ordinance; or

(iii) A press release may be issued announcing the adoption of the pending rate change and a Class II legal advertisement may be published, the first such publication to occur within five days after the adoption of this ordinance.

Section 8. The notice provided shall meet the requirements of §24-2-4b(c) of the West Virginia Code, Procedural Rule 2.1.(c)(4) of the West Virginia Public Service Commission, and other applicable provisions of law. Customers shall have a protest period that shall commence after the adoption of this ordinance and shall continue for 30 days.

Section 9. Also, within five (5) days after the adoption of this ordinance a filing shall be made in the office of the Executive Secretary of the Public Service Commission, in accordance with Procedural Rule 2.1.(f). Such filing shall contain the following:

(i) The new rates and charges;

(ii) A copy of this ordinance;

(iii) The justification for such ordinance, including a pro forma income statement showing the costs of providing service and the revenues to be generated by the new rates and charges;

(iv) An affidavit of publication with respect to the notice described in section 6 above;

(v) Documentation from the Bethany Sanitary Board verifying that one of the three (3) methods of notice described in section 7 above was given within the five-day period following adoption of this ordinance. If notice was provided by newspaper publication, the Bethany Sanitary

Board must within 20 days after adoption of the rate change, file a verification that a press release was issued together with an affidavit of publication of legal notice. If a method was used other than newspaper publication, the Bethany Sanitary Board must include with its filing an affidavit that indicates the method used and that notice was given; and

(vi) A statement of the correct number of customers served by the Bethany Sanitary Board, as determined by the number of bills rendered in the billing cycle last completed before adoption of this ordinance.

Section 10. If no protest be filed with the Public Service Commission under the provisions of §24-2-4b of the West Virginia Code, then this ordinance shall take effect upon the commencement of construction of the Sanitary Board's pending Sewer System Improvements Project, or soon thereafter as practicable, as the Sanitary Board by a written determination and notice shall specify, but not earlier than 45 days from the date of adoption of this ordinance.

Section 11. Ordinance No. 107, adopted December 10, 2002, is repealed as of the time that the rates established by this ordinance become effective. Similarly, any other prior inconsistent legislation of the Town Council is repealed as of such date, to the extent of the inconsistencies.

/s/ Sven deJong  
MAYOR

First Reading: December 23, 2003

Second Reading (adopted): January 13, 2004

sewageamd3.ord

THE TOWN OF BETHANY  
PUBLIC NOTICE

THE TOWN OF BETHANY has proposed an ordinance amending the rates, fees and charges for use and service of the municipal sewage works, operated by the Bethany Sanitary Board as follows:

1. Usage rates of \$0.48 per 1,000 gallons of water used (as determined from Ohio County Public Service District water meters, including estimates and minimums based on water meter size).
  2. Minimum monthly charges of \$19.35 for sewer customers with metered water supplies and \$29.03 for sewer customers with non-metered water supplies.
  3. A charge of \$100.00 for every residential customer tapping into the Bethany sewerage system and \$800.00 for every commercial customer.
  4. A charge of \$20.00 for reestablishing service whenever the supply of water is turned off, as provided in the ordinance.
  5. A 10% penalty for payments made later than 20 days after the billing date.
- The proposed usage rates represents a 99% increase over the present rates for residential customers and a 118% increase over the present rates for commercial customers. The increase in revenues will be applied to the costs of the pending Sewer System Improvements Project.

The proposed ordinance shall be considered for final reading and adoption at the regular meeting of the Bethany Town Council to be held on January 13, 2004.

Copies of the proposed ordinance setting forth the proposed rates, fees and charges in greater detail may be inspected at the Town of Bethany's offices, in the Bethany Community Building, 101 Church Street, Bethany, West Virginia.

All interested parties may appear at the meeting and be heard with respect to the proposed ordinance.

Written inquiries or statements are encouraged for submission and should be addressed to the Town of Bethany, P.O. Box U, Bethany, West Virginia 26032.

HELEN MOREN  
Town Recorder

Int. Jan. 2, 9, 2004  
N.R., Jan. 2, 9, 2004

STATE OF WEST VIRGINIA  
COUNTY OF OHIO.

I, Pat Wohel for the publisher of the NEWS REGISTER newspaper published in the CITY OF WHEELING, STATE OF WEST VIRGINIA, hereby certify that the annexed publication was inserted in said newspaper on the following dates:

1-02-04, 1-09-04

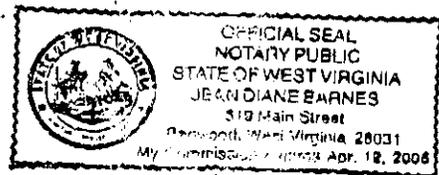
Given under my hand this 15<sup>th</sup> day of January, 2004.  
Pat Wohel

Sworn to and subscribed before me this 15<sup>th</sup> day of January, 2004 at WHEELING, OHIO COUNTY, WEST VIRGINIA.

Jean Diane Barnes  
Notary Public

of, in and for OHIO COUNTY, WEST VIRGINIA

My Commission expires April 12, 2005



# **Town Council Special Meeting**

Tuesday December 23, 2003  
7:00 pm  
Town Council Chambers

## **Agenda**

1. 1<sup>st</sup> Reading of Sanitation Ordinance Rate Increase to be effective upon the date construction for sanitation system improvements begins. (Anticipated date, September 2004)

Meeting Open to the Public

Sven de Jong  
Mayor

TOWN OF BETHANY  
JANUARY 13, 2004  
SVEN deJONG, MAYOR  
COUNCIL CHAMBERS

Council members present: Lisa Wenner, Gray Williamson, James Forrester, and Pat Sutherland. Others Shirley Kemp, Treasurer, Attorney Andy Jackson, Solicitor and Helen Moren, Recorder. Guest: Cyndi Hoffman, David George, Gary and Stephanie Kappel.

Pat Sutherland moved; seconded by Lisa Wenner to accept the minutes as corrected. Gray Williamson moved; seconded by Jim Forrester to accept the treasurer's report.

Mayors Report:

The City of Wheeling donated to radar guns to the town. Reported on the flooding at John and Millie Ferry's home. It was due to sewage blockage. He stated Marvin Platter and Bill Barnhart assisted the town in the clean-up. Mayor deJong thanked Jay Eisenhower for assisting the Mayor in cleaning out storm drains. He reported nine vehicles were vandalized and a water break at the community center. He spoke to the American Disposal Company about late pick-up, they are trying to make adjustments and are aware of the problem. Dr. John Cunningham was appointed Assistant to Bethany College President and will serve as liaison between town and Bethany College. The agreement was approved by Dr. Patricia Poteat. Slide on Rt. 67. a contract has been signed and work will begin, utility lines will be move across the road. Some damage was done to the sewage plant. Pendleton Street will become a two-way street until the road project is finish. Mayor deJong thanked Gray Williamson for helping to direct traffic and Senator Andy McKenzie and Delegate Tim Ennis for their support on the Rt. 67 project. New lights have been installed at the Recreation Center on Rt. 67, signs will be install at top of hill and speed limit signs will be placed thru Main Street. Pat Sutherland thanked the Mayor for expediting the safety issue.

Jim Forrester praised Mayor Sven deJong on a wonderful job done doing the time of flooding.

Solicitor Report:

✓ Lisa Wenner moved; seconded by Jim Forrester to hear the second reading of Ordinance No. 118 Amending the Rates, Fees, and Charges for use and service of the Municipal Sewage. Motion carried. Attorney Jackson stated we will need a sewage ordinance.

Sanitation Update: The sanitation board met December 18, 2003. The board was briefed on sanitation project and it is on schedule. The board will meet once a month.

Mayor deJong will meet with Rick Hudson in regards to getting the community center project started. He spoke to Congressman Alan Mollohan's office requesting funding for the building. The old committee will be activated. The Mayor will be working with Bethany College Development Office in securing grants.

Gray Williamson moved; seconded by Jim Forrester to hear the first reading of Ordinance 119 authorizing the refunding of the outstanding sewerage system bond anticipation notes, series 2003. Motion carried.

Lisa Wenner mover; seconded by Jim Forrester to accept Pat Sutherland resolution concerning Pedestrian and Driver Safety Concerns/Actions within Bethany town limits. Motion carried.

Pat Sutherland will do a news release in regards to the traffic pattern on Rt. 67.

Council Concerns:

Pat Sutherland stated the town is looking for an intern to help with projects. He met with Kayla Young -land use plan. Topics discussed : what are our plans and town future, tourism and etc. Communications with other communities. Lisa suggested using the intern and developing a town newsletter. The Mayor is going to suggest that Brooke County Commissioners meet at 7:00 P.M. once a month for interest people.

Jim Forrester stated that Karen McFadden was concerned about the up-date on the animal shelter. Mayor has spoken to Sylvia Benzo on this matter. Jim Forrester will relate this information to Karen McFadden.

Lisa Wenner officially resigned her position as town council member. Her new employment will take her to Erie, Pa. Mayor deJong thanked her for serving on council and the 150th anniversary committee and wished her well.

Reminder: Law enforcement meeting Jan 20, at 6:00 P.M. and record keeping Jan. 29, at 6:00 P.M. The Mayor has 300 gun safety locks to be given to interest citizens. Project ChildSafe project is funded by U.S. Department of Justice grant.

Jim Forrester moved; seconded by Lisa Wenner to adjourn at 08:25 P.M..

Helen Moren, Recorder Helen Moren

Sven deJong, Mayor \_\_\_\_\_

TOWN OF BETHANY  
JANUARY 20, 2004  
SPECIAL MEETING  
SVEN deJONG, MAYOR

Council members present: Pat Sutherland, Jay Eisenhauer, Jim Forrester and Gray Williamson. Also Helen Moren, Recorder.

Pat Sutherland asked for variance to construct a deck and patio at 101 Point Breeze Drive. All paper work has been completed. Kim Lawless, representing the zoning board has given their approval for the variance. Gray Williamson moved; seconded by Jim Forrester to approve the variance. Motion carried.

Executive session was held with Larry Palmer, Bethany Police Department.

Helen Moren, Recorder Helen Moren

Sven deJong, Mayor \_\_\_\_\_

Also published  
02/26/2004  
Sally Williams  
Editor,  
Publisher

**BROOKE COUNTY REVIEW**

Thursday March 4, 2004

**TOWN OF BETHANY  
NOTICE OF PUBLIC HEARING ON ORDINANCE**

A public hearing will be held on the following-entitled Ordinance at a regular meeting of the Council of the Town of Bethany (the "Town") to be held on Tuesday, March 9, 2004, at 6:30 p.m. in Council Chambers at the Town Hall, Bethany, West Virginia, and at such hearing any person interested may appear before the Council and present protests, and all protests and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

**ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2003, AND ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE TOWN OF BETHANY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF BETHANY OF NOT MORE THAN \$3,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA INFRASTRUCTURE FUND), PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.**

The above-entitled Ordinance was approved by the Council on February 10, 2004.

The above-quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bonds contemplated thereby. The Town contemplates the issuance of the Bonds described in the Ordinance. The proceeds of the Bonds will be used to provide permanent financing of the (i) refunding of the outstanding Sewerage System Bond Anticipation Notes, Series 2003, (ii) paying costs of acquisition and construction of betterments, additions and improvements to the sewerage system of the Town and (iii) paying certain costs of issuance of the Bonds and related costs. The Bonds are payable solely from revenues to be derived from the ownership and operation of the sewerage system of the Town. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

A certified copy of the above-entitled Ordinance is on file with the Council at the office of the Recorder for review by interested parties during regular office hours.

Following the public hearing, the Council intends to enact the Ordinance upon final reading.

Dated: February 10, 2004.

/s/ Helen Moran  
Recorder

**A PUBLIC SERVICE COMMISSION  
OF WEST VIRGINIA  
CHARLESTON**

CASE NOS. 03-1980-MC-TC and 03-1981-MC-TC

T A VENDING, L.L.C., doing business as  
FIRST CLASS LIMOUSINE, L.L.C., Wheeling,  
Ohio County,

Application for the transfer and assignment  
of P.S.C. M.C. Certificate Nos. 7407 and  
7450, unto S & B, LLC, doing business as  
FIRST CLASS LIMOUSINE SERVICE, Wheeling,  
Ohio County.

**NOTICE OF FILING**

On November 24, 2003, T A Vending, L.L.C., doing business as First Class Limousine, L.L.C., filed applications for the transfer and assignment of P.S.C. M.C. Certificate Nos. 7407 and 7450, unto S & B, LLC, doing business as First Class Limousine Service. P.S.C. M.C. Certificate No. 7407 is being transferred in Case No. 03-1980-MC-TC and authorizes its holder -

to operate as a common carrier by motor vehicle in the transportation of passengers in limousine service excluding the transportation of railroad employees and Medicaid passengers - between points and places in Brooke, Marshall and Ohio Counties, on the one hand, and points and places in West Virginia, on the other hand.

P.S.C. M.C. Certificate No. 7450 is being transferred in Case No. 03-1981-MC-TC and authorizes its holder -

to operate as a common carrier by motor vehicle in the transportation of passengers in limousine service between points and places in Hancock County, on the one hand, and points and places in West Virginia, on the other hand.

Commission Staff has recommended that the proposed transfer and assignment of P.S.C. M.C. Certificate Nos. 7407 and 7450 be approved.

Anyone desiring to make objection to said applications must do so, in writing, within ten (10) days after the publication of said Notice of Filing to Sandra Squire, Executive Secretary, P.O. Box 812, Charleston, West Virginia 25323. The protest must state the precise grounds on which the protest is being made. Said written objection must request a hearing if a hearing is desired and the protestor should appear at said hearing to protect the stated interest. If no protests are received, the Commission may grant the request without a hearing.

T A VENDING, L.L.C., doing business as  
FIRST CLASS LIMOUSINE, L.L.C.  
Wheeling

TH  
W  
PF  
L  
OI  
IV  
W  
IS  
W  
M  
  
OI  
HI  
TF  
FC  
RE  
SE  
P.J

**Great news for people who have used  
WELDING RODS**

Scientists report that elevated manganese exposure from welding rod fumes has been associated with Parkinsonism (like Parkinson's disease) and manganism. Symptoms include shakiness, distorted facial expression, loss of equilibrium, decreased hand agility, difficulty walking, joint pain, loss



**LEGAL NOTICE**

To the Creditors and Beneficiaries of the Estate of WILLIAM R. SNOW, All persons having claims against the estate of said person,

**LEGAL NOTICE**

I have before me the Waiver of Final Settlement of Gary Robson, Executor for the Estate of WILAMINA DILEONARDO, deceased, given under my hand this 23rd day of February, 2004.

Christopher J. Paul, Esq.  
Fiduciary Commissioner, Brooke County, WV

To  
Estate  
dece  
At  
of li  
dece  
estate  
verit

CERTIFICATE OF PUBLICATION

The Brooke County Review

Brooke County  
Wellsburg, West Virginia

I, J.W. George Wallace, publisher of  
The Brooke County Review, a newspaper of general  
circulation in Brooke County, West Virginia,  
published in Wellsburg, hereby Certifies that the  
attached advertisement was duly published in said  
Newspaper 2 successive weeks in the issues  
of 2/24/04

3/04/04

TOWN OF BETHANY  
NOTICE OF PUBLIC HEARING ON ORDINANCE

A public hearing will be held on the following-entitled Ordinance at a regular meeting of the Council of the Town of Bethany (the "Town") to be held on Tuesday, March 9, 2004, at 6.30 p.m. in Council Chambers at the Town Hall, Bethany, West Virginia, and at such hearing any person interested may appear before the Council and present protests, and all protests and suggestions shall be heard by the Council and it shall then take such actions as it shall deem proper in the premises upon an Ordinance entitled:

ORDINANCE AUTHORIZING THE REFUNDING OF THE OUTSTANDING SEWERAGE SYSTEM BOND ANTICIPATION NOTES, SERIES 2003, AND ACQUISITION AND CONSTRUCTION OF ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE TOWN OF BETHANY AND THE FINANCING OF THE COST, NOT OTHERWISE PROVIDED, THEREOF THROUGH THE ISSUANCE BY THE TOWN OF BETHANY OF NOT MORE THAN \$3,000,000 IN AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2004 A (WEST VIRGINIA INFRASTRUCTURE FUND); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; APPROVING, RATIFYING AND CONFIRMING A LOAN AGREEMENT RELATING TO SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS, AND ADOPTING OTHER PROVISIONS RELATING THERETO.

The above-entitled Ordinance was approved by the Council on February 10, 2004.

The above-quoted title of the Ordinance describes generally the contents thereof and the purposes of the Bonds contemplated thereby. The Town contemplates the issuance of the Bonds described in the Ordinance. The proceeds of the Bonds will be used to provide permanent financing of the (i) refunding of the outstanding Sewerage System Bond Anticipation Notes, Series 2003; (ii) paying costs of acquisition and construction of betterments, additions and improvements to the sewerage system of the Town and (iii) paying certain costs of issuance of the Bonds and related costs. The Bonds are payable solely from revenues to be derived from the ownership and operation of the sewerage system of the Town. No taxes may at any time be levied for the payment of the Bonds or the interest thereon.

A certified copy of the above-entitled Ordinance is on file with the Council at the office of the Recorder for review by interested parties during regular office hours.

Following the public hearing, the Council intends to enact the Ordinance upon final reading.

Dated: February 10, 2004.

12/24/04 - 12/24/04

/s/ Helen Moren  
Recorder

Given under my hand this 4 day of March, 2004  
*J.W. George Wallace*

Publisher of the Brooke County Review

Printer's Fee \$ 155.44

Subscribed and sworn to this 4 day of March, 2004



OFFICIAL SEAL  
NOTARY PUBLIC  
STATE OF WEST VIRGINIA  
Sandra L. Loar  
Brooke Publishing, Inc.  
319 Charles Street, P.O. Box 591  
Wellsburg, West Virginia 26070-0591  
My Commission Expires May 4, 2014

*Sandra L. Loar*  
May 04, 2014

TOWN OF BETHANY  
JANUARY 13, 2004  
SVEN deJONG, MAYOR  
COUNCIL CHAMBERS

Council members present: Lisa Wenner, Gray Williamson, James Forrester, and Pat Sutherland. Others Shirley Kemp, Treasurer, Attorney Andy Jackson, Solicitor and Helen Moren, Recorder. Guest: Cyndi Hoffman, David George, Gary and Stephanie Kappel.

Pat Sutherland moved; seconded by Lisa Wenner to accept the minutes as corrected. Gray Williamson moved; seconded by Jim Forrester to accept the treasurer's report.

Mayors Report:

The City of Wheeling donated to radar guns to the town. Reported on the flooding at John and Millie Ferry's home. It was due to sewage blockage. He stated Marvin Platter and Bill Barnhart assisted the town in the clean-up. Mayor deJong thanked Jay Eisenhauer for assisting the Mayor in cleaning out storm drains. He reported nine vehicles were vandalized and a water break at the community center. He spoke to the American Disposal Company about late pick-up, they are trying to make adjustments and are aware of the problem. Dr. John Cunningham was appointed Assistant to Bethany College President and will serve as liaison between town and Bethany College. The agreement was approved by Dr. Patricia Poteat. Slide on Rt. 67, a contract has been signed and work will begin, utility lines will be move across the road. Some damage was done to the sewage plant. Pendleton Street will become a two-way street until the road project is finish. Mayor deJong thanked Gray Williamson for helping to direct traffic and Senator Andy McKenzie and Delegate Tim Ennis for their support on the Rt. 67 project. New lights have been installed at the Recreation Center on Rt. 67, signs will be install at top of hill and speed limit signs will be placed thru Main Street. Pat Sutherland thanked the Mayor for expediting the safety issue.

Jim Forrester praised Mayor Sven deJong on a wonderful job done doing the time of ~~the~~ flooding.

Solicitor Report:

Lisa Wenner moved; seconded by Jim Forrester to hear the second reading of Ordinance No. 118 Amending the Rates, Fees, and Charges for use and service of the Municipal Sewage. Motion carried. Attorney Jackson stated we will need a sewage ordinance.

Sanitation Update: The sanitation board met December 18, 2003. The board was briefed on sanitation project and it is on schedule. The board will meet once a month.

Mayor deJong will meet with Rick Hudson in regards to getting the community center project started. He spoke to Congressman Alan Mollohan's office requesting funding for the building. The old committee will be activated. The Mayor will be working with Bethany College Development Office in securing grants. - K -

✓ Gray Williamson moved; seconded by Jim Forrester to hear the first reading of Ordinance 119 authorizing the refunding of the outstanding sewerage system bond anticipation notes, series 2003. Motion carried.

Lisa Wenner mover; seconded by Jim Forrester to accept Pat Sutherland resolution concerning Pedestrian and Driver Safety Concerns/Actions within Bethany town limits. Motion carried.

Pat Sutherland will do a news release in regards to the traffic pattern on Rt. 67.

Council Concerns:

Pat Sutherland stated the town is looking for an intern to help with projects. He met with Kayla Young -land use plan. Topics discussed : what are our plans and town future, tourism and etc. Communications with other communities. Lisa suggested using the intern and developing a town newsletter. The Mayor is going to suggest that Brooke County Commissioners meet at 7:00 P.M. once a month for interest people.

Jim Forrester stated that Karen McFadden was concerned about the up-date on the animal shelter. Mayor has spoken to Sylvia Benzo on this matter. Jim Forrester will relate this information to Karen McFadden.

Lisa Wenner officially resigned her position as town council member. Her new employment will take her to Erie, Pa. Mayor deJong thanked her for serving on council and the 150th anniversary committee and wished her well.

Reminder: Law enforcement meeting Jan 20, at 6:00 P.M. and record keeping Jan. 29, at 6:00 P.M. The Mayor has 300 gun safety locks to be given to interest citizens. Project ChildSafe project is funded by U.S. Department of Justice grant.

Jim Forrester moved; seconded by Lisa Wenner to adjourn at 08:25 P.M..

Helen Moren, Recorder *Helen Moren*

Sven deJong, Mayor \_\_\_\_\_

TOWN OF BETHANY  
JANUARY 20, 2004  
SPECIAL MEETING  
SVEN deJONG, MAYOR

Council members present: Pat Sutherland, Jay Eisenhauer, Jim Forrester and Gray Williamson. Also Helen Moren, Recorder.

Pat Sutherland asked for variance to construct a deck and patio at 101 Point Breeze Drive. All paper work has been completed. Kim Lawless, representing the zoning board has given their approval for the variance. Gray Williamson moved; seconded by Jim Forrester to approve the variance. Motion carried.

Executive session was held with Larry Palmer, Bethany Police Department.

Helen Moren, Recorder *Helen Moren*

Sven deJong, Mayor \_\_\_\_\_

5000

**BETHANY TOWN COUNCIL MEETING  
FEBRUARY 10, 2004  
COUNCIL CHAMBERS  
MAYOR SVEN deJONG**

Bethany Town Council met February 10, 2004, at 7:00 P.M. Council members present: Jay Eisenhauer, Pat Sutherland, Gray Williamson and James Forrester. Others Solicitor Andy Jackson, Treasurer Shirley Kemp and Recorder Helen Moren. Guests: Millie and Max Ferry, David George, Lynn Davis, Brian Cunningham, and Cyndi Hoffman. College students Katie Navarra and Mike Skywatcher.

Minutes corrected to read: Add Cyndi Hoffman, Rusty Schwertfeger, Helen Moren, Herb Weaver and Ray Godina members of the former building committee. Rt. 67 contract signed between State Department of West Virginia Highways and Belco Company. James Forrester moved; seconded by Gray Williamson to accept the minutes as corrected. Shirley Kemp, Treasurer presented the treasurer's report. Jay Eisenhauer asked about students fee payment. Mayor Sven deJong reported that he and Mr. Joe Kurey, Business Manager Bethany College will meet and discuss the matter at a later date. Also Bocco Cable franchise. Helen Moren stated Mr. Ellis pays his franchises in the month of February, therefore his franchise has been paid for the 2003-2004 year. Gray Williamson moved; seconded by James Forrester to accept the treasurer's report and file for audit.

Mrs. John Ferry and son Max were present and spoke on their behalf about the damage done to their home on January 2, 2004. The damage was caused by a clog sewer line belonging to the town. The claim was denied by the town's insurance company. Mrs. Ferry explained the procedurers she has done( letter writing, phone calls and etc.) since that time. Further comments were made by Max Ferry. Mayor Sven deJong gave his review on the situation. Discussion followed. It was suggested that the town follow-up with a letter to the West Virginia State Insurance Commission. Mayor Sven deJong and Attorney Andy Jackson will meet and discuss matter and report back to Mr. and Mrs. John Ferry.

Brian Cunningham gave the Bethany College Security report. Also spoke for the Bethany Volunteer Fire Department. Mayor Sven deJong stated forms have been filed for a grant and bids have been released for new fire truck.

**Mayors Report:**

Mayor Sven deJong stated that 704 community service hours was completed. He is working with Bethany College Development Office for \$100,000 grant for rails and trails thru the Department of Highways. He will travel to Charleston on February 17 to meet with legislators. Dr. John Cunningham will be joining the Mayor. A letter was received from Audio Group who is interested in doing community projects at no cost to the community. Mayor Sven deJong will reply to the letter. The Mayor would like to have budget proposals at March meeting. He also recommended to council that the .03 square footage remain for one or two years. This item will be added to the March agenda. Four letters were read from Tom Furbee, Frank Reven, Cyndi Hoffman and Deborah Hull requesting the council seat vacant by Lisa Wenner. Rt. 67 update-

once cable lines are moved work will begin in two and half weeks.

**Solicitor Report:**

Attorney Andy Jackson-no report

**Sanitation Report:**

Project still on track and moving forward.

**Comunity Center Report:**

Mayor Sven deJong met with Rick Hudson who will submit a bid for electricial, heating and cooling.

The second reading was heard on Ordinance 119 authoring the refunding of the outstanding sewerage system bond anticipation notes, series 2003.

Discussion was heard on making community day celebration an annual event. Gray Williamson felt this was a good idea and will serve as chairman. Anyone interested in serving on committee should contact Cyndi Hoffman.

Mayor Sven deJong gave the report for Ad-Hov record keeping committee.

**Council Concerns:**

Jay Eisenhauer asked about having a special budget meeting. It was set for Saturday March 13, at 9:30 A.M.. He also stated that the Drug and Alcohol task force will meet April 5, in Huntington. Jay Eisenhauer will represent council. John Cunningham will be in attendance. Shirley Kemp reported she had a credit card application form. The Mayor felt this was a good idea. Gray Williamson moved; seconded by James Forrester to obtain a credit card. Motion carried.

Mayor Sven deJong did write a letter to Brooke County Commisioners requesting an evening meeting. No response was received. He will follow up with another letter.

Pat Sutherland thanked the students for attending the meeting.

Meeting adjourned to excutive session at 09:05 P.M.

The meeting was moved from executive session at 10:16 P.M..

Gray Williamson moved; seconded by James Forrester to purchase a new filing cabinet, with a verticial lock. Motion carried. A budget revision resolution form was passed for council signatures.

Mayor Sven deJong announced the following candidates for vacant council seat. Frank Reven, Tom Furbee, Cyndi Hoffman and Deborah Hull. Pat Sutherland thanked all the candidates for expressing an interest. After a long executive session trying to select the best candidate. Jay Eisenhauer nominated . Pat Sutherland seconded the motion. Motion carried. Vote taken:  
Cynthia Hoffman: Jay Eisenhauer and Gray Willimanson- NO;  
Pat Sutherland and James Forrester- YES

Deborah Hull: Jay Eisenhower and Gray Williamson-YES

Pat Sutherland and James Forrester-NO

Tie Vote 2-2

Since the tie vote: Mayor Sven deJong cast the tie breaking vote.

Mayor Sven deJong voted for Deborah Hull

Result: Deborah Hull 3 votes and Cyndi Hoffman 2 votes.

James Forrester moved to adjourn at 10:25 P.M.. Motion seconded by Jay Eisenhower.  
Motion carried.

Helen Moren, Recorder

Helen Moren

Sven deJong, Mayor

\_\_\_\_\_

TOWN OF BETHANY  
MARCH 9, 2004  
COUNCIL CHAMBERS  
MAYOR SVEN deJONG

Council members present: Jay Eisenhauer, Pat Sutherland, Gray Williamson, Debra Hull and Jim Forrester. Also Solicitor Andy Jackson, Treasurer Shirley Kemp and Recorder Helen Moren. Guest Lynn Davis, David George and West Liberty Student.

**Corrections to minutes:**

Jay Eisenhauer nominated Cynthia Hoffman. Gray Williamson nominated Debra Hull; seconded by Jay Eisenhauer.

Ad-Hov record keeping meeting add: desire to get files updated, new file cabinet for adequate storage of files. Pat Sutherland moved; seconded by Jim Forrester to accept the minutes as corrected. Motion carried.

Treasurer's report: Mayor Sven deJong commented on collection of fines, parking fees and service fees. Jay Eisenhauer suggested a letter be send to Mr. Joe Kurey, Business Manager Bethany College for collecting student service fees. Gray moved; seconded by Jim Forrester to accept the treasurer's report. Motion carried.

Bethany College Security report was given by Mayor Sven deJong. He noted the property damage was very high.

**Mayor's Report:**

Congratulated Debra Hull on her appointment to town council. A grant for \$99,000 for rails and trails has been submitted. Mayor deJong worked with Betty Stammerjohn, Bethany College. He presented a copy of the rails and trails booklet to county officials. He stated the ABC did enter Bison Inn in regards to underage drinking. No report has been received. Mayor Sven deJong gave a report on his trip to Charleston. Rt. 67 update-various problems have ocured, but, the work should be completed in two weeks. Parking on Pendleton Street has been a problem. Police were called and a tow truck to tow away cars. Jay Eisenhauer commented on traffic control on Pendleton Street. Also sugested buying a new one way sign for Pendleton Street. Gave a brief report on the Sanitary board meeting and an update on John Ferry. Insurance Company declined the claim, the Ferry's are willing to settle for \$5000.00 and give the Town of Bethany a release. Gray Williamson made a motion to reimburse the Ferry's pending upon receipts, up to \$5000.00. Jim Forrester seconded the motion. Motion carried.

Helen Moren, Recorder swore Debra Hull in as member of Town Council to fill the unexpired term of Lisa Wenner.

**Solicitors Report:**

Spoke on the sewer program, passed out draft and explained the map. Explained a letter preliminary title opinion, passed out four deeds and explained each. Council thanked Mr. Jackson for all the work he has done on the sewer project. Mr. Jackson stated their was no objections to sewer rate increase and the ordinance book will be completed in due time.

The third reading of Ordinance 119 was heard. Gray Williamson moved; seconded by Jim Forrester. Voice vote taken. Motion carried.

Gray Williamson outlined Bethany Homecoming old fashion community day. The date of September 11 has been set.

Mayor Sven deJong presented an example of street sign. The sign would be placed on Main Street, Point Breeze and include Logan Court. The \$3000.00 would be taken from the \$10,000 grant that was received for Main Street signage. Pat Sutherland moved; seconded by Debra Hull to purchase six ( 6 ) signs. Voice

vote taken. Motion carried.

A bid was received from Rick Hudson for community building. Budget proposals were received from police and fire departments. A budget meeting will be held March 13, at 9:00 A.M..

Lynn Davis reported for the planning commission. She stated Bill and Jill Hicks would like to become members of the planning commission. Jim Forrester moved; seconded by Gray Williamson to appoint the Hick's to the planning commission. Motion carried.

**Council Concerns:**

Jim Forrester asked why the Town Police didn't submit a report.

Jim Forrester moved; seconded by Gray Williamson to adjourn at 08:55 P.M..

Helen Moren, Recorder

Helen Moren

Sven deJong, Mayor

\_\_\_\_\_

TOWN OF BETHANY

Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

EXCERPT OF MINUTES ON  
ADOPTION OF SUPPLEMENTAL RESOLUTION

The undersigned Recorder of the Town of Bethany (the "Town") hereby certifies that the following is a true and correct excerpt of the minutes of a regular meeting of the said Town:

\*\*\*

\*\*\*

\*\*\*

The Council of the Town met in regular session, pursuant to notice duly posted, on the 8th day of February, 2005, in Bethany, West Virginia, at the hour of 7:00 p.m.

PRESENT: Sven deJong - Mayor  
Jay Eisenhauer - Councilmember  
James Forrester - Councilmember  
Patrick Sutherland - Councilmember

ABSENT: Helen Moren - Recorder  
Debra Hull - Councilmember  
Gary Williamson - Councilmember

Sven deJong, Mayor, presided, and the Mayor, acted as Recorder. The Mayor announced that a quorum of members was present and that the meeting was open for any business properly before it.

The Mayor then presented a proposed Supplemental Resolution in writing entitled:

SUPPLEMENTAL RESOLUTION PROVIDING AS TO PRINCIPAL AMOUNT, DATE, MATURITY DATE, REDEMPTION PROVISION, INTEREST RATE, INTEREST AND PRINCIPAL PAYMENT DATES, SALE PRICE AND OTHER TERMS OF THE SEWER REVENUE BONDS, SERIES 2005A (WEST VIRGINIA INFRASTRUCTURE FUND), OF THE TOWN OF BETHANY; APPROVING AND RATIFYING THE LOAN AGREEMENT RELATING TO SUCH BONDS AND THE SALE AND DELIVERY OF SUCH BONDS TO THE WEST VIRGINIA WATER DEVELOPMENT AUTHORITY; DESIGNATING A REGISTRAR, PAYING AGENT AND DEPOSITORY BANK; CHANGING THE SERIES DESIGNATION; AND MAKING OTHER PROVISIONS AS TO THE BONDS.

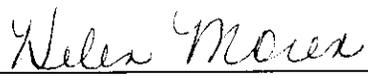
and caused the same to be read and there was discussion. Thereupon, upon motion duly made and seconded, it was unanimously ordered that the said Supplemental Resolution be adopted and be in full force and effect on and from the date hereof.

\*\*       \*\*       \*\*

CERTIFICATION

I hereby certify that the foregoing is a true copy of the minutes of the Town of Bethany and that such actions remain in full force and effect and have not been amended, rescinded, superseded, repealed or changed.

WITNESS my signature on this 22nd day of February, 2005.

  
\_\_\_\_\_  
Recorder

02/08/05  
072227.00002

CH732832.1

WV MUNICIPAL BOND COMMISSION  
#8 Capitol Street  
Terminal Building, Suite 500  
Charleston, WV 25301  
(304) 558-3971

NEW ISSUE REPORT FORM

Date of Report: February 22, 2005

(See Reverse for Instructions)

ISSUE: <u>Town of Bethany Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund)</u>	
ADDRESS: <u>Post Office Box U Bethany, WV 26032</u>	COUNTY: <u>Brooke</u>
PURPOSE OF ISSUE: New Money: <u>X</u> Refunding: _____	REFUNDS ISSUE(S) DATED: <u>N/A</u>
ISSUE DATE: <u>February 22, 2005</u>	CLOSING DATE: <u>February 22, 2005</u>
ISSUE AMOUNT: <u>\$ 1,250,000</u>	RATE: <u>3%</u>
1ST DEBT SERVICE DUE: <u>September 1, 2006</u>	1ST PRINCIPAL DUE: <u>September 1, 2006</u>
1ST DEBT SERVICE AMOUNT: <u>\$20,835.26</u>	PAYING AGENT: <u>Municipal Bond Commission</u>
BOND COUNSEL: <u>Step toe &amp; Johnson PLLC</u> Contact Person: <u>Vincent A. Collins, Esquire</u> Phone: <u>304.624.8161</u>	UNDERWRITERS COUNSEL: <u>Jackson Kelly PLLC</u> Contact Person: <u>Samme L. Gee, Esquire</u> Phone: <u>304.340.1318</u>
CLOSING BANK: <u>WesBanco Bank Wheeling</u> Contact Person: <u>Marilyn McGowan, Manager</u> Phone: <u>304.737.2925</u>	ESCROW TRUSTEE: _____ Contact Person: _____ Phone: _____
KNOWLEDGEABLE ISSUER CONTACT Contact Person: <u>Sven M. de Jong</u> Position: <u>Mayor</u> Phone: <u>304.829.4217 - Town Hall</u>	OTHER: <u>West Virginia Infrastructure and Jobs Development Council</u> Contact Person: <u>Katy Mallory, P.E.</u> Function: <u>Executive Secretary</u> Phone: <u>304.558.4607</u>
DEPOSITS TO MBC AT CLOSE: By: _____ Wire _____ Check	Accrued Interest: \$ _____ Capitalized Interest: \$ _____ Reserve Account: \$ _____ Other: \$ _____
REFUNDS & TRANSFERS BY MBC AT CLOSE By: _____ Wire _____ Check _____ IGT	To Escrow Trustee: \$ _____ To Issuer: \$ _____ To Cons. Invest. Fund: \$ _____ To Other: \$ _____
NOTES: _____ _____ _____	
FOR MUNICIPAL BOND COMMISSION USE ONLY: DOCUMENTS REQUIRED: _____ TRANSFERS REQUIRED: _____ _____	

The purpose of the NEW ISSUE REPORT FORM is to provide the WV Municipal Bond Commission with an early warning of three basic facts no later than the day of closing on any issue for which the Commission is to act as fiscal agent. These are:

1. Formal notification that a new issue is outstanding.
2. Date of first action or debt service.
3. Contact people should we lack documents, information, or funds needed to administer the issue by the date of the first action or debt service.

The commission recognizes that as bond transcripts become increasingly long and complex, it has become more difficult to assemble and submit them to the Commission within the 30 days specified by the West Virginia Code 13-3-8. This notice is not intended to provide all the information needed to administer an issue, but to alert the Commission and ensure that no debt service payments are missed due to delays in assembling bond transcripts. If, at the time of closing, documents such as the ordinance and all supplements, debt service schedules, and a specimen bond or photostat are available and submitted with this form, it will greatly aid the Commission in the performance of its duties. These documents are needed to set up the proper accounts and to advise the issuer of monthly deposit requirements as far in advance of the first debt service as possible.

It is not necessary to complete all items if they are not pertinent to your issue. Indicate the County of the issuer. With PSDs that overlap more than one county, indicate the county of their business office. Complete "Rate" only if the issue has only one rate. Please complete a separate form for each series of an issue. Other important information can be recorded under "Notes."

Again, please submit this form on each new issue on the day of closing. If fund transfers into or out of the Commission at closing are required, please submit this form before closing. If no significant facts change by closing, no resubmission at closing is required. If, however, there are changes, please submit an updated form, with changes noted, at closing.

If you should have any questions concerning this form, please call the Commission.

Form **8038-G**  
 (Rev. November 2000)  
 Department of the Treasury  
 Internal Revenue Service

## Information Return for Tax-Exempt Governmental Obligations

▶ Under Internal Revenue Code section 149(e)

▶ See separate instructions.

Caution: If the issue price is under \$100,000, use Form 8038-GC.

OMB No. 1545-0720

Part I Reporting Authority		If Amended Return, check here <input checked="" type="checkbox"/>	
1 Issuer's name <b>Town of Bethany</b>		2 Issuer's employer identification number 55 0528612	
3 Number and street (or P.O. box if mail is not delivered to street address) <b>Box U</b>	Room/suite	4 Report number 3 2005-1	
5 City, town, or post office, state, and ZIP code <b>Bethany, West Virginia 26032</b>		6 Date of issue February 22, 2005	
7 Name of issue <b>Sewer Revenue Bonds, 2005 A (West Virginia Infrastructure Fund)</b>		8 CUSIP number N/A	
9 Name and title of officer or legal representative whom the IRS may call for more information <b>Sven M. de Jong, Mayor</b>	10 Telephone number of officer or legal representative ( 304 ) 829.4217		

Part II Type of Issue (check applicable box(es) and enter the issue price) See instructions and attach schedule			
11 <input type="checkbox"/> Education		11	
12 <input type="checkbox"/> Health and hospital		12	
13 <input type="checkbox"/> Transportation		13	
14 <input type="checkbox"/> Public safety		14	
15 <input checked="" type="checkbox"/> Environment (including sewage bonds)		15	\$1,250,000
16 <input type="checkbox"/> Housing		16	
17 <input type="checkbox"/> Utilities		17	
18 <input type="checkbox"/> Other. Describe ▶		18	
19 If obligations are TANs or RANs, check box <input type="checkbox"/> If obligations are RANs, check box <input type="checkbox"/>			
20 If obligations are in the form of a lease or installment sale, check box <input type="checkbox"/>			

RECEIVED

MAR 25 2005

OGDEN, UT

Part III Description of Obligations. Complete for the entire issue for which this form is being filed.				
(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21 June 1, 2026	\$ 1,250,000	\$ 1,250,000	12.390 years	3.0199636 %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)				
22 Proceeds used for accrued interest			22	-0-
23 Issue price of entire issue (enter amount from line 21, column (b))			23	\$1,250,000
24 Proceeds used for bond issuance costs (including underwriters' discount)	24	15,000		
25 Proceeds used for credit enhancement	25	-0-		
26 Proceeds allocated to reasonably required reserve or replacement fund	26	-0-		
27 Proceeds used to currently refund prior issues	27	224,233.93		
28 Proceeds used to advance refund prior issues	28	-0-		
29 Total (add lines 24 through 28)			29	239,233.93
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)			30	1,010,766.07

Part V Description of Refunded Bonds (Complete this part only for refunding bonds.)	
31 Enter the remaining weighted average maturity of the bonds to be currently refunded	_____ -0- years
32 Enter the remaining weighted average maturity of the bonds to be advance refunded	_____ N/A years
33 Enter the last date on which the refunded bonds will be called	_____ February 22, 2005
34 Enter the date(s) the refunded bonds were issued	_____ May 22, 2003

Part VI Miscellaneous	
35 Enter the amount of the state volume cap allocated to the issue under section 141(b)(5)	35 -0-
36a Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (see instructions)	36a -0-
b Enter the final maturity date of the guaranteed investment contract	
37 Pooled financings: a Proceeds of this issue that are to be used to make loans to other governmental units	37a -0-
b If this issue is a loan made from the proceeds of another tax-exempt issue, check box <input type="checkbox"/> and enter the name of the issuer	
38 If the issuer has designated the issue under section 265(b)(3)(B)(i)(iii) (small issuer exception), check box <input type="checkbox"/>	
39 If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box <input type="checkbox"/>	
40 If the issuer has identified a hedge, check box <input type="checkbox"/>	

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

**Sign Here**

2.22.05
Sven M. de Jong, Mayor  
 Signature of issuer's authorized representative      Date      Type or print name and title



TOWN OF BETHANY

Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

ACCEPTANCE OF APPOINTMENT AS DEPOSITORY BANK

WesBanco Bank, Wellsburg, West Virginia, hereby accepts appointment as Depository Bank in connection with a Bond Ordinance of the Town of Bethany (the "Issuer") enacted by the Issuer on March 9, 2004, and a Supplemental Resolution adopted by the Issuer on February 8, 2005 (collectively, the "Bond Legislation"), authorizing issuance of the Issuer's Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated February 22, 2005, issued in the original aggregate principal amount of \$1,250,000 (the "Bonds"), and agrees to serve as Depository Bank in connection with the Bonds, all as set forth in the Bond Legislation.

WITNESS my signature on this 22nd day of February, 2005.

WESBANCO BANK, INC.

By: Marilyn J. McGowan  
Its: Authorized Officer

02/08/05  
072227.00002

TOWN OF BETHANY

Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

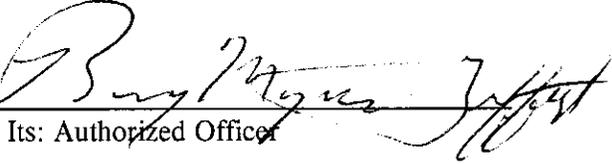
ACCEPTANCE OF DUTIES AS REGISTRAR

The Huntington National Bank, Charleston, West Virginia, hereby accepts appointment as Registrar in connection with the Town of Bethany Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated February 22, 2005, issued in the original aggregate principal amount of \$1,250,000 (the "Bonds"), and agrees to perform all duties of Registrar in connection with the Bonds, all as set forth in the Bond Legislation authorizing issuance of the Bonds.

WITNESS my signature on this 22nd day of February, 2005.

THE HUNTINGTON NATIONAL BANK

By:

  
Its: Authorized Officer

02/08/05  
072227.00002

TOWN OF BETHANY

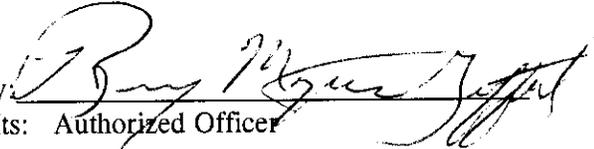
Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

CERTIFICATE OF REGISTRATION OF BONDS

THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia, as Registrar under the Bond Legislation and Registrar's Agreement providing for the above-captioned Bonds of the Town of Bethany (the "Issuer"), hereby certifies that on the date hereof, the single, fully registered Sewer Revenue Bond, Series 2005 A (West Virginia Infrastructure Fund), of the Issuer, dated February 22, 2005, in the principal amount of \$1,250,000, numbered AR-1, was registered as to principal and interest in the name of "West Virginia Water Development Authority" in the books of the Issuer kept for that purpose at our office, by a duly authorized officer on behalf of The Huntington National Bank, as Registrar.

WITNESS my signature on this 22nd day of February, 2005.

THE HUNTINGTON NATIONAL BANK

By:   
Its: Authorized Officer

02/08/05  
072227.00002

TOWN OF BETHANY

Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

REGISTRAR'S AGREEMENT

THIS REGISTRAR'S AGREEMENT, dated as of the 22nd day of February, 2005, by and between the TOWN OF BETHANY, a municipal corporation and political subdivision of the State of West Virginia (the "Issuer"), and THE HUNTINGTON NATIONAL BANK, Charleston, West Virginia (the "Registrar").

WHEREAS, the Issuer has, contemporaneously with the execution hereof, issued and sold its \$1,250,000 Sewer Revenue Bonds, Series 2005 A (West Virginia Infrastructure Fund), dated February 22, 2005, in fully registered form (the "Bonds"), pursuant to a Bond Ordinance of the Issuer duly enacted March 9, 2004, and a Supplemental Resolution of the Issuer duly adopted February 8, 2005 (collectively, the "Bond Legislation");

WHEREAS, capitalized words and terms used in this Registrar's Agreement and not otherwise defined herein shall have the respective meanings given them in the Bond Legislation, a copy of which is attached as EXHIBIT A hereto and incorporated herein by reference;

WHEREAS, the Bond Legislation provides for an appointment by the Issuer of a Registrar for the Bonds; and

WHEREAS, the Issuer desires to appoint, and by the Bond Legislation and this Registrar's Agreement does appoint, the Registrar to act as Registrar under the Bond Legislation and to take certain other actions hereinafter set forth;

NOW, THEREFORE, it is agreed by and between the parties hereto as follows:

1. Upon the execution of this Registrar's Agreement by the Issuer and the Registrar and during the term hereof, the Registrar does accept and shall have and carry out the powers and duties of Registrar for the Bonds, all as set forth in the Bond Legislation, such duties including, among other things, the duties to authenticate, register and deliver Bonds upon original issuance and when properly presented for exchange or transfer, and shall do so with the intention of maintaining the exemption of interest on the Bonds from federal income taxation, in accordance with any rules and regulations promulgated by the United States Treasury Department or by the Municipal Securities Rulemaking Board or similar regulatory bodies as the Issuer advises it of and with generally accepted industry standards.

2. The Registrar agrees to furnish the Issuer with appropriate records of all transactions carried out by it as Registrar and to furnish the Issuer with the names and specimen signatures of the Registrar's authorized officers for the purposes of acting as the Registrar and with such other information and reports as the Issuer may from time to time reasonably require.

3. The Registrar shall have no responsibility or liability for any action taken by it at the specific direction of the Issuer.

4. As compensation for acting as Registrar pursuant to this Registrar's Agreement, the Issuer hereby agrees to pay to the Registrar the compensation for services rendered as provided in the attached invoice.

5. It is intended that this Registrar's Agreement shall carry out and implement provisions of the Bond Legislation with respect to the Registrar. In the event of any conflict between the terms of this Registrar's Agreement and the Bond Legislation, the terms of the Bond Legislation shall govern.

6. The Issuer and the Registrar each warrants and represents that it is duly authorized and empowered to execute and enter into this Registrar's Agreement and that neither such execution nor the performance of its duties hereunder or under the Bond Legislation will violate any order, decree or agreement to which it is a party or by which it is bound.

7. This Registrar's Agreement may be terminated by either party upon 60 days' written notice sent by registered or certified mail to the other party, at the following respective addresses:

ISSUER:                   Town of Bethany  
                                  Post Office Box U  
                                  Bethany, WV 26032  
                                  Attention: Mayor

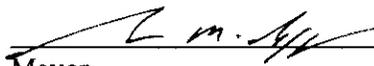
REGISTRAR: The Huntington National Bank  
One Huntington Square  
Charleston, West Virginia 25326  
Attention: Corporate Trust Department

8. The Registrar is hereby requested and authorized to authenticate, register and deliver the Bonds in accordance with the Bond Legislation.

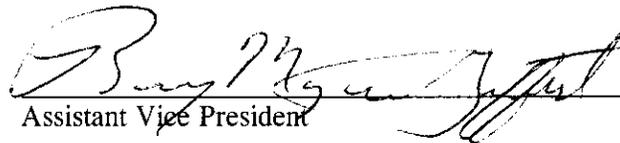
9. This document may be executed in one or more counterparts each of which shall be deemed an original and all of which shall constitute but one and the same document.

IN WITNESS WHEREOF, the parties hereto have respectively caused this Registrar's Agreement to be signed in their names and on their behalf, all as of the day and year first above-written.

TOWN OF BETHANY

  
\_\_\_\_\_  
Mayor

THE HUNTINGTON NATIONAL BANK

  
\_\_\_\_\_  
Assistant Vice President

02/08/05  
072227.00002

EXHIBIT A

Bond Legislation included in bond transcript as Documents No. 1 and No. 2

SCHEDULE OF COMPENSATION

(See attached)

Private Financial Group  
900 Lee Street, 11th Floor  
P. O. Box 633 WE3013  
Charleston, West Virginia 25322-0633



STATEMENT OF TRUSTEE'S FEES  
Invoice Date February 22, 2005

**Town of Bethany**  
**Account Number 6089001809**

Town of Bethany  
Sewer Revenue Bonds, Series 2004 A  
C/O John C. Stump  
Steptoe & Johnson, PLLC  
P.O. Box 1588  
Charleston, WV 25326-1588

SUMMARY OF ACCOUNT

\*\*\*\*\*  
FEE CALCULATION FOR December, 2004  
\*\*\*\*\*

TOTAL AMOUNT	\$	500.00
TOTAL DUE	\$	<u>500.00</u>

- \* FEE INVOICES ARE PAYABLE WITHIN 30 DAYS. IF PAYMENT \*
- \* IS NOT RECEIVED, FEES WILL BE DEDUCTED FROM THE PLAN \*
- \* .. MAIL CHECK TO: HUNTINGTON NATIONAL BANK, ATTN: DEBRA .. \*
- \* .. BOWDEN, PO BOX 633, CHARLESTON, WV 25322-0633 .. \*

IF YOU HAVE ANY QUESTIONS, PLEASE CONTACT  
Barry Morgan Griffith at (304)348-5035

# State of West Virginia

## OFFICE OF ENVIRONMENTAL HEALTH SERVICES

815 QUARRIER STREET, SUITE 418

CHARLESTON, WEST VIRGINIA 25301-2616

TELEPHONE 304-558-2981

### PERMIT

PROJECT: (Sewage) Wastewater Collection and Treatment System Improvements

PERMIT NO.: 15,915

LOCATION: Bethany

COUNTY: Brooke

DATE: 1-23-2004

THIS IS TO CERTIFY that after reviewing plans, specifications, application forms, and other essential information that

**Town of Bethany  
Post Office Box U  
Bethany, West Virginia 26032**

is hereby granted approval to: separate some of the sanitary and storm water in the existing combined sewage collection system; add approximately 188 LF of 6" sewer line; clean and TV inspect approximately 7,870 LF of existing sewer line; install new manhole lids; seal existing manholes; and repair approximately 41 sewer inverts; repair 41 sewer line points; and replace the existing main wastewater pump station with a new 385 G.P.M. duplex submersible sewage pump station and approximately 340 LF of 6" force main. Also, to upgrade and improve the existing 200,000 G.P.D. (average daily design flow) wastewater treatment lagoons by replacing the existing aeration piping and diffusion systems in lagoons A and B; adding a new baffle in lagoon A; adding biofiltration media in lagoons A and B; covering lagoon B; adding two (2) new blowers; replacing the existing ultraviolet disinfection system with a new open channel gravity flow ultraviolet disinfection system; adding a non-potable water system for the bioaugmentation process; construction of a new blower/bioaugmentation/flow meter building; construction of a new ultraviolet disinfection shelter; addition of an emergency generator for the wastewater plant blowers and the main wastewater pump station; and all necessary piping, valves, controls and appurtenances.

Facilities are to serve the Town of Bethany.

The Office of Environmental Health Services Wheeling District Office, telephone (304) 238-1145, is to be notified when construction begins.

Validity of this permit is contingent upon conformity with plans, specifications, application forms, and other information submitted to the West Virginia Bureau for Public Health.

FOR THE DIRECTOR

  
William S. Herold, Jr., P.E., Assistant Manager  
Infrastructure and Capacity Development  
Environmental Engineering Division

WSH:sec

pc: Cerrone Associates, Inc.  
O. Robert Coontz, P.E., DEP  
Permitting Section, DEP  
James W. Ellars, P.E., PSC-Engineering Division  
Amy Swann, PSC  
Brooke County Health Department  
OEHS-EED Wheeling District Office

RECEIVED

JAN 26 2004

Blank file



west virginia department of environmental protection

Division of Water and Waste Management  
601 57<sup>th</sup> Street SE  
Charleston, WV 25304  
Tel. No.: 304-926-0495  
Fax No.: 304-926-0463

Bob Wise, Governor  
Stephanie R. Timmermeyer, Cabinet Secretary  
www.wvdep.org

January 6, 2005

Honorable Sven DeJong  
Mayor, Town of Bethany  
P. O. Box U  
Bethany, WV 26032

Re: WV/NPDES Permit No. WV0022080  
Brooke County

Honorable Mayor DeJong:

This letter shall serve as an extension of WV/NPDES Water Pollution Control Permit No. WV0022080 until the 30th day of June 2005. By that time, the review of WV/NPDES Permit Application No. WV0022080 should be completed and a new permit issued.

This action is necessary to maintain permit status while the review of WV/NPDES Permit Application No. WV0022080 is being completed.

Please be advised that the terms and conditions of the existing permit shall remain applicable and in effect throughout the permit extension period.

Very truly yours,

Allyb G. Turner  
Director

AGT:bsg

cc: Env. Insp. Supervisor  
Env. Inspector

WRD 1A-82  
Revised 11/97



STATE OF WEST VIRGINIA  
DIVISION OF ENVIRONMENTAL PROTECTION  
OFFICE OF WATER RESOURCES  
1201 GREENBRIER STREET  
CHARLESTON, WV 25311

**NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM**  
**WATER POLLUTION CONTROL PERMIT**

Permit No.: WV0022080

Issue Date: January 31, 2001

Subject: Sewage Facilities

Effective Date: March 2, 2001

Expiration Date: January 30, 2005

Supersedes: WV/NPDES Permit No.  
WV0022080 issued May  
19, 1994

Location:	Bethany	Brooke	Ohio
	(City)	(County)	(Drainage Basin)

Outlets: 001  
Latitude: 40° 11' 59" North  
Longitude: 80° 33' 45" West

**To whom it may concern:**

This is to certify that

Town of Bethany  
PO Box 65  
Bethany, WV 26032

is hereby granted a NPDES Water Pollution Control Permit to: operate and maintain an existing 0.260 MGD wastewater collection and treatment system consisting of the existing sewage collection system including 3,850 linear feet of six (6) inch gravity sewer line, 12,255 linear feet of eight (8) inch gravity sewer line, 4,400 linear feet of ten (10) inch gravity sewer line, 1,575 linear feet of twelve (12) inch gravity sewer line, 3,800 linear feet of twenty-four (24) inch gravity sewer line, 650 linear feet of six (6) inch force mains, 54 manholes, 17 cleanouts, one (1) lift station, an 8 acre aerated lagoon with three (3) 5 HP floating aerators, a 3.6 acre polishing pond, an ultraviolet disinfection unit, step aeration prior to discharge, a duckweed removal system, a fenced holding pond for CSO Outfall Number 004, and all other necessary appurtenances.

The system is designed to serve 1,300 people in the Town of Bethany and discharge the treated wastewater to Buffalo Creek (20.1 miles from its mouth) of the Ohio River.

(Continued on Page 2)

This permit is subject to the following terms and conditions:

The information submitted on and with Permit Application No. WV0022080 dated the 12th day of April, 2000 with additional information received the 13th day of September, 2000, the 30<sup>th</sup> day of October, 2000, and the day of November, 2000, is all hereby made terms and conditions of this Permit with like effect as if all such permit application information were set forth herein and with other conditions set forth in Sections A, B, C, and Appendix A.

The validity of this permit is contingent upon the payment of the applicable annual permit fee, as required by Chapter 22, Article 11, Section 10 of the Code of West Virginia.

**"CORRECTED"**

# ACORD CERTIFICATE OF LIABILITY INSURANCE

OP ID AH  
BETHA-1

DATE (MM/DD/YYYY)  
02/22/05

<b>PRODUCER</b>  Commercial Insurance Services 340 MacCorkle Ave. Ste #200 Charleston WV 25314 Phone: 304-345-8000 Fax: 304-345-8014	THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.												
<b>INSURED</b>  Town of Bethany Sven De Jong, Mayor Box U Bethany WV 26032	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <th style="width: 80%;">INSURERS AFFORDING COVERAGE</th> <th style="width: 20%;">NAIC #</th> </tr> <tr> <td>INSURER A: Great American Insurance Co.</td> <td style="text-align: center;">16691</td> </tr> <tr> <td>INSURER B: Clarendon Insurance Group</td> <td></td> </tr> <tr> <td>INSURER C:</td> <td></td> </tr> <tr> <td>INSURER D:</td> <td></td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> </table>	INSURERS AFFORDING COVERAGE	NAIC #	INSURER A: Great American Insurance Co.	16691	INSURER B: Clarendon Insurance Group		INSURER C:		INSURER D:		INSURER E:	
INSURERS AFFORDING COVERAGE	NAIC #												
INSURER A: Great American Insurance Co.	16691												
INSURER B: Clarendon Insurance Group													
INSURER C:													
INSURER D:													
INSURER E:													

### COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSH	ADD'L	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
B		GENERAL LIABILITY <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	APR 12-00715-01	07/01/04	07/01/05	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 Emp Ben. 1,000,000
B		AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	APR 11-00715-01	07/01/04	07/01/05	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
		GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$
		EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE  <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
B		WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER	APR 12-00715-01	07/01/04	07/01/05	<input checked="" type="checkbox"/> WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A		Property Section	MAC 699-43-48	07/01/04	07/01/05	Buildings 368,946 Contents 92,700

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
 "Work as Directed" - Building and Personal Property limits are on a scheduled basis subject to \$1,000 deductible.

<b>CERTIFICATE HOLDER</b>  <div style="text-align: right;"><b>STEPCHA</b></div> Steptoe & Johnson PO Box 1588 Charleston WV 25326-1588	<b>CANCELLATION</b>  SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL <u>30</u> DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES. AUTHORIZED REPRESENTATIVE 
--	--

## **IMPORTANT**

If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

# CORD CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)  
02/17/2005

INSURER (304)233-3303 FAX (304)233-7524  
Associates  
1311 Chapline Street  
P. O. Box 990  
Wheeling, WV 26003-0123

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.

INSURED Bethany, Town Of  
Box U  
Bethany, WV 26032-0000

INSURERS AFFORDING COVERAGE	NAIC #
INSURER A: Commercial Insurance Services	
INSURER B:	
INSURER C:	
INSURER D:	
INSURER E:	

## COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR ADD'L TR INSD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS
A	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	APR120071501	07/01/2004	07/01/2005	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMPI/OP AGG \$ 2,000,000
A	<b>AUTOMOBILE LIABILITY</b> <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS <input checked="" type="checkbox"/> NON-OWNED AUTOS	APR110071501	07/01/2004	07/01/2005	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$
	<b>GARAGE LIABILITY</b> <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EA ACC \$ AGG \$
	<b>EXCESS/UMBRELLA LIABILITY</b> <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$
A	<b>WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below	<b>EMPLOYERS LIABILITY</b>			WC STATU-TORY LIMITS <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
A	<b>OTHER</b> Blanket Building & Personal Property	MAC699434800	07/01/2004	07/01/2005	Blanket Bldg. Limit \$368,946. Blanket PP Limit \$92,700. Deductible: \$1,000.

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS  
Work As Directed"

## CERTIFICATE HOLDER

Steptoe & Johnson  
John Stump  
P. O. Box 1588  
Charleston, WV 25326

## CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL 030 DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO MAIL SUCH NOTICE SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.

AUTHORIZED REPRESENTATIVE

## **IMPORTANT**

If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must be endorsed. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

## **DISCLAIMER**

The Certificate of Insurance on the reverse side of this form does not constitute a contract between the issuing insurer(s), authorized representative or producer, and the certificate holder, nor does it affirmatively or negatively amend, extend or alter the coverage afforded by the policies listed thereon.

# CLOSING MEMORANDUM

**To:** Financing Team  
**From:** John C. Stump, Esquire  
**Date:** February 22, 2005  
**Re:** Town of Bethany Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

---

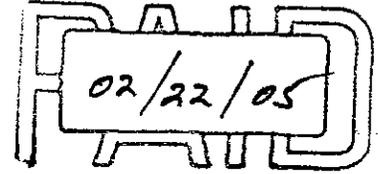
1. DISBURSEMENTS TO THE TOWN OF BETHANY

Payor: West Virginia Infrastructure Fund  
Amount: \$31,206.07  
Form: Wire  
Payee: Town of Bethany  
Bank: WesBanco Bank, Inc., Wellsburg Branch  
ABA: 043400036  
Account #: 0102548763  
Contact: Marilyn J. McGowan ((304) 737-2925)  
Account: Series 2005 A Bonds Construction Fund

2. DISBURSEMENT TO PROGRESSIVE BANK, N.A.

Payor: West Virginia Infrastructure Fund for the Town of Bethany  
Amount: \$224,233.93  
Form: Wire  
Payee: Progressive Bank, N.A.  
ABA: 043403224  
Account: Town of Bethany  
Account #: 99702  
Contact: Harold O. Thomas (304.277.1100)  
Purpose: Payment in Full of the Town of Bethany, Sewerage System  
Bond Anticipation Notes, Series 2003





UNITED STATES OF AMERICA  
STATE OF WEST VIRGINIA  
TOWN OF BETHANY  
SEWERAGE SYSTEM BOND ANTICIPATION NOTE, SERIES 2003

No. R-1

\$225,000

KNOW ALL MEN BY THESE PRESENTS: That on this the 22nd day of May, 2003, the Town of Bethany, a municipal corporation and political subdivision of the State of West Virginia in Brooke County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the sources and in the manner hereinafter set forth, to the order of

-PROGRESSIVE BANK, N.A.-

or registered assigns (the "Registered Owner"), on May 22, 2003, the principal sum of TWO HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$225,000), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as evidenced by the Record of Advances attached as EXHIBIT A hereto and incorporated herein by reference as a part hereof, together with interest payable thereon, in semiannual installments, on May 1 and November 1 of each year, commencing November 1, 2003, with a final payment due on November 1, 2004, on such advances from the date thereof at the rates per annum set forth as follows:

A. Interest on this Note shall be payable at the rate of 1.55% per annum (hereinafter sometimes called the "Tax-Exempt Rate").

B. Notwithstanding any other provision herein, in the event the interest on this Note is declared to be includible in gross income for federal income tax purposes by the Internal Revenue Service ("Determination of Taxability"), interest on this Note shall be payable at the rate of 2.45% per annum (hereinafter sometimes called the "Taxable Rate"). Interest at the Taxable Rate shall commence to accrue on the date of Determination of Taxability and such interest rate shall be charged retroactively and prospectively for all periods in which interest paid on this Note is asserted, declared or determined to be includible in gross income for federal income tax purposes, and shall continue until the entire principal of and

interest on this Note are paid, notwithstanding that the entire principal amount of this Note may have been paid in full prior to the Determination of Taxability. Any interest being past due on this Note by reason of such increase shall become immediately due and payable.

The principal of and interest on this Note are payable in any coin or currency which on the date of payment thereof is legal tender for the payment of public and private debts under the laws of the United States of America, at the office of Progressive Bank, N.A., Wheeling, West Virginia, as Registrar and Paying Agent.

The loan evidenced by this Note shall be advanced to the Issuer as requested by the Issuer and interest shall accrue on the amount of each advance from its actual date as shown on the Record of Advances attached hereto as a part hereof.

This Note is subject to prepayment of principal and interest to the date of prepayment in whole or in part at any time, without penalty.

This Note is issued (i) to temporarily finance a portion of the costs of design and other preliminary costs of certain betterments and improvements to the existing public sewerage facilities of the Issuer (the "Project" ); and (ii) to pay the costs of issuance hereof and related costs. The existing public sewerage facilities of the Issuer, the Project and any further improvements or extensions thereto are herein called the "System". This Note is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (the "Act"), and a Notes Ordinance duly enacted by the Issuer on May 13, 2003, as supplemented by a Supplemental Resolution duly adopted by the Issuer on May 13, 2003 (collectively, the "Notes Legislation"), and is subject to all the terms and conditions thereof.

The principal of and interest on this Note are payable only from and secured by a first lien on (i) the proceeds of revenue bonds or other obligations of the Issuer to be issued subsequent to the issuance of the Notes to permanently finance the costs of acquisition and construction of the Project, (ii) the proceeds of any grants received by the Issuer for the Project; and (iii) the Surplus Revenues, if any, of the System. The monies from these sources shall be deposited into the Notes Payment Fund established under the Notes Legislation for the prompt payment of the principal of and interest on this Note.

THIS NOTE IS ISSUED JUNIOR AND SUBORDINATE WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, TO THE ISSUER'S SEWER REVENUE BONDS, SERIES A, DATED SEPTEMBER 1, 1963 (THE "PRIOR BONDS").

This Note does not constitute a corporate indebtedness of the Issuer within the meaning of any constitutional, statutory or charter provisions or limitations, nor shall the Issuer be obligated to pay the same or the interest hereon except from the sources set forth above. Under the Notes Legislation, the Issuer has entered into certain covenants with the Registered Owner, for the terms of which reference is made to said Notes Legislation. Remedies provided the Registered Owner are exclusively as provided in the Notes Legislation, to which reference is here made for a detailed description thereof.

Subject to the requirements for transfer set forth below, this Note is, and has all the qualities and incidents of, a negotiable instrument under the Uniform Commercial Code of the State of West Virginia. This Note is transferable, as provided in the Notes Legislation, only by transfer of registration upon the books of the Registrar, to be made at the request of the Registered Owner hereof in person or by his attorney duly authorized in writing, and upon surrender hereof, together with a written instrument of transfer satisfactory to the Registrar duly executed by the Registered Owner or his duly authorized attorney.

All monies received from the sale of this Note shall be applied solely to the payment of the costs of design of the Project and the costs of issuance and related costs described in the Notes Legislation, and there shall be and hereby is created and granted a lien upon such monies, until so applied, in favor of the Registered Owner of this Note.

Under the Act, this Note and the interest hereon are exempt from all taxation by the State of West Virginia or any county, municipality, political subdivision or agency thereof.

This Note is hereby designated a "qualified tax-exempt obligation" within the meaning of Section 265(b)(3)(B) of the Internal Revenue Code of 1986, as amended.

IT IS HEREBY CERTIFIED, RECITED AND DECLARED that all acts, conditions and things required to exist, happen and be performed precedent to and at issuance of this Note do exist, have happened and have been performed in due time, form and manner as required by law, and that the Notes, together with all other obligations of the Issuer, do not exceed any limit prescribed by the Constitution or statutes of the State of West Virginia.

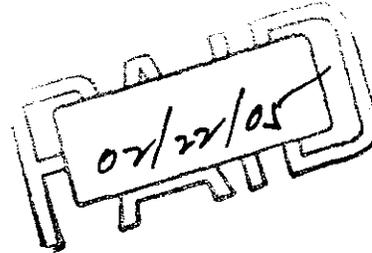
All provisions of the Notes Legislation and the statutes under which this Note is issued shall be deemed to be a part of the contract evidenced by this Note to the same extent as if written fully herein.

This Note shall not be valid or obligatory unless authenticated and registered by the Registrar by the execution of the Registrar's Certificate of Authentication and Registration attached hereto and incorporated herein.

IN WITNESS WHEREOF, THE TOWN OF BETHANY has caused this Note to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Recorder, and has caused this Note dated on the day first above written.

[SEAL]

  
\_\_\_\_\_  
Mayor



ATTEST:

  
\_\_\_\_\_  
Recorder

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

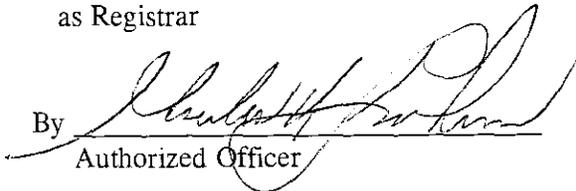
This is to certify that this Note is one of the Notes described in and issued under the provisions of the within-mentioned Notes Legislation and has been duly registered in the name of the registered owner set forth above.

Date: May 22, 2003.

PROGRESSIVE BANK, N.A.,

as Registrar

By

  
Authorized Officer

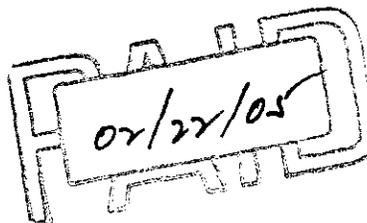


EXHIBIT A  
RECORD OF ADVANCES

	AMOUNT	DATE		AMOUNT	DATE
(1)	\$12,000	May 22, 2003	(13)	\$	
(2)	\$10,467.11	June 5, 2003	(14)	\$	
(3)	\$20,600.00	July 23, 2003	(15)	\$	
(4)	\$13,600.00	July 23, 2003	(16)	\$	
(5)	\$53,249.50	Sept 18, 2003	(17)	\$	
(6)	\$46,300.00	Oct 15, 2003	(18)	\$	
(7)	\$17,500.00	Nov 4, 2003	(19)	\$	
(8)	\$24,099.50	Nov 24, 2003	(20)	\$	
(9)	\$11,200.00	Dec 16, 2003	(21)	\$	
(10)	\$15,224.45	May 3, 2003	(22)	\$	
(11)	\$ 6.63 Principal Paid	Oct 31, 2003	(23)	\$	
(12)	\$		(24)	\$	

TOTAL                      \$ 224,233.93

**PAID**  
07/22/05

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto \_\_\_\_\_ the within-mentioned Note and does hereby irrevocably constitute and appoint \_\_\_\_\_, attorney, to transfer said Note on the books of the Registrar on behalf of said Issuer with full power of substitution in the premises.

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

\_\_\_\_\_

IN THE PRESENCE OF:

\_\_\_\_\_

TOWN OF BETHANY

Sewer Revenue Bonds, Series 2005 A  
(West Virginia Infrastructure Fund)

RECEIPT OF PAYMENT OF STEP I LOAN

The undersigned duly authorized representative of the West Virginia Water Development Authority, the owner of the Step I Loan (the "Loan"), of Town of Bethany (the "Issuer"), dated January 31, 1978, in the original aggregate principal amount of \$3,125, bearing a service charge of \$31.25, hereby certifies that it has received the sum of \$3,156.25 from the Issuer and that such sum is sufficient to pay the entire outstanding principal amount of the Loan and the service charge thereon to the date hereof and discharge the liens, pledges and encumbrances securing the Loan.

Dated this 22nd day of February, 2005.

WEST VIRGINIA WATER DEVELOPMENT AUTHORITY

  
Authorized Representative

02/10/05  
072227.00002