

**EXHIBIT A**  
**PROCESS AND PROCEDURES RESOLUTION**

**WHEREAS**, the West Virginia Infrastructure and Jobs Development Council (the “Council”) is required by Section 5 of Chapter 31, Article 15 of the Code of West Virginia, 1931, as amended (the “Act”), to review preliminary applications for water and sewer projects submitted by project sponsors for project feasibility (the “Applications”) and for projects declared technically feasible to recommend the source or sources of funding to be utilized by the project sponsor;

**WHEREAS**, the Council previously authorized its existing application and submittal processes to be automated using the online application and tracking system developed in conjunction with the West Virginia Water Development Authority (“WDA”);

**WHEREAS**, the Council/WDA online application and tracking system went into operation in July 2011;

**WHEREAS**, the Council previously adopted a Resolution on October 5, 2011, providing for its “Interim Online Policies and Procedures”;

**WHEREAS**, the Council has determined that certain formerly adopted policies should be revised; and

**WHEREAS**, the Council finds that a resolution is needed in order to establish certain policies and procedures as the final policy document of the Council;

**NOW THEREFORE**, the West Virginia Infrastructure and Jobs Development Council resolves as follows:

- 1) The Council hereby determines that the “Process and Procedures” attached hereto as Exhibit A and incorporated herein by reference is in the best interest of the Council.
- 2) The Council hereby adopts the “Process and Procedures” the provisions of which shall supersede any and all previously adopted policies of the Council, including, in particular, the “Interim Online Policies and Procedures” adopted October 5, 2011;
- 3) This Resolution shall be effective immediately upon adoption.

Adopted the 2<sup>nd</sup> day of October, 2013.

# EXHIBIT A

## West Virginia Infrastructure and Jobs Development Council

### PROCESS AND PROCEDURES

#### I. PROJECT INITIATION PROCESS

- a) Projects shall be initiated through the online system via the submission of a Project Initiation Form. Such Initiation Form shall be submitted in a format to be determined by the Executive Director and shall require the following information at a minimum:
  - i. Name and contact information for all members of the project team engaged by the Project Sponsor to assist in the completion of the project;
  - ii. A basic description of the proposed project;
  - iii. If necessary, a declaration/request that funds are being sought to assist in the completion of the Preliminary Application;
  
- b) The following requirements apply to all Project Team Members:
  - i. If an Attorney, Engineer, or Accountant: Must be duly licensed to practice in the State of West Virginia;
  - ii. Must be certified by the Executive Director to use the online system after successful completion of a certification process prescribed by the Executive Director;
  - iii. No single individual or firm may serve in more than one role on the project team;
  
- c) Should the Sponsor request funds in order to assist in the preparation of the Preliminary Application, the Executive Director is hereby authorized to approve such funds requests, not to exceed 50% of the cost of the application or \$5,000 whichever is greater. It is recognized that the maximum amount of funds utilized annually for these purposes cannot exceed \$500,000 \* per fiscal year.

*\*Senate Bill 153 passed March 7<sup>th</sup>, 2019; in effect 90 days from passage.*

## II. PRELIMINARY APPLICATION PROCESS

- a) Once the Project Sponsor has successfully completed the Project Initiation Form, the Preliminary Application may be filed with the Council;
- b) The Preliminary Application must be submitted within six (6) months after acceptance of the Project Initiation Form or the project initiation submission shall be terminated and new project initiation form will need to be resubmitted to re-instate the project.
- c) Filing Deadline - Preliminary Applications may be submitted on a monthly cycle, with the deadline for submission being no later than midnight on the 10th calendar day of the month. Should the 10th fall upon a weekend or holiday then the deadline shall be the preceding day or Friday;
- d) The Preliminary Application shall consist of three separate parts to be completed by the respective Project Team Members: Administrator, Engineer, and Accountant;
- e) The Preliminary Application, upon acceptance by the Executive Director, shall be forwarded to the Technical Review Committees of the Council for review;
- f) Upon successful technical review, Preliminary Applications are then forwarded to the Funding Committee, and then the Council as prescribed in the Council's Legislatives Rules and By-Laws;
- g) Proposed Funding – the Project Sponsor shall provide its target user rates for the proposed project. The Funding Committee shall then determine the appropriate funding scenario for the project. For final approval, the funding committee's recommendation shall be forwarded to the full Council.
- h) Revised Applications – Project Sponsors shall have the ability to submit one revision to an existing application. Should more than one revision to a project be required, a new application shall be submitted and a new project number assigned.

## III. BINDING COMMITMENTS

- a) When seeking a binding commitment of Council funds, the Project Sponsor shall submit a request using the online system;
- b) At a minimum, requests for binding commitments shall be accompanied by the following:
  - i. Copy of Professional Services Agreements (Administrative, Engineering, Legal, and Accounting);
  - ii. Schedule for obtaining PSC Certificate of Convenience and Necessity;
  - iii. Status of all required permitting processes;
  - iv. Draft pre-bid project budget (Pre-Bid Schedule B);
  - v. Evidence of other funding commitments;
  - vi. Evidence of rate ordinance (for municipalities)
  - vii. Status of land and easement acquisitions;
  - viii. A list of materials, with quantities, to be used in the project; and
  - ix. Detailed project schedule and timeline, in such form as is satisfactory to the Council;
- c) Expiration of binding commitments – all commitment of funds approved by the Council shall expire 365 days following the date of the Council’s commitment letter;
- d) The Council shall be the approving authority for all requests for binding commitments;

#### IV. BID AUTHORIZATION

- a) Prior to advertising for bids, the Project Sponsor shall first obtain Council approval using the online system;
- b) At a minimum, requests for bid authorization shall be accompanied by the following:
  - i. Evidence that all required permits have been obtained;
  - ii. Current/updated pre-bid project budget (Pre-Bid Schedule B);
  - iii. Front-end bid documents including proposed bid advertisement;
  - iv. Preliminary title opinion demonstrating at least 80% of easements and 100% of lands have been obtained;
  - v. Treatment or water purchasing agreements (if applicable);
  - vi. Evidence of resolution of parity issues;
  - vii. Updated schedule for obtaining PSC Certificate of Convenience and
  - viii. Certification of compliance with the WV Jobs Act (only for projects without federal funding);
  - ix. Intergovernmental agreements (if applicable);
  - x. Sewer use ordinance (if applicable);
  - xi. Certificate of insurance;
- c) The Executive Director shall be the approving authority for all bid authorization requests.

## V. BID UNDERRUNS AND OVERRUNS

### a) Bid Underruns and Overruns:

- i. In the event received project bids are less than the estimated amount, the Project Sponsor may submit a request using the online system to utilize the underrun funds for specific purposes;
- ii. In the event received project bids are greater than the estimated amount, the Sponsor may submit a request using the online system to request additional funds for the bid overrun;
- iii. No Projects involving a bid underrun or overrun shall be considered for additional funding or increase in Project scope unless the application was pre-approved by the Council prior to its bid;
- iv. Bid Underruns:
  - a. At a minimum, requests to use Council funds resulting from a bid underrun shall be accompanied by the following:
    1. Detail committed project funding;
    2. Amount of the bid underrun;
    3. Detail of the proposed uses of the bid underrun;
    4. Provide list of construction items and costs, if applicable;
    5. Cost per customer, if applicable;
    6. Customer user rates for 4,000 gallons;
    7. Justification and need for the use of the additional funds;
  - b. The approval authority for the use of excess funds resulting from a bid underrun shall be the Funding Committee;
- v. Bid Overruns:
  - a. At a minimum, requests for additional funds due to a bid overrun shall contain the actual bid tabulations, and must specify the amount of additional funds being requested;
  - b. The approval authority for the procurement of additional funds due to a bid overrun shall be the Full Council;
  - c. The Council shall not fund any bid overrun with more than \$165,000 of Council grant funds, and any bid overrun amounts in excess of \$165,000 to be funded by Council funds shall be in the form of a loan;

*\*Revised (from \$100,000) to \$165,000; approved by Council on July 7, 2021*

## VI. CLOSING OF LOAN AND GRANT PROCEEDS

- a) When seeking to establish a closing date for loan and/or grant proceeds, the Project Sponsor shall submit a request using the online system;
- b) At a minimum, requests for closings shall be accompanied by the following:
  - i. Final, post-bid project budget (Post-Bid Schedule B) signed by Project Sponsor;
  - ii. Final, non-appealable PSC Order approving project scope, funding, and construction;
  - iii. Final title opinion demonstrating 100% of easements and lands have been obtained;
  - iv. Evidence that all necessary permits have been obtained;
  - v. Affidavit of publication of bid advertisement;
  - vi. Copy of bid tabulations, certified by the Project Engineer;
  - vii. Attorney's opinion if lowest bidder was not chosen;
  - viii. Closing resolution;
  - ix. Invoices for initial draw at closing, including expenditure schedule;
  - x. Wiring instructions for funds disbursement;
  - xi. Bond Counsel documents, Resolutions, and Engineer certifications;
  - xii. CPA Certificate;
  - xiii. Evidence of parity consent;
  - xiv. Proposed or requested closing date;
- c) The Executive Director shall be the approving authority for all closings of loan and grant proceeds;

## VII. DISBURSEMENTS OF FUNDS (DRAWS)

- a) When seeking to draw funds available for a project, the Project Sponsor shall submit a request using the online system;
- b) At a minimum, each draw request shall be accompanied by the following:
  - i. A resolution adopted by the Project Sponsor's governing body, clearly indicating the approved fund amounts and their purpose;
  - ii. Supporting invoices, certified by the project engineer and/or contractor as necessary;
- c) The approving authority for all draw requests shall be the Executive Director;
- d) For all approved draws, the Executive Director shall submit correspondence to the Water Development Authority (WDA) indicating approval and requesting that payment be made on behalf of the Council;



## VIII. USE OF CONTINGENCY FUNDS DURING CONSTRUCTION

- a) There are two separate approval procedures:
  - i. Requests that expand the scope of a project and are larger than \$50,000 (Expansion Requests);
  - ii. Requests that do not substantially expand the scope of a project and total less than \$50,000 (Minor Requests).
- b) Subsequent Minor Requests that total over \$50,000 in the aggregate will be treated as Expansion Requests.
- c) Frequent requests are discouraged, and it is the intention of the Infrastructure Council that only one such request should be received from any project, under normal circumstances.
- d) This Policy Statement does not pertain to routine change orders that do not change the scope of a project. These routine change orders shall continue to be reviewed and approved (or rejected) by the Technical Review Committee Chair and/or the Executive Secretary.
- e) In the event of a Minor Request, the Executive Secretary shall be the approving authority. However, if the Technical Review Committee Chair reviews the request for feasibility, need and cost effectiveness and such review is not in agreement with the Executive Secretary's review, then the request is forwarded to the Funding Committee for consideration.
- f) Requests for use of contingency funds must include at a minimum:
  - i. Explanation of request;
  - ii. Justification for request;
  - iii. List of construction items and costs, on proposed change order signed by contractor and engineer, where applicable;
  - iv. Cost / customer, if applicable;
  - v. Copy of latest contractor's estimate for project which shows the percent completion along with engineer's calculation of percent completion for the project;
  - vi. Project Sponsor's certification of dollar amount remaining in contingency;
  - vii. Estimate of any claims that may be made against the project;
- g) Upon receipt of Expansion Requests, the Infrastructure Council will forward the request to the Technical Review Committee Chair for review.
- h) The Technical Review Committee Chair will review the request for feasibility, need and cost effectiveness and make a recommendation to the Funding Committee at its next meeting.
- i) The Funding Committee will review the recommendation and compare the request to other pending projects to determine the best utilization of funds.
- j) The Funding Committee will make the final decision.

## IX. PROJECT CLOSEOUT

- a) The Council, through previous policy decisions, has recognized the need to timely closeout projects once completed in order to free-up unused leftover funds for other projects;
- b) For all separate contracts associated with a project, the Sponsor shall submit to the Council, no later than 30 days following the substantial completion date, a copy of the Certificate of Substantial Completion signed by the Project Engineer;
- c) From the Date of Substantial Completion, the Sponsor shall have 90 days to provide the following items to the Council:
  - i. Certification with last draw on remaining amounts in expenditure schedule related to that contract;
  - ii. Remaining expected expenditures related to that contract;
  - iii. Provide a copy of the final inspection certification and notify the Council of the selected following options if grant and/or loan funds remain:
    1. Use of contingency and/or remaining budget;
    2. Amount to be returned to Council;
    3. Request to reduce number of payments (for loan balances);
    4. Request to pre-fund reserves (for loan balances);
- d) If the information described in IX.c is not received within 90 days of the Date of Substantial Completion, the Council will:
  - i. Reduce any grant amounts in accordance with remaining budget;
  - ii. Remit loan funds to the Municipal Bond Commission required to fully fund any reserve requirements. If the reserve fund is fully funded, the Council will apply the balance to the last maturities and provide a revised debt service schedule showing the amount outstanding and the new maturity date;
  - iii. The Project Sponsor shall draw down any approved contingency funds within 6 months unless it has received the prior written consent of the Council for a longer period.

## ADDITIONAL POLICIES GOVERNING THE USE OF BOND AND GRANT PROCEEDS

### PROJECT COST ESTIMATES:

When requesting either a binding commitment or authorization to bid, the Project Sponsor shall update or re-certify project cost estimates that are submitted to the Council more than 3 months\* prior to the date of such request. Any revised cost estimates shall be certified by the Project Engineer.

Project Sponsors with revised project cost estimates seeking additional Council funds to cover an increase in the revised project cost estimate shall submit a revised application to the Council for additional review and approval. The revised application shall include a detailed justification and re-certification of the revised project cost estimate.

### EXPIRATION OF BINDING COMMITMENTS:

All commitment of funds approved by the Council shall expire 365 days following the date of the Council's commitment letter.

### WRAP LOANS

The Council shall only consider deferral of principal or interest payments as a last resort in any funding scenario, and only when all other options are deemed to be infeasible.

Any wrap loans authorized by the Council shall be limited in the following manner:

- Such wrap loan shall have payments that begin within 12 months following the substantial completion date of the project; and
- If the Sponsor has no outstanding debt maturing within 10 years, then such wrap loan shall have final accelerated payments that begin within 5 years following the substantial completion date of the project;
- If the Sponsor has outstanding debt maturing within 10 years, then the Council may consider commencing the accelerated payments between years 5 and 10 following construction.

### FILING DEADLINE FOR ACTIONS WHICH REQUIRE THE APPROVAL OF A STANDING COMMITTEE OF THE COUNCIL AND/OR THE FULL COUNCIL

All requests which require review and approval at a subsequent meeting of a standing committee of the Council and/or the full Council shall be received at the Council's offices no later than

midnight on the tenth (10th) calendar day of the month to be eligible for placement on the meeting agenda for the next monthly meeting. This includes, but is not limited to, the following submissions:

- Preliminary project applications;
- Budget revisions/requests to use contingency funds;
- Binding commitment requests;
- Requesting for additional funding, i.e., bid overruns; and
- Requests to use leftover funds resulting from bid overruns.
- With respect to the submission of preliminary project applications, the standard review period is from the tenth (10th) day of the month in which such application is submitted to the date of the Funding Committee meeting in the following month.

*\*Revised (from 12 months) to 3 months; approved by Council on April 7, 2021.*