



City of Elkins Municipal Properties Committee Meeting

November 18, 2024

11:00 AM

Phil Gainer Community Center
142 Robert E. Lee Ave. Ext.

Charter Authority of the Municipal Properties Committee: Monitor and report to Council on the condition of and proposed plans for city buildings, real estate, and rights-of-way. Review and propose to Council capital investment in buildings, real estate, and associated infrastructure.

AGENDA

- 1. Call to order and roll call**
- 2. Public comment**
- 3. Minutes**
 - a. Proposed minutes for the meeting of August 26, 2024
- 4. Reports**
- 5. New business**
 - a. Recommendation to proceed with GAI parking study
 - b. Draft Adopt-a-Tree application
- 6. Announcements**
- 7. Adjournment**



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	November 18, 2024
Section:	Minutes
Category:	Action Item
Agenda Item Name:	Proposed minutes for the meeting of August 26, 2024
Recommended By:	City Clerk
Summary:	Minutes proposed for the meeting of August 26
Fiscal Impact:	n/a
Recommendation:	Consider for approval
Attachments:	1. Municipal Properties Committee - 2024_08_26 - minutes_proposed

**MUNICIPAL PROPERTIES COMMITTEE
REGULAR MEETING
MINUTES**

*401 Davis Avenue
City Hall, Council Chambers
August 26, 2024
11 a.m.*

Present were members: N. Bross-Fregonara, D. Parker, C. Kerns.

Also present were: Jerry Marco (mayor), Mike Kesecker (operations manager), Gerry Roberts (city attorney), Tracy Judy (treasurer), Travis Bennett (police chief), J. Deighan (communications), and Sutton Stokes (city clerk).

PUBIC COMMENT

There was no public comment.

MINUTES

Parker **MOVED APPROVAL OF THE MINUTES OF THE MEETING OF JUNE 10, 2024.** The motion carried.

NEW BUSINESS

The operations manager provided an update on the Davis Avenue Bridge project. Comments were submitted to DOH in early August. There has been no response from DOH since.

The committee discussed enforcement of Elkins City Code 91.025 (concerning duty to remove dead trees). No action was taken.

The committee discussed repairs to downtown sidewalks. The operations manager will research the possibility of grinding uneven sidewalks. No action was taken.

Kerns **MOVED RECOMMENDING RETURNING TO \$15/MONTH FEE FOR PARKING SPACE RENTALS.** The motion carried.

The committee discussed a proposal to replace streetlight bulbs with LED bulbs. This would be at no cost to the city, provided that the city agrees to retain the bulbs for at least 10 years. The city attorney will review the agreement. No action was taken.

The meeting adjourned at 12:12 p.m.

Name & Title

Signature



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	November 18, 2024
Section:	New business
Category:	Action Item
Agenda Item Name:	Recommendation to proceed with GAI parking study
Recommended By:	Admin Team
Summary:	GAI Consultants, the company that prepared the Streetscape and Riverfront plans, has submitted a proposal to perform a study of current and future needs related to parking in downtown Elkins.
Fiscal Impact:	The cost of the engagement would be about \$16,000.
Recommendation:	Consider for recommendation to council
Attachments:	<ol style="list-style-type: none"> 1. Elkins_Parking_Study_10_14_24 2. Professional Services Agreement_Elkins Parking Study



Charleston Office
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Charleston, West Virginia 25301

T 304.926.8100
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October 14, 2024
Project R241420.00

Mr. Sutton Stokes
City Clerk, City of Elkins
401 Davis Avenue
Elkins, West Virginia 26241

Elkins Parking Study Scope of Services

Dear Mr. Stokes:

Thank you for selecting us to provide the Elkins Parking Study for The City of Elkins. We are extremely excited to have the opportunity to once again work with you.

Following is a detailed scope of services that GAI is qualified to provide. The services described will be provided mostly by our Charleston office. The following scope is tailored in a manner so that each task will be able to build upon the information gathered in the previous task.

We look forward to also engaging with other stakeholders in the City to gather a clear understanding of the existing parking conditions within the downtown area and develop a plan and recommendations to best accommodate residents and visitors as the City continues to develop.

Scope of Services

Task 1: Discovery

GAI will begin working on the project with the following startup tasks that will serve as the foundation for developing the final Parking Study:

Subtask 1.1 Initial Project Start-Up Meeting

Prior to beginning the parking analysis, the GAI team will conduct a work session with the City of Elkins and other stakeholders as required (Client). This task will involve the following components:

1. A determination of the relevant study area (to be determined with the Client's input). We will document the boundaries within the city to be studied and discuss the anticipated outcomes and goals of the parking evaluation.
2. A discussion of other project-area activities occurring during the study that may affect or influence the results or recommendations of the parking study. Such activities include, but may not be limited to, ongoing construction projects, planned special events, and anticipated development projects.

Subtask 1.2 Background Data Review

A comprehensive effort will be made during the first task to gather and review various documents and supporting materials that are available in order to compile the relevant information and data needed for the study. The documents reviewed as part of this task will include, but not be limited to:

- Past Study Documents for Project Area
- Publicly Available Mapping

- City Provided Mapping
- City Provided Parking Statistics or Data

In addition to the review of existing mapping, studies and resources, we will work with the Client to identify other important data and information necessary to support the study. During this phase of the study, the GAI team will also work with the Client to determine an appropriate meeting schedule to keep the Client and other interested stakeholders updated as the study progresses. We would initially propose a monthly status meeting with the Client.

Subtask 1.3 Field Visit/Verification

GAI will perform a site visit during the first task to document and verify existing conditions and characteristics of the available parking within the study area. Conditions and characteristics of the available parking include, but is not limited to, dimensions, orientation, existing restrictions, ownership, etc. The GAI team will also document and verify other existing components that either affect current parking availability or may have an effect on future recommendations. These may include parking related signage and/or pavement markings, proximity to marked crosswalks or other pedestrian features, and sight distance from existing side street or driveway approaches.

The field visit will be coordinated with the Client to allow for participation and attendance by City personnel or other stakeholders as desired.

Deliverables for Subtasks 1.1, 1.2, and 1.3:

- *Start-up Meeting*
- *Summary of background data*
- *Field Visit Documentation*

Task 2: Parking Analysis

Subtask 2.1 Parking Location and Amount

During the second phase of the study, the GAI team will identify specific information regarding parking location and the amount of available parking. The findings will be presented with both quantifiable summary tables and graphic representations. The existing available parking will be identified using the following categories:

- On-Street Public
- On-Street Restricted (Metered, Accessible, etc.)
- Off-Street Public
- Off-Street Private

Subtask 2.2 Parking Demand

A high-level parking demand analysis will be performed using industry accepted standards to project the necessary available parking to accommodate existing conditions. These projections will then be compared to the currently available parking as identified in previous tasks. The GAI team will also coordinate with The Client to identify other factors that may affect parking demand. Some of these factors may include, but are not limited to, known future development projects within the study area, and known future parking modifications planned by the city or by others.

As part of the parking demand analysis, other factors that may influence recommendations will be taken into consideration and discussed, such as enhancement to public spaces, beautification projects, or expansion of planned festivals and activities within the city. However, it is more difficult to quantify the associated parking demand with these types of items.

Subtask 2.3 Conformance to Standards

In addition to projecting parking demand needs, GAI will also compare existing parking conditions to state and federal standards and determine if compliance with these standards is being met. Some parking features that will be investigated for compliance include:

- Parking Space Dimensions
- Pavement Marking Type and Color
- Relative Signage for Parking Regulations

The GAI team will also investigate compliance with other design standards, such as proximity of parking to pedestrian accommodations, proximity to intersections, and proximity to other roadside features. These conditions will be documented, and any deficiencies will be noted and summarized.

Deliverables for Subtasks 2.1, 2.2, and 2.3:

- *Summary of Parking Location and Amount*
- *Parking Demand Analysis and Projections*
- *Summary of Parking Conformance to Standards*

Task 3: Final Report

A Draft Parking Study Report will be prepared which combines all the findings from the previous tasks into a final summary document. The Draft Report will include the following major elements:

- Executive Summary
- Existing Conditions and Parking Availability
- Parking Demand Analysis
- Conformance to Standards
- Findings and Recommendations

The draft report will be transmitted to The Client for review and comment. The GAI team will then revise the report to address all comments and prepare the final report. The Final Report will be submitted to the Client in both electronic and hard copy format.

In addition to preparing and delivering the final report, GAI is prepared to meet with the Client to present the findings and recommendations of the study to other stakeholders in the proper venue, such as a City Council meeting or a private meeting with select City personnel.

Deliverables for Task 3:

- *Executive Summary printed on high quality paper (10 copies)*
- *Final Parking Study Report and Supporting Documentation (8 hard copies / digital file)*
- *Final power Point presentation to The Client*

Fee and Schedule

Compensation

GAI will perform the services described herein for a lump-sum fee of \$16,500 according to the cost per task below. These costs include labor hours and other expenditures necessary to complete each task. GAI will not exceed this

fee or perform any task or service outside of the scope without prior consent and approval from the Owner. A detailed breakdown of hours is enclosed.

Task 1:	Discovery	\$3,500
Task 2:	Parking Analysis	\$8,500
Task 3:	Final Report	\$4,500
	Total Lump Sum Fee	\$16,500

Schedule

Task 1:	Discovery	11.1.24 – 11.30.24
Task 2:	Parking Analysis	12.01.24 – 01.31.25
Task 3:	Final Report	02.01.25 – 02.28.25

Assumptions and Exclusions

This proposal contains our best evaluation of the tasks required to accomplish the Owner's goals for the project based on the information presently available. GAI will perform its services in accordance with good and accepted professional standards and practices at the time it performs its services. However, unknown variables on the site may have a significant effect on the complexity of the project. We have stated throughout the proposal any assumptions specific to that task. Presented below are items that are specifically excluded from the scope of services and assumptions that could affect the scope and price of the project.

Assumptions

GAI will perform all services hereunder in a reasonably skillful and prudent manner and shall exercise that degree of professional care consistent with that exercised by members of the same profession practicing currently under the same or similar circumstances in the State of West Virginia and all GAI's services hereunder shall be performed as expeditiously as is consistent with such standards.

GAI personnel will be available by phone or in-person for Elkins City Council meetings to give updates if desired.

Any data generated as part of the project will be given to The City of Elkins prior to completion.

In the event unforeseen developments or circumstances arise that are beyond the control of GAI, the project schedule will be reviewed and potentially extended.

The Owner will provide permissions for access by GAI to any private property that may be required for GAI to perform its services.

The Owner will provide GAI with any available relevant data, statistics, or past reports for this project.

GAI may rely on documents, data or other information pertinent to the project received from other sources.

The Owner will review and provide comments and approvals on all interim and final deliverables submitted by GAI in a mutually agreed time frame.

GAI will initiate performance upon receipt of the Owner's authorization and perform in accordance with agreed upon schedule(s). Performance by either party will be excused due to unforeseen events or circumstances beyond the control of either party.

Exclusions

The scope of work **does not include** the following services based on the project requirements. As project needs arise, GAI can prepare a supplement to the contract for these additional services at the request of the Owner at any time during the project.

- Aerial mapping or field surveying.
- Permitting Services
- Environmental site assessments, testing, or permitting.
- Archeological site assessments
- Utility, geotechnical, and structural investigations or assessments.
- Building feasibility assessments.
- Variance and zoning applications.
- Turning Movement Volume Data Collection
- Other services not specifically included in the proposal.

Closing

GAI appreciates the opportunity to provide these services to The City of Elkins, and we look forward to the working together on this project. Please contact James Yost at 681.245.6482 or via email at j.yost@gaiconsultants.com with any questions about this scope document.

Sincerely,
GAI Consultants, Inc.

James Yost, PLA, ASLA
Landscape Architect Manager

Matthew Skiles, PE, PTOE, MSE
Assistant Engineer Director

Enc.: Detailed Hours Breakdown, 2024 Rate Schedule

Project Hours Breakdown

Position Title	Task 1: Discovery	Task 2: Parking Analysis	Task 3: Final Report	Total Hours
Senior Engineering Manager	2	4	2	8
Assistant Engineering Manager	8	24	18	50
Landscape Architect Manager	4	6	4	14
Landscape Designer	8	16	16	40
			<i>Total Project Hours</i>	112

GAI Consultants

Office OH 176.64%
 FCCM 3.989%

2024 Rate Schedule

Classification	Wage Rate	Overhead	FCCM	Profit 10%	Regular Billing Rate
Senior Engineering Manager	\$ 85.00	\$ 150.14	\$ 3.39	\$ 23.51	\$ 262.05
Assistant Engineering Manager	\$ 49.00	\$ 86.55	\$ 1.95	\$ 13.56	\$ 151.06
Landscape Architect Manager	\$ 61.00	\$ 107.75	\$ 2.43	\$ 16.88	\$ 188.06
Landscape Designer	\$ 35.00	\$ 61.82	\$ 1.40	\$ 9.68	\$ 107.90

GAI CONSULTANTS, Inc.
Professional Services Agreement

Project Number: R241420.00

THIS AGREEMENT, made and entered into this 14th day of October, 2024 is by and between GAI Consultants, Inc., its directors, officers and employees located at 500 Lee Street East, Suite 700, Charleston, WV 25301, (hereinafter collectively referred to as "GAI"), and The City of Elkins, WV, located at 401 Davis Avenue, Elkins, WV 26241, (hereinafter referred to as "CLIENT"). This AGREEMENT is subject to and incorporates the provisions of GAI's Proposal dated October 14, 2024, attached hereto. In the event of any conflict between this AGREEMENT and GAI's Proposal, the terms of GAI's Proposal shall govern.

WHEREAS, CLIENT is desirous of engaging GAI to provide certain professional Scope of Services described in GAI's Proposal dated October 14, 2024, and

WHEREAS, GAI is agreeable to performing the professional Scope of Services described under these terms and conditions,

WHEREFORE, the parties hereto do mutually agree as follows:

Article 1. Scope of Services - GAI shall perform the Scope of Services described in GAI's Proposal, incorporated herein by reference, in connection with the following project: Elkins Parking Study.

Article 2. Compensation - GAI agrees to accept and CLIENT agrees to pay the compensation on either a time (hourly) and expense basis in accordance with GAI's rates in effect at the time of performance, or a lump sum basis as set forth in GAI's Proposal.

Article 3. Invoicing/Payment

1. GAI will submit invoices periodically, but not more frequently than every two weeks, for Project Scope of Services performed during the period or upon completion of the Project, whichever is earlier.
2. Invoices are due and payable in U.S. dollars within 30 days from date of invoice. All charges not paid within 30 days are subject to a service charge of 1-1/2 percent per month or a fraction thereof, plus all costs and expenses of collection, including without limitation, attorneys' fees. In addition, should CLIENT fail to pay any invoice within 45 days of the invoice date, GAI may, in its sole discretion, upon 3 days written notice to CLIENT, stop work and recover from CLIENT payment for all Scope of Services performed prior to the work stoppage, plus all amounts for interest, penalties and attorney's fees that may be recoverable under applicable law, including without limitation, prompt payment and/or lien laws. GAI will resume performance once CLIENT pays all outstanding amounts due plus any advance payment(s) or other security in GAI's sole discretion deemed necessary.
3. CLIENT will be invoiced for all internal expenses, such as photocopy and photographic reproductions, postage, mileage, company vehicle rental, subcontracted Scope of Services at direct cost plus a 10% handling and administrative fee, travel and lodging expenses on a per diem rate for all personnel that are required under the Scope of Services to remain away from their normal residence and for the cost of transporting materials, equipment, and/or personnel as required for proper performance of the Project on a mileage basis. If one of GAI's field vehicles is required for the execution of the work, CLIENT will be invoiced for the vehicle on a rental basis or on a mileage basis, depending upon the vehicle.
4. Payments shall include the GAI invoice number and be emailed to AP@gaiconsultants.com as a PDF file.

Article 4. Changes - CLIENT and GAI may make additions to the Scope of Services by written Change Order. CLIENT may omit the Scope of Services previously ordered by written instructions to GAI. The provisions of this AGREEMENT, with appropriate changes in GAI's Compensation and Project Schedule, shall apply to all additions and omissions.

Article 5. CLIENT Responsibilities - CLIENT represents, with the intent that GAI rely thereon, that it has sufficient financial resources to pay GAI as agreed to in this AGREEMENT and, as applicable and necessary for GAI to perform its Scope of Services. CLIENT will:

1. Provide all criteria and full information as to its requirements for GAI's Scope of Services, including design or study objectives, constraints, first (1st) and third (3rd) party certification requirement(s), standards, or budget limitation(s).
2. Assist GAI by providing to GAI all available information pertinent to the Project and/or GAI's Scope of Services including the actual or suspected presence of hazardous waste, materials, or conditions at or beneath the Project site, record ("As-Built") drawings and specifications, surveys, previous reports, exploration logs of adjacent structures and any other data pertinent to GAI's Scope of Services or the Project. Unless otherwise noted, GAI may reasonably rely upon all such information.

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3. Provide all health and safety information and CLIENT requirements that GAI is required to comply with at a Project site including, without limitation, any jobsite hazards that GAI and/or its subcontractor's employees may encounter as well as all Federal, state, and local health and safety regulations or requirements that are applicable at the Project site.
4. Upon identification by GAI and approval by CLIENT of the necessity and scope of information required, furnish GAI with data, reports, surveys, and other materials and information required for this Project, all of which GAI may reasonably rely upon in performing its Scope of Services, except those included in GAI's agreed upon Scope of Services.
5. Guarantee access to the property and make all provisions for GAI to enter upon public and private lands and clear all exploration location(s) for buried utilities/piping/structures as required for GAI to perform its Scope of Services under this AGREEMENT.
6. Examine all studies, reports, sketches, opinions of the construction costs, specifications, drawings, proposals and other documents or Project deliverables presented by GAI to CLIENT and promptly render in writing all decisions pertaining thereto within a period of time mutually agreed upon.
7. Designate in writing a person to act as CLIENT'S representative with respect to the Scope of Services to be rendered under this AGREEMENT. Such person shall have complete authority to transmit instructions, receive information, interpret, and define CLIENT's policies and decisions with respect to materials, equipment, elements, and systems pertinent to GAI's Scope of Services.
8. Give prompt written notice to GAI whenever CLIENT observes or otherwise becomes aware of any development that may adversely affect the scope or timing of GAI'S Scope of Services, GAI's non-compliance with the terms of this AGREEMENT or any non-compliance or defect in the Project or work of Contractor(s).
9. Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others as may be necessary for completion of the Project.
10. Furnish such finance, accounting, audit, legal and/or insurance counseling Scope of Services as CLIENT may require for the Project.

Article 6. Schedule/Delays - GAI shall commence performance upon receipt of the CLIENT's written authorization to proceed and shall perform its professional Scope of Services in accordance with the mutually agreed schedule; provided however, that the performance under this AGREEMENT, other than the CLIENT's obligation to pay GAI's invoices in accordance with the terms of this AGREEMENT, shall be excused in the event performance of this AGREEMENT is prevented or delays are occasioned by factors beyond the delayed party's control, or by factors which could not reasonably have been foreseen at the time this AGREEMENT was prepared and executed including, without limitation, pandemic, epidemic or other related conditions or declarations. The delayed party's performance shall be extended by the period of delay plus a reasonable period to restart operations. Client shall negotiate additional compensation for GAI if any such delays are not due to GAI's fault or negligence.

Article 7. Document Ownership and Reuse

1. All reports, drawings, specifications, manuals, learning and audio-visual materials, boring logs, field data, laboratory test data, calculations, estimates, and other documents (collectively "Work Product") prepared by GAI are instruments of service and shall remain the property of GAI. Unless otherwise notified by CLIENT, GAI will retain all pertinent records relating to the Scope of Services performed for a period of two (2) years following submission of the report, design documents or other Project deliverables, during which period the records will be made available at GAI's office to the CLIENT at reasonable times.
2. Any reuse of the Work Product described above without written verification or adaptation by GAI, as appropriate, for the specific purpose intended, will be at CLIENT's sole risk and without liability or legal exposure to GAI. CLIENT shall defend, indemnify, and hold harmless GAI from all claims, damages, losses, and expenses including attorneys' fees arising out of or resulting therefrom. Any future verification or adaptation of such Work Product will entitle GAI to further compensation at rates to be agreed upon by CLIENT and GAI.
3. Unless specified otherwise in GAI's Proposal, GAI will dispose of all materials and/or samples that it obtains in the investigation portion of the Project within 90 days after completion of the report. Further storage or transfer of samples will be made at CLIENT's expense.
4. CLIENT recognizes that site conditions where samples and data are gathered do vary with time and that particularly subsurface conditions may differ from those encountered at the time and location where explorations

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or investigations are made and, therefore, the data, interpretations, and recommendations of GAI are based solely on the information available at the time of the investigation. GAI shall not be responsible for the interpretation by others of the information it develops or for any additional information that may become available subsequently.

Article 8. Standard of Performance - GAI will perform its Scope of Services with that level of care and skill ordinarily exercised by other professionals practicing in the same discipline(s), under similar circumstances and at the time and place where the Scope of Services are performed, and makes no warranty, express or implied, including the implied by law warranties of MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

Article 9. Insurance

1. GAI shall procure and maintain such insurance as is required by law as of the date first written above and during the performance of the AGREEMENT, and subject to the terms and conditions of the policies keep in force the following insurance:
 - A. Worker's Compensation Insurance with Other States' endorsement, including Employer's Liability Insurance for its employees in the amount of \$500,000;
 - B. Comprehensive General Liability Insurance, including Contractor's Protective and Completed Operations, covering bodily injuries with limits of \$2,000,000 per occurrence and aggregate, and property damage with limits of \$2,000,000 per occurrence and aggregate;
 - C. Comprehensive Automobile Liability Insurance, including operation of owned, non-owned and hired automobiles, with combined single limits for bodily injury and property damage of \$1,000,000 per occurrence; and
 - D. Contractor's Pollution Liability Insurance with limits of \$1,000,000 per claim.
2. If CLIENT requires additional types or amounts of insurance coverage, GAI, if specifically directed by CLIENT, will purchase additional insurance (if procurable) at CLIENT's expense; but GAI shall not be responsible for property damage from any cause, including fire and explosion, beyond the amounts and coverage of GAI's insurance specified above.
3. CLIENT will require that any Contractor(s) performing work in connection with GAI's Scope of Services will name GAI as an additional insured on their insurance policies. In addition, in any hold-harmless agreements between CLIENT or Owner and any contractor who may perform work in connection with any professional Scope of Services rendered by GAI, CLIENT will require such contractor(s) to defend and indemnify GAI against third party suits.
4. It is agreed that GAI shall have no responsibility: 1) To supervise, manage, direct, or control CLIENT or its Contractors', subcontractors' or their employees; 2) For any of CLIENT's or its Contractors, subcontractors or agents or any of their employees' safety practices, policies, or compliance with applicable federal, state and/or local safety and health laws, rules or regulations; 3) For the adequacy of its Contractor's or vendor's means, methods, techniques, sequencing or procedures of performing their Scope of Services or work; or 4) For defects in its Contractor's or vendor's work.

Article 10. Indemnity - Subject to the Limitation(s) of Liability provision(s) below in Articles 11 and 12, GAI agrees to indemnify and hold harmless CLIENT, and its officers, directors, and employees from and against any and all claims, suits, liability, damages, injunctive or equitable relief, expenses including reasonable attorneys' fees, or other loss (collectively "Losses") to the extent proximately caused by GAI's negligent performance of Scope of Services.

Article 11. Limitation of Liability - In the event of any loss, damage, claim or expense actually incurred by CLIENT resulting from GAI's performance or non-performance of the professional Scope of Services authorized under this AGREEMENT, GAI's liability whether based on any legal theory of contract, tort including negligence, strict liability or otherwise under this AGREEMENT for professional acts, errors, or omissions shall be limited to the extent any such claims, damages, losses or expenses that result from the negligent acts, errors or omissions of GAI or its employees and that occur during GAI's performance under this AGREEMENT. The total, cumulative liability of GAI arising out of professional acts, errors, or omissions shall not exceed the greater of \$50,000 or two times the total compensation GAI receives from CLIENT under this AGREEMENT. GAI's aggregate liability for all other acts, errors, or omissions shall be limited to the coverage and amounts of insurance specified in Article 9, above. The limitations stated above shall not apply to the extent any damages are proximately caused by the willful misconduct of GAI and its employees.

Article 12. Disclaimer of Consequential Damages - Notwithstanding anything to the contrary in this AGREEMENT, neither party shall have any liability to the other party for indirect, consequential, or special damages including, but not limited to, liability or damages for delays of any nature, loss of anticipated revenues or profits, costs of shutdown or startup whether such damages are based on contract, tort including negligence, strict liability or otherwise.

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Article 13. Probable Construction Cost Estimates - Where applicable, statements concerning probable construction cost and detailed cost estimates prepared by GAI represent its judgment as a professional familiar with the construction industry. CLIENT recognizes that neither GAI nor CLIENT has any control over the cost of labor, materials, or equipment, over the contractors' methods of determining bid prices, or over competitive bidding or market conditions. Accordingly, GAI cannot and does not guarantee that bids, proposals, or actual costs will not vary from any statement of probable construction cost or other cost estimate prepared by it.

Article 14. Confidentiality/Non-Disclosure - GAI shall not disclose or permit disclosure of any information developed in connection with its performance under this AGREEMENT or received from CLIENT or the Project Owner, or their affiliates, subcontractors, or agents designated by CLIENT as confidential, except to GAI's employees and subcontractors who need such information in order to properly execute the Scope of Services of this AGREEMENT. GAI shall take reasonable steps to require any such of its employees and subcontractors and their employees not to disclose or permit disclosure of any of such information, without the prior written consent of CLIENT. The foregoing shall not prohibit GAI from disclosing information in response to any federal, state, or local government directive or judicial order, but in the event GAI receives or is threatened with such an order or has actual knowledge that such an order may be sought or be forthcoming, GAI shall immediately notify CLIENT and assist CLIENT in CLIENT's undertaking such lawful measures as it may desire to resist the issuance, enforcement, and effect of such an order. GAI's obligation to resist such an order and assist CLIENT and the Project Owner is contingent upon GAI receiving further compensation for such assistance, including without limitation, a reasonable attorney's fee, in assisting CLIENT.

Article 15. Certifications - GAI shall not be required to execute any certification with regard to the Scope of Services performed, tested, and/or observed under this AGREEMENT unless:

1. GAI concludes that it will be performing or has performed, tested and/or observed sufficient work under the Scope of Services to provide a sufficient basis for it to issue the certification; and
2. GAI has reviewed and approved the form of certification being required by or on behalf of CLIENT prior to executing this AGREEMENT and believes that the work performed, tested, or observed under the Scope of Services meets the certification criteria.

Any certification by GAI shall be interpreted and construed as an expression of professional opinion based upon the Scope of Services performed by GAI, and does not constitute a warranty or guaranty, either expressed or implied.

Article 16. Miscellaneous Terms of Agreement

1. This AGREEMENT shall be subject to, interpreted, and enforced according to the laws of the state of the GAI office location first written above without giving effect to its conflict of law principles. If any part of this AGREEMENT shall be held illegal, unenforceable, void, or voidable by any court of competent jurisdiction, each of the remainder of the provisions shall nevertheless remain in full force and effect and shall in no way be affected, impaired, or invalidated.
2. Neither the CLIENT nor GAI may delegate, assign, sublet, or transfer their duties or interest as described in this AGREEMENT and GAI's Proposal without the written consent of the other party. Both parties relinquish the power to assign and any attempted assignment by either party or by operation of law shall be null and void.
3. This AGREEMENT shall be binding upon the parties hereto, their heirs, executors, administrators, successors, and assignees. In the event that a dispute should arise relating to the performance of the Scope of Services to be provided under this AGREEMENT and GAI's Proposal, and should that dispute result in litigation, it is agreed that each party shall bear its own litigation expenses, including staff time, court costs, attorneys' fees, and other claim-related expenses.
4. CLIENT shall not assert any claim or suit against GAI after expiration of a Limitation Period, defined as the shorter of (a) three (3) years from substantial completion of the particular GAI service(s) out of which the claim, damage or suit arose, or (b) the time period of any statute of limitation or repose provided by law. In the event of any claim, suit, or dispute between CLIENT and GAI, CLIENT agrees to only pursue recovery from GAI and will not to seek recovery from, pursue or file any claim or suit, whether based on contract, tort including negligence, strict liability or otherwise against any director, officer, or employee of GAI.
5. Either the CLIENT or GAI may terminate or suspend performance of this AGREEMENT without cause upon thirty (30) days written notice delivered or mailed to the other party.
 - A. In the event of material breach of this AGREEMENT, the party not breaching the AGREEMENT may terminate it upon ten (10) days written notice delivered or mailed to the other party, which termination notice shall state

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Professional Services Agreement

- the basis for the termination. The AGREEMENT shall not be terminated for cause if the breaching party cures or commences reasonable steps to cure the breach within the ten-day period.
- B. In the event of the termination, other than caused by a material breach of this AGREEMENT by GAI, CLIENT shall pay GAI for the Scope of Services performed prior to the termination notice date, and for any necessary Scope of Services and expenses incurred in connection with termination of the project, including but not limited to, the costs of completing analysis, records and reports necessary to document job status at the time of termination and costs associated with termination or subcontractor and/or sub-consultant contracts. Such compensation shall be based upon the schedule of fees used by GAI.
 - C. In the event CLIENT delays providing written authorization to proceed within 45 days of the date of GAI's Proposal or suspends GAI's performance for 45 days or more after authorization has been given, GAI reserves the right, in its sole discretion, to revise its cost, compensation and/or hourly rates to its then current rates prior to resuming performance under this AGREEMENT.
- 6. All notices required to be sent hereunder shall be either hand delivered, with signed receipt of such hand delivery, or sent by certified mail, return receipt requested.
 - 7. The paragraph headings in this AGREEMENT are for convenience of reference only and shall not be deemed to alter or affect the provisions hereof.
 - 8. Unless expressly stated to the contrary, the professional Scope of Services to be provided by GAI do not include meetings and consultations in anticipation of litigation or arbitration or attendance as an expert witness in any deposition, hearing, or arbitration. If requested, these Scope of Services will be provided by an amendment to this AGREEMENT, setting forth the terms and rates of compensation to be received by GAI.
 - 9. Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than CLIENT, the Project Owner and GAI.
 - 10. No modification or changes in the terms of this AGREEMENT may be made except by written instrument signed by the parties.
 - 11. GAI is an Equal Opportunity Employer. GAI complies with the Office of Federal Contract Compliance Programs Affirmative Action Programs as outlined in 41 CFR 60-1.4(a)(b), 41 CFR 60-250.5(a)(b), and 41 CFR 60-741.5(a)(b).

IN WITNESS WHEREOF, GAI AND CLIENT have executed this AGREEMENT as of the date first above written.

CLIENT NAME (ALL CAPS)

By _____
 Printed Name _____
 Title _____

GAI CONSULTANTS, INC.

By _____
 Printed Name Shaun M. Long
 Title Engineering Director / Assistant Vice President

Attachments:

- Scope of Services Proposal
- Indirect Cost Evaluation Memo

END OF AGREEMENT



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	November 18, 2024
Section:	New business
Category:	Action Item
Agenda Item Name:	Draft Adopt-a-Tree application
Recommended By:	Tree Board
Summary:	Agenda item is for review of the draft agreement for the Adopt-A-Tree program, for trees to be planted in the city right-of-way between sidewalks and streets.
Fiscal Impact:	TBD
Recommendation:	Consider for next steps and recommendations
Attachments:	1. Elkins Grow Greener Adopt - draft



ELKINS GROW GREENER ADOPT-A-TREE APPLICATION

Only completed forms will be accepted. For more information visit cityofelkinswv.com/city-government/boards-commissions/tree-board/.

Name: _____

Address: _____

City/State/Zip: _____

TREE ADOPTION AGREEMENTS

Tree Care Pledge

I agree to select a tree and location that are space compatible and appropriate for any utility lines conflicts. I agree to care for this tree and water it for at least two years. I understand an Elkins Tree Board City representative may confirm the type of tree appropriate for the location and make a site visit to my property to verify compliance with program requirements.

Affidavit of ownership and hold harmless permission to plant tree

The undersigned being duly sworn and upon oath states as follows:

1. I am the current Owner (whether singular or plural) of the property know as _____
(address).
2. All statements contained in this application have been prepared by me or my agents and are true and correct to the best of my knowledge.
3. The affidavit is being submitted with my knowledge and consent.
4. Owner agrees to hold the City harmless for any loss or damage to persons or property occurring as a result of planting a tree in the city's right of way.

Print

Name: _____

Owner

Signature: _____

Phone

: _____

Email: _____

Date: _____

Location where tree will be planted:

- Public Right of Way. This is the area usually between the curb and the sidewalk.
- Front yard close to street
- Property Owned by Applicant (required)

Address where the tree will be planted (if different from above):

Tree selection preference options are determined by planting location and availability. The ETB will attempt to provide residents with preferred tree but cannot guarantee.

Small (up to 15-20 ft. in height, and suitable where utility lines are present, 2' wide tree berm)

- Redbud Serviceberry
- Flowering Dogwood

Medium (30-35 ft. in height, no utility lines present, 4' wide tree berm)

- Red maple Washington Hawthorn

Large (40 ft. plus in height, no utility lines present, 8' wide tree berm)

- Ginkgo Sugar Maple

Program Requirements

- Applicants must reside within the city limits of Elkins.
- One tree per household, per year.
- Priority will be given to residents who are replacing a street tree on their property.
- Applicant must sign the Tree Adoption Agreements.
- Once an application is approved, the resident will be notified of when the pick-up date will be at the Elkins Tree Nursery.

Email Completed Applications to: mcuonzo@gmail.com **OR Mail/Drop off completed applications to:** City of Elkins Tree Board, 401 Davis Ave., Elkins, WV 26241.

EIGHT THINGS YOU SHOULD KNOW WHEN PLANTING A TREE

1. **Call before you dig**— Several days before planting, call the WV 811 hotline or go online: wv811.com/homeowners/ to have underground utilities located.
2. Make sure street signage will be clearly visible. Street signage includes regulatory, warning, transit, and other City installed signs.
3. Handle with care— Always lift tree by the root ball. Keep roots moist until planting.
4. Digging a proper hole— Dig 2-5 times wider than the diameter of the root ball with sloping sides to allow for proper root growth.
5. Planting depth— The trunk flare should sit slightly above ground level, and the top-most roots should be buried 1-2 inches.
6. Filling the hole— Backfill with native soil unless it's all clay. Tamp in soil gently to fill large air spaces.
7. Mulch— Allow 1-2 inch clearance between the trunk and the mulch. Mulch should be 2-3 inches deep.
8. Trees are living, growing things and require ongoing care to thrive. The ETB provides resources on tree planting and care for young trees.