



City of Elkins

Regular Council Meeting

April 20, 2023
7:00 PM
401 Davis Avenue
Council Chamber, 2nd Floor

AGENDA

1. Public Hearing

- a. *An Ordinance to Amend and Reenact the Rates, Rules, and Regulations for Furnishing Sewer Service at Elkins and Vicinity, Randolph County, West Virginia, by Increasing the Rates Charged Therefor*

2. Invocation and Pledge of Allegiance

3. Call to order and roll call

4. Public comment

5. Minutes

- a. Minutes of the regular meeting of April 6, 2023.
- b. Minutes of the special meeting of April 18, 2023.

6. Correspondence and Notifications

- a. Approved minutes of committees, boards, and commissions
- b. Approved building permits.

7. Presentation

- a. Preservation Alliance of West Virginia.

8. Committee Reports

9. Staff reports

- a. Treasurer's report

10. Approval of vendor invoice payments

(Available for public review in the city clerk's office two business days before this meeting, as required by W. Va. Ethics Commission Open Meetings Advisory Opinion 2012-04.)

Vendor invoices presented for approval:

- 1. Vendor invoices for the period April 3-April 14, 2023.

11. New business

- a. *Ordinance 312*: An ordinance to amend and reenact the rates, rules and regulations for furnishing sewer service at Elkins and vicinity, Randolph County, West Virginia by increasing the rates charged therefor (final reading).
- b. *Resolution 1645*: Ratification of Industrial Access Road program agreement between West Virginia Division of Highways, Randolph County Development

Authority, and City of Elkins for road work related to the RCDA's industrial park expansion.

- c. *Ordinance 313*: Ordinance abandoning section of Riverbend Road to W. Va. DOH (first of two readings)
- d. *Ordinance 314*: Amending City Code Chapter 52: Sewers and Sewage (first of two readings)
- e. *Resolution 1644*: Authorizing Conditions of Agreement between Avertium and the City of Elkins for an IT Assessment
- f. *Resolution 1646*: Compensation increase for police chief.
- g. *Resolution 1647*: EFD Fund Budget Revision (#2 for FY 23)
- h. *Resolution 1648*: Establishing compensation rates for city election officials
- i. *Resolution 1649*: Appointing election officials for the 2023 city election.
- j. *Resolution 1650*: Absorbing increases in PEIA medical insurance costs for FY 2024.

12. Mayor's comments

13. Adjournment

Proposed Minutes

ELKINS COMMON COUNCIL REGULAR COUNCIL MEETING MINUTES

***401 Davis Avenue
Council Chamber, 2nd Floor
April 6, 2023
7:00 p.m.***

Elkins Common Council met in regular session in the council chamber of city hall. Present were Mayor Jerry A. Marco; Councilpersons N.E. Bross-Fregonara, R.C. Chenoweth, M. D. Cuonzo, C.R. Griggs, J.A. Guye, G.M. Hinchman, C.C. Lowther, D.C. Parker, L.S. Severino, and L.H. Vest; City Treasurer T. Judy; Fire Chief S.D. Himes; Police Chief T. Bennett; Operations Manager M. Kesecker; City Attorney G. S. Roberts; and City Clerk S.R. Stokes.

MINUTES

Cm. Chenoweth, **MOVED APPROVAL OF THE MINUTES OF THE MEETING OF MARCH 16, 2023.**
The motion carried.

CORRESPONDENCE AND NOTIFICATIONS

Council received the following correspondence and notifications:

- a. Approved minutes of committees, boards, and commissions
- b. Event Request: One Hope

APPROVAL OF VENDOR INVOICE PAYMENTS

Cm. Hinchman **MOVED APPROVAL OF THE INVOICES PRESENTED.** The motion carried.

The invoices in question were as specified on the following list, which is attached and made part of this record:

- Accounts Payable check transactions for the period March 13-31, 2023.

NEW BUSINESS

Cm. Hinchman **MOVED APPROVAL OF RESOLUTION 1630: REAPPOINTING CAROL BUSH TO THE ELKINS WATER BOARD.** The motion carried.

Cm. Hinchman **MOVED APPROVAL OF RESOLUTION 1631: AUTHORIZING THE MAYOR TO SIGN A CONTRACT WITH REGION VII PLANNING AND DEVELOPMENT COUNCIL FOR GIS SERVICES.**
The motion carried.

Proposed Minutes

Cm. Hinchman MOVED APPROVAL OF RESOLUTION 1632: APPROVING THE USE OF ARPA FUNDS FOR AN IT ASSESSMENT AND RELATED IT NEEDS, WEBSITE REDESIGN AND GO-LIVE SERVICES, AND THE PURCHASE OF GIS EQUIPMENT FOR THE WATER BOARD AND THE SANITARY BOARD. The motion carried.

Cm. Hinchman MOVED THAT THE CITY CLERK BE AUTHORIZED TO SIGN AN ABCA ENDORSEMENT LETTER FOR A NATIONAL SPELEOLOGICAL SOCIETY EVENT ON THE CAMPUS OF DAVIS & ELKINS COLLEGE. The motion carried.

Cm. Hinchman MOVED APPROVAL OF ORDINANCE 312: AN ORDINANCE TO AMEND AND REENACT THE RATES, RULES, AND REGULATIONS FOR FURNISHING SEWER SERVICE AT ELKINS AND VICINITY, RANDOLPH COUNTY, WEST VIRGINIA BY INCREASING THE RATES CHARGED THEREFOR (FIRST OF TWO READINGS). The motion carried.

Cm. Lowther MOVED APPROVAL OF RESOLUTION 1633: AUTHORIZING CONDITIONS OF LEASE & ADDENDUM AND MAINTENANCE AGREEMENT BETWEEN HART OFFICE SOLUTIONS AND THE CITY OF ELKINS (BUILDING OFFICIALS OFFICE). The motion carried.

MAYOR'S COMMENTS

Cm. Hinchman MOVED ADJOURNMENT. The motion carried.

The meeting adjourned at 7:55 p.m.

*Approved by council at the meeting
of MONTH DAY, YEAR*

Jerry A. Marco, Mayor

Attest:

Sutton Stokes, City Clerk

Proposed Minutes

**ELKINS COMMON COUNCIL
SPECIAL COUNCIL MEETING
MINUTES**

***401 Davis Avenue
Council Chamber, 2nd Floor
April 18, 2023
7:00 p.m.***

Elkins Common Council met in special session in the council chamber of city hall. Present were Mayor Jerry A. Marco; Councilpersons N.E. Bross-Fregonara, R.C. Chenoweth, M. D. Cuonzo, C.R. Griggs, J.A. Guye, G.M. Hinchman, C.C. Lowther, D.C. Parker, and L.S. Severino; City Treasurer T. Judy; Fire Chief S.D. Himes; Police Chief T. Bennett; Operations Manager M. Kesecker; City Attorney G. S. Roberts; and City Clerk S.R. Stokes.

Cw. L.H. Vest was absent.

NEW BUSINESS

Cm. Chenoweth **MOVED THAT COUNCIL LAY THE LEVY FOR FISCAL YEAR 2024.** The motion carried.

The city clerk presented council with a list of proposed officials for the June 13, 2023 municipal election for review.

Cm. Hinchman **MOVED ADJOURNMENT.** The motion carried.

The meeting adjourned at 7:05 p.m.

***Approved by council at the meeting
of MONTH DAY, YEAR***

Jerry A. Marco, Mayor

Attest:

Sutton Stokes, City Clerk



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 20, 2023
Section:	Correspondence and Notifications
Category:	Presentation
Agenda Item Name:	Approved minutes of committees, boards, and commissions
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. PlanningCommission_2023_04_09- minutes- approved 2. ETB_MeetingMinutes_03072023_signed

PLANNING COMMISSION REGULAR MEETING MINUTES

*401 Davis Avenue
City Hall, Council Chambers
March 9, 2023
3:30 p.m.*

Present were Commission Members: Jerry Marco, Phillips Kolsun, Kate Somers, Nanci Bross-Fregonara, Burley Woods, Vance Jackson.

Also present were: Gerry Roberts (city attorney) and Sutton Stokes (city clerk).

MINUTES

Kolsun **MOVED APPROVAL OF THE MINUTES OF THE FEBRUARY 9, 2023 MEETING.** The motion carried.

NEW BUSINESS

Roberts distributed "Draft Comprehensive Plan Amendment Adoption Schedule" based on goal completion date of December 1, 2024. Under this schedule, the first legally mandated adoption step would be due August 20, 2024.

No action was taken on the timeline or on the planning of public forums.

Somers **MOVED ADJOURNMENT.** The motion carried.

The meeting adjourned at 4:45 p.m.

The foregoing minutes were approved at the meeting of Apr. 13, 2023.

Phillips Kolsun, Vice Chair
Name & Title

Phillips Kolsun
Signature

ELKINS TREE BOARD

MEETING MINUTES

Darden House, 421 Davis Ave. Elkins WV 26241

March 7, 2023 • 5:30 p.m.

Present: Aira Burkhardt, Chair; Angela Daniels, Secretary; Linda Burke, Vice Chair; Linda Silva, Treasurer; and members Marilyn Cuonzo, Nanci Bross-Fregonara, and Iris Allen. Also in attendance, Danny Helmick AFNHA member. Sam Golston was absent.

PUBLIC COMMENT

No public comment.

MINUTES

BROSS-FREGONARA MOVED APPROVAL OF THE MINUTES OF THE FEBRUARY 7, 2023, MEETING. MOTION CARRIED.

BUDGET REPORT

Silva reported the current ETB budget balance is: \$1541.47. This is the balance after the \$1450.00 Scarlet Oaks order.

BROSS-FREGONARA MOTIONED TO APPROVE THE COMBINATION. MOTION CARRIED.

While we were discussing budget, Bross-Fregonara advised that the Kump House would like for us to purchase around 15 tree tags for the trees around the property. They plan to participate in an event on June 24th for Wild and Wonderful Woods. Bross-Fregonara expects the cost to be around \$300. **CUONZO MOTIONED TO MOVE FORWARD WITH ORDERING THE 15 TREE TAGS. MOTION CARRIED.**

It was also discussed that a load of mulch should be purchased for use at the Kump House. **CUONZO MOTIONED TO ORDER A LOAD OF MULCH. MOTION CARRIED.**

UNFINISHED/OLD BUSINESS:

- (a) 2023 City Demonstration Grant Update-Planting day is 3/15/2023. David Mitchell will be doing downtown planting and planting the Scarlet Oaks beside of the bike trail near the overlook.
- (b) Tree Arrival and Planting from Musser Forest Nursery- Cuonzo asked that when trees arrive, that we get them potted right away. The plan is to do this on Saturday March 18th after the Fruit Tree Pruning and Grafting Workshop at the Kump House.
- (c) Arbor Day Plans (4/28/2023) - The Dogwood Tree will be planted in Pollinator Alley in Glendale Park. It will be dedicated in Sue Pifer's husband's memory. We will also be replacing another tree that has died at Glendale while there that day.
- (d) Pruning Workshops- 3/11 at 11:00 in Glendale Park, Sam Adams will go over best practices for tree pruning such as when and how. He will also discuss the importance of pruning. 3/18/2023 at 2:30 at the Kump Education Center, David Proudfoot will be doing a fruit tree pruning and grafting workshop.

NEW BUSINESS:

- (a) Glendale Park Updates- Owen Peet will be working on trunks that include interactive activities that will be great for groups/classes or Scout Groups. Tom Tesar is interested in getting more tree ID signs. Benches are not completed yet for outdoor classroom pods. Slabs from a White Oak have been cut out for use, they are just not put together yet. Tom Tesar is going to contact Youth Build and see if they could possibly work on the benches.

- (b) Possible AARP Community Challenge Grant- Bross-Fregonara advised that too much is needed to be done before the deadline in March, but we will consider it next year. Most communities have been able to get 2-3 music instrument sculptures and they include interpretative signs with them. Whatever we submit grant for next year will have to be completed by 2/20/24.
- (c) Darden Gardens and City Hall Clean up- scheduled for May 6, 2023, beginning at 10 a.m. until finished.

ANNOUNCEMENTS

Burke announced that she thinks we should do an ornament for the National Christmas Tree.

Bross-Fregonara announced that we won the Growth Award again for the 4th year in a row now.

BROSS-FREGONARA MOTIONED THAT WE GET 10 MORE PINS WITH OUR TREE BOARD LOGO MADE FROM THE WOOD TECH CENTER. MOTION CARRIED.

Cuonzo announced that David Mitchell will be replacing Hawthornes in City Park on the 15th as well with the other planting he is doing that day.

River Burches will be planted along the fence line at the Kump House.

Cuonzo announced that our goal this Spring will be to get some of our bigger trees out of the nursery. Sycamores and Oaks specifically. We will check which ones need to come out of the nursery on 3/18/2023 after the pruning workshop.

Cuonzo passed out How To Grow a Great Tree Board Handout for us to read and discuss at the next meeting.

Cuonzo advised that she will continue to be our Project Coordinator and Burke advised that she will be our link and communicator with Friends of Trees.

The next regular meeting of the Tree Board is set for **April 4, 2023 at 5:30 p.m.** The meeting was adjourned at 6:43 p.m.

The foregoing minutes were approved at the meeting of April 13, 2023.

LINDA BURKE Vice Chair

Name & Title

Linda M Burke

Signature



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 20, 2023
Section:	Correspondence and Notifications
Category:	Presentation
Agenda Item Name:	Approved building permits.
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. approved building permits - 2023_04_20

Permits Issued

PERMIT	APPLICANT	LOCATION	DESCRIPTION	Value
230059	Davis & Elkins College	100 Campus Dr	New Residence Hall	14,500,000.00
230060	Bradshaw, Kelly	619 Yokum St	12' X 12' Deck	1,500.00
230061	Thomas, Taylor	107 Eleventh St	Drywall & Insulation	4,650.00
230062	Elza, Mike	2000 Livingston Ave	Pole Barn	10,000.00
230063	Knutti, John	108 Edgewater Dr	Stand-By Generator	2,000.00
230064	Kenny, Wilson	209 Ferndale Dr	Stand-By Generator	10,168.00
230065	Summerfield Asset Mgmt	1614 Taylor Ave.	Ext Door & Electric Service	2,000.00
230066	Holland Investment Group	6 Lincoln Ave	Electric Service Upgrade	1,000.00
230067	Mullen, Tom	343 & 345 Blaine Ave	Replace Roof Shingles	6,000.00
230068	Rosencrance, Barbara	222 Randolph Ave	Replace Roof Shingles	5,000.00
230069	Gallagher, Cristin	137 Guy St	Kitchen Remodel	10,000.00
230070	Nelling, Raymond	204 Bridgewater Dr	Frame & Screen in Back Porch	4,200.00
230071	Holland Investment Group LLC	326 S Randolph Ave	Upgrade Electric Wiring & Service And Plumbing	13,000.00
230072	Hospice Care Corp.	169 Diamond St	Install 2 Sump Pumps & Basement Gutter	41,382.00
230073	Coberly, Linda	624 Yokum St	Run Underground Electric Circuit	3,249.00

General Fund Revenue Detail

	March Revenues	YTD Revenues	Percent of Revenues Collected Per Budget	Percent of Yr. Completed 75.00
Unassigned Fund Balance				270,054.00
County Tax	\$147,372.87	\$940,779.70	85.96%	1,094,407.00
B & O Tax	\$10,910.49	\$1,269,607.50	97.29%	1,305,000.00
Hotel/Motel Tax	\$12,149.04	\$171,088.63	106.86%	160,100.00
Gas & Oil Severance Tax	\$0.00	\$40,323.89	336.03%	12,000.00
2% City Utility Tax	\$7,006.47	\$55,132.64	82.29%	67,000.00
Utility Excise Tax	\$31,348.07	\$225,514.29	77.76%	290,000.00
Liquor Tax	\$0.00	\$67,351.48	70.90%	95,000.00
Police	\$2,594.84	\$21,323.14	92.31%	23,100.00
Municipal Court	\$7,958.66	\$66,685.83	139.51%	47,800.00
Code Enforcement	\$2,732.37	\$21,588.61	70.32%	30,700.00
Business License	\$480.00	\$11,310.00	39.00%	29,000.00
Intergovernmental	\$25,186.11	\$274,217.18	85.56%	320,503.00
Franchise/IRP Fees	\$3,711.88	\$94,156.47	70.27%	134,000.00
Phil Gainer Community Center	\$6,445.00	\$47,781.25	159.27%	30,000.00
Misc. Revenue	\$8,388.50	\$218,932.99	303.82%	72,060.00
Municipal Sales Tax	\$0.00	\$1,113,805.97	79.56%	1,400,000.00
TOTAL	\$266,284.30	\$4,639,599.57	86.23%	5,380,724.00

BUDGET CONTROL REPORT

Revenues	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Revenues Over Expenses	Total
	\$789,524.48	\$344,994.76	\$557,718.83	\$1,160,897.12	\$213,049.39	\$124,782.01	\$964,739.13	\$217,609.55	\$266,284.30				\$653,248.33	\$4,639,599.57
Expenses	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun		
	\$539,656.21	\$505,777.32	\$424,092.94	\$455,332.03	\$385,837.37	\$516,766.02	\$383,827.02	\$418,877.12	\$356,185.21					\$3,986,351.24

Bank Account Name	Balance as of 3/31/2023
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ARPA	\$1,195,983.42
Elkins Building Comm. Sinking Fund	\$0.00
Elkins Municipal Building Comm.	\$0.00
Financial Stabilization	\$1,334,705.43
Fire Pension Fund	\$2,359,754.59
Firemen's Pension & Relief Fund	\$0.00
Landfill Access Escrow	\$1,786,227.47
Landfill Post Closure	\$48,675.42
Payroll	\$333.62
Police Forfeitures	\$12,124.36
Police Pension Fund	\$4,092,598.17
Police Seizures	\$24,461.10
Policemen's Pension & Relief Fund	\$0.00
Pooled Cash-Coal Severance Fund	\$156,313.21
Pooled Cash-Fire Fund	\$561,671.65
Pooled Cash-General Fund	\$1,312,320.04
Pooled Cash-Landfill Fund	\$122,538.09
Pooled Cash-Parks Fund	\$967,123.76
Pooled Cash-Sanitation Fund	\$1,238,410.62
Pooled Cash-Sewer Fund	\$359,197.27
Pooled Cash-Water Fund	\$141,222.03
Sewer Depreciation	\$240,748.79
Sewer O&M	\$300,371.44
Sewer Project-Phase II	\$49.26
Water Depreciation	\$97,972.15
Water O&M	\$278,461.62

VENDOR SET: 01 Elkins

BANK: * ALL BANKS

DATE RANGE: 4/03/2023 THRU 4/14/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
02437	Maple Grove LLC							
C-CHECK	Maple Grove LLC	VOIDED V	4/12/2023			013285		150.00CR

* * T O T A L S * *

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	0	0.00	0.00	0.00
HAND CHECKS:	0	0.00	0.00	0.00
DRAFTS:	0	0.00	0.00	0.00
EFT:	0	0.00	0.00	0.00
NON CHECKS:	0	0.00	0.00	0.00
VOID CHECKS:	1 VOID DEBITS	0.00		
	VOID CREDITS	150.00CR	150.00CR	0.00

TOTAL ERRORS: 0

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
VENDOR SET: 01 BANK: TOTALS:	1	150.00CR	0.00	0.00
BANK: TOTALS:	1	150.00CR	0.00	0.00

4/14/2023 8:20 AM

A/P HISTORY CHECK REPORT

PAGE:

2

VENDOR SET: 01 Elkins

BANK: ARPA America Rescue Plan Act

DATE RANGE: 4/03/2023 THRU 4/14/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00874	Municipal Emergency Services I							
I-IN1850820	back suspenders	R	4/04/2023	362.72		000092		362.72
00438	Master Service Corporation							
I-Application#1	cont serv emerg. generator	R	4/11/2023	13,050.00		000093		
I-Application#2	cont serv emerg generator	R	4/11/2023	12,690.00		000093		25,740.00

* * T O T A L S * *	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	2	26,102.72	0.00	26,102.72
HAND CHECKS:	0	0.00	0.00	0.00
DRAFTS:	0	0.00	0.00	0.00
EFT:	0	0.00	0.00	0.00
NON CHECKS:	0	0.00	0.00	0.00
VOID CHECKS:	0 VOID DEBITS	0.00		
	VOID CREDITS	0.00	0.00	0.00

TOTAL ERRORS: 0

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
VENDOR SET: 01 BANK: ARPA TOTALS:	2	26,102.72	0.00	26,102.72
BANK: ARPA TOTALS:	2	26,102.72	0.00	26,102.72

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 4/03/2023 THRU 4/14/2023

VENDOR I.D.	NAME	STATUS	CHECK	INVOICE	DISCOUNT	CHECK	CHECK	CHECK
			DATE			NO	STATUS	AMOUNT
00741	Great-West Trust Company LLC							
I-VF 202304031501	Voya	D	4/03/2023	318.00		004581		
I-VF2202304031501	Voya AT	D	4/03/2023	50.00		004581		368.00
00952	WV Consolidated Retirement Boa							
C-CR RT6 072022	Credit-RT6 07/2022	D	4/04/2023	31.40CR		004582		
D-DB RT6 070222	Debit-RT6 072022	D	4/04/2023	31.40		004582		
00116	Child Support Enforcement							
I-CDS202304031501	Child Support	R	4/03/2023	571.48		013204		571.48
00121	Citizens Bank of WVFP							
I-FP 202304031501	Fire Pension	R	4/03/2023	493.68		013205		493.68
00122	Citizens Bank of WVPp							
I-PP 202304031501	Police Pension	R	4/03/2023	146.26		013206		
I-PPN202304031501	Police Pension-2010 Forward	R	4/03/2023	420.05		013206		566.31
00147	COE Misc							
I-MIS202304031501	Misc Reimbursements	R	4/03/2023	521.00		013207		521.00
00150	COE Payroll							
I-T1 202304031501	Federal Withholding	R	4/03/2023	11,334.63		013208		11,334.63
00151	COE Payroll							
I-T3 202304031501	FICA	R	4/03/2023	13,150.76		013209		
I-T4 202304031501	Medicare	R	4/03/2023	4,409.50		013209		17,560.26
00152	COE Payroll							
I-T2 202304031501	State Withholding	R	4/03/2023	4,915.00		013210		4,915.00
00203	Davis Trust Company							
I-CC 202304031501	Employee Christmas Club	R	4/03/2023	2,510.00		013211		2,510.00
00747	Washington National Insurance							
I-WN 202304031501	Washington National Insurance	R	4/03/2023	438.31		013212		438.31
00837	COE Payroll Reimbursement							
I-001202304031501	Payroll Reimbursement	R	4/03/2023	46,171.98		013213		
I-006202304031501	Payroll Reimbursement	R	4/03/2023	5,045.01		013213		
I-036202304031501	Payroll Reimbursement	R	4/03/2023	16,526.37		013213		
I-400202304031501	Payroll Reimbursement	R	4/03/2023	19,233.66		013213		
I-401202304031501	Payroll Reimbursement	R	4/03/2023	14,217.10		013213		
I-404202304031501	Payroll Reimbursement	R	4/03/2023	10,781.30		013213		111,975.42

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 4/03/2023 THRU 4/14/2023

VENDOR I.D.	NAME	STATUS	CHECK	INVOICE	DISCOUNT	CHECK	CHECK	CHECK
			DATE	AMOUNT		NO	STATUS	AMOUNT
01885	Colonial Life							
I-CL 202304031501	Colonial Life-AT	R	4/03/2023	112.10		013214		
I-CLP202304031501	Colonial Life-PT	R	4/03/2023	52.52		013214		164.62
00525	Otis Elevator Co.							
I-NBK16068001	reinstall repaired drive	R	4/04/2023	15,807.23		013215		15,807.23
00030	The Art Medium Company							
I-032423	signs for recycling	R	4/04/2023	250.00		013216		250.00
00032	Absolute Assurance Drug Test L							
I-08052777B	Testing - New Emp RStanley	R	4/04/2023	39.00		013217		39.00
00054	Ronald Belt, Jr.							
I-TRVL 041023	Travel Per Diem -041023-401323	R	4/04/2023	500.50		013218		500.50
00143	COE General Fund 2							
I-IND 04/2023	Monthly Indirects 04/2023	R	4/04/2023	24,270.24		013219		24,270.24
00149	COE Parks and Recreation							
I-04/2023 Support	Monthly Support 04/2023	R	4/04/2023	25,483.00		013220		25,483.00
00211	Elkins Depot Welcome Center							
I-ckrequest4323	February hotel tax	R	4/04/2023	6,074.52		013221		6,074.52
00235	Elkins Building Comm.							
I-04/2023 Pmt	Monthly Payment 04/2023	R	4/04/2023	3,483.79		013222		3,483.79
00381	Grover C Jackson Jr							
I-RENT 04/2023	Rent 04/2023	R	4/04/2023	1,800.00		013223		1,800.00
00426	Liggett's Supply							
I-10707240	nipples, cam lock, unions	R	4/04/2023	92.08		013224		92.08
00479	Amtower Auto Supply, Inc.							
I-186667	clamp/oil filter/oil	R	4/04/2023	84.97		013225		84.97
00483	Mountain Valley Bank							
I-1202553-22 040723	1202553-22 040723 Int	R	4/04/2023	198.43		013226		198.43
00565	Quill Corporation							
I-31116684	#10 envelopes	R	4/04/2023	47.99		013227		47.99

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 4/03/2023 THRU 4/14/2023

VENDOR I.D.	NAME	STATUS	CHECK	INVOICE	DISCOUNT	CHECK	CHECK	CHECK
			DATE			NO	STATUS	AMOUNT
00671	Sutton Stokes							
I-23-01	Meeting Attendance/training	R	4/04/2023	1,039.50		013228		1,039.50
00688	Terra Flora Landscaping							
I-0015	Parking Lot work	R	4/04/2023	2,816.64		013229		2,816.64
00701	Toshiba Financial Services							
I-496727256	M5255/E4515AC	R	4/04/2023	532.99		013230		
I-497080499	C4150/E3005AC 0312-041223	R	4/04/2023	221.37		013230		
I-497257444	E4515AC 0315-041523	R	4/04/2023	125.59		013230		
I-497403550	Lexmark 3250	R	4/04/2023	69.00		013230		948.95
00707	Trickett Hardware, Inc.							
I-3179 030923	3 keys	R	4/04/2023	7.50		013231		
I-3207 031623	radar bolts	R	4/04/2023	2.04		013231		9.54
00900	National Road Utility Supply,							
I-335030	6 CPLG 1/2pjctsx1/2pjcts	R	4/04/2023	195.60		013232		
I-335082	cpings/valve box/cplng tee/npl	R	4/04/2023	12,956.28		013232		13,151.88
01331	TimeClock Plus							
I-00257327	Clockable Employee License	R	4/04/2023	20.00		013233		20.00
01445	Linda Silva							
I-CKREQ 032923	Reimb-tree protectors	R	4/04/2023	108.01		013234		108.01
01594	Pace Analytical Services LLC							
I-106/652/747/950	Analytical Services	R	4/04/2023	1,194.95		013235		
I-2330420942	lab analysis Jan 2023-Feb 2023	R	4/04/2023	1,964.50		013235		3,159.45
02309	Twin A Equipment Repair LLC							
I-493-494	work on Loader/Intl Dump Tk	R	4/04/2023	1,541.51		013236		1,541.51
02347	LEAF							
I-14492987	Tosh E4515AC 041123	R	4/04/2023	317.44		013237		
I-14523358	Toshiba E478S	R	4/04/2023	96.74		013237		
I-14523359	Toshiba E478S 003 041823	R	4/04/2023	96.74		013237		510.92
02431	Ferguson Waterworks #527							
I-806129 807237	Meter supplies	R	4/04/2023	1,927.00		013238		1,927.00
02434	Angela Harper							
I-RFND Maxwell	Bond Refund C Maxwell	R	4/04/2023	504.00		013239		504.00

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 4/03/2023 THRU 4/14/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
02435	Nathan Taylor							
I-Bondrefund4323	Case 23CR141-Victim Dropped	R	4/04/2023	302.00		013240		302.00
01704	Dustin George							
I-Travel 041123	Per Diem 041123-041323	R	4/10/2023	404.00		013241		404.00
02439	Dylan Coffman							
I-Travel 041123	Per Diem 041123-041323	R	4/10/2023	404.00		013242		404.00
1	WILLIAMSON, DAVID &							
I-000202303311496	US REFUND	R	4/11/2023	3.17		013243		3.17
1	SKIDMORE, MARY JANE							
I-000202303311497	US REFUND	R	4/11/2023	214.09		013244		214.09
1	TACY, MATTHEW							
I-000202303311498	US REFUND	R	4/11/2023	366.95		013245		366.95
1	CARPENTER, PATRICK							
I-000202304031499	US REFUND	R	4/11/2023	125.00		013246		125.00
1	RECKART, ROBERT & LI							
I-000202304031500	US REFUND	R	4/11/2023	27.50		013247		27.50
00034	ATCO International							
I-I0611210	Paper Towels/Hand Sanitizer	R	4/12/2023	677.85		013248		677.85
00047	Truist Governmental Finance							
I-00005 042423	9948000234-05 042423	R	4/12/2023	2,596.05		013249		
I-00006 042723	9948000234-06 042723	R	4/12/2023	2,643.26		013249		
I-00007 041923	9948000234-07 04/19/23	R	4/12/2023	4,984.55		013249		10,223.86
00075	Encova Insurance							
I-36515659	03/02/23-04/02/23	R	4/12/2023	5,981.00		013250		5,981.00
00154	COE Sanitation							
I-202304034071	Hauling/Tipping Fee 12401	R	4/12/2023	285.76		013251		285.76
00156	COE Sewer Depreciation Account							
I-SWR Depr 03/23	Swr Depr 03/2023	R	4/12/2023	5,484.08		013252		5,484.08
00169	Assured Partners of West Virgi							
I-20551	Lost Inst Bond 040423	R	4/12/2023	100.00		013253		100.00

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

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VENDOR I.D.	NAME	STATUS	CHECK	INVOICE	DISCOUNT	CHECK	CHECK	CHECK
			DATE			NO	STATUS	AMOUNT
00202	Davis Trust Company							
I-12755 042223	3113776-12755 042223	R	4/12/2023	4,256.84		013254		4,256.84
00479	Amtower Auto Supply, Inc.							
I-187468 187117	HightImpactTorque/Pliers/Wrnch	R	4/12/2023	590.48		013255		590.48
00484	Mountaineer Gas Company							
I-Natl Gas 032923	Natural Gas 032923	R	4/12/2023	10,796.28		013256		10,796.28
00498	Naylor's Ace Hardware							
I-456744	Tools	R	4/12/2023	353.75		013257		
I-456775	Mowing parts/oil/filter/blades	R	4/12/2023	162.41		013257		516.16
00540	Pitney Bowes Bank Inc							
I-Pstg Alloc 03/2023	Postage Allocation 03/2023	R	4/12/2023	1,557.35		013258		1,557.35
00565	Quill Corporation							
I-31728004	supplies	R	4/12/2023	228.49		013259		228.49
00644	Smith Backhoe & Dozer Service,							
I-104445	Fork Lift at Park	R	4/12/2023	382.50		013260		382.50
00711	Tygart Valley Transfer, Inc.							
I-00012113	Comm	R	4/12/2023	97.31		013261		
I-00012137	Comm	R	4/12/2023	197.22		013261		
I-00012140	Comm	R	4/12/2023	20.00		013261		
I-00012148	Comm	R	4/12/2023	284.10		013261		
I-00012155	Res	R	4/12/2023	471.76		013261		
I-00012156	Res	R	4/12/2023	416.16		013261		
I-00012158	Comm	R	4/12/2023	402.25		013261		
I-00012176	Comm	R	4/12/2023	112.08		013261		
I-00012182	Comm	R	4/12/2023	312.77		013261		
I-00012205	Comm	R	4/12/2023	497.82		013261		
I-00012207	Res	R	4/12/2023	532.57		013261		
I-00012208	Res	R	4/12/2023	658.55		013261		
I-00012231	Comm	R	4/12/2023	309.29		013261		
I-00012235	Comm	R	4/12/2023	517.80		013261		
I-00012251	Res	R	4/12/2023	541.26		013261		
I-00012252	Res	R	4/12/2023	575.15		013261		
I-00012254	Comm	R	4/12/2023	483.05		013261		
I-00012265	Comm	R	4/12/2023	135.53		013261		
I-00012272	Res	R	4/12/2023	116.42		013261		
I-00012274	Comm	R	4/12/2023	390.09		013261		
I-00012282	Res	R	4/12/2023	557.77		013261		
I-00012283	Res	R	4/12/2023	465.68		013261		
I-00012285	Comm	R	4/12/2023	789.74		013261		
I-00012298	Comm	R	4/12/2023	114.68		013261		
I-00012303	Comm	R	4/12/2023	251.95		013261		

VENDOR SET: 01 Elkins

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VENDOR I.D.	NAME	STATUS	CHECK	INVOICE	DISCOUNT	CHECK	CHECK	CHECK
			DATE	AMOUNT		NO	STATUS	AMOUNT
I-00012310	Comm	R	4/12/2023	210.25		013261		
I-00012326	Res	R	4/12/2023	737.61		013261		
I-00012327	Res	R	4/12/2023	851.42		013261		
I-00012330	Comm	R	4/12/2023	889.65		013261		
I-00012360	Res	R	4/12/2023	44.31		013261		
I-00012362	Comm	R	4/12/2023	194.61		013261		
I-00012371	Residential	R	4/12/2023	59.08		013261		
I-00012375	Comm	R	4/12/2023	201.56		013261		
I-00012384	Res	R	4/12/2023	540.39		013261		
I-00012385	Res	R	4/12/2023	481.32		013261		
I-00012386	Comm	R	4/12/2023	440.48		013261		
I-00012401	Comm	R	4/12/2023	104.26		013261		
I-00012403	Comm	R	4/12/2023	251.95		013261		
I-00012405	Comm	R	4/12/2023	432.66		013261		
I-00012410	Comm	R	4/12/2023	119.89		013261		
I-00012419	Res	R	4/12/2023	611.64		013261		
I-00012420	Res	R	4/12/2023	473.50		013261		
I-00012421	Comm	R	4/12/2023	454.38		013261		
I-00012468	Res	R	4/12/2023	500.43		013261		
I-00012472	Res	R	4/12/2023	547.34		013261		
I-00012473	Comm	R	4/12/2023	549.95		013261		
I-00012485	Comm	R	4/12/2023	254.56		013261		
I-00012496	Comm	R	4/12/2023	119.03		013261		
I-00012513	Comm	R	4/12/2023	658.55		013261		
I-00012515	Res	R	4/12/2023	386.62		013261		
I-00012516	Res	R	4/12/2023	559.51		013261		
I-11584	residential waste	R	4/12/2023	39.96		013261		
I-11586	commercial waste	R	4/12/2023	227.63		013261		
I-11593	commercial waste	R	4/12/2023	588.18		013261		
I-11607	residential waste	R	4/12/2023	552.56		013261		
I-11611	residential waste	R	4/12/2023	548.21		013261		
I-11613	commercial waste	R	4/12/2023	633.36		013261		
I-11652	commercial waste	R	4/12/2023	569.93		013261		
I-11657	residential waste	R	4/12/2023	583.83		013261		
I-11658	residential waste	R	4/12/2023	583.83		013261		
I-11659	commercial waste	R	4/12/2023	608.16		013261		
I-11677	commercial waste	R	4/12/2023	224.15		013261		
I-11682	commercial waste	R	4/12/2023	539.52		013261		
I-11696	commercial waste	R	4/12/2023	271.07		013261		
I-11702	commercial waste	R	4/12/2023	770.63		013261		
I-11706	residential waste	R	4/12/2023	449.17		013261		
I-11707	residential waste	R	4/12/2023	584.70		013261		
I-11722	commercial waste	R	4/12/2023	245.00		013261		
I-11729	commercial waste	R	4/12/2023	443.96		013261		
I-11737	commercial waste	R	4/12/2023	140.75		013261		
I-11744	commercial waste	R	4/12/2023	708.07		013261		
I-11747	residential waste	R	4/12/2023	825.36		013261		
I-11750	residential waste	R	4/12/2023	743.69		013261		

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VENDOR I.D.	NAME	STATUS	CHECK	INVOICE	DISCOUNT	CHECK	CHECK	CHECK
			DATE			NO	STATUS	AMOUNT
I-11783	commercial waste	R	4/12/2023	167.68		013261		
I-11801	residential waste	R	4/12/2023	509.12		013261		
I-11802	commercial waste	R	4/12/2023	444.83		013261		
I-11803	residential waste	R	4/12/2023	486.53		013261		
I-11826	residential waste	R	4/12/2023	135.53		013261		
I-11831	commercial waste	R	4/12/2023	134.66		013261		
I-11833	commercial waste	R	4/12/2023	419.63		013261		
I-11838	commercial waste	R	4/12/2023	224.15		013261		
I-11850	residential waste	R	4/12/2023	543.00		013261		
I-11851	residential waste	R	4/12/2023	591.65		013261		
I-11865	commercial waste	R	4/12/2023	218.07		013261		
I-11887	commercial waste	R	4/12/2023	370.11		013261		
I-11893	residential waste	R	4/12/2023	570.80		013261		
I-11895	residential waste	R	4/12/2023	456.99		013261		
I-11896	residential waste	R	4/12/2023	476.10		013261		
I-11928	commercial waste	R	4/12/2023	225.02		013261		
I-11931	commercial waste	R	4/12/2023	662.03		013261		
I-11935	residential waste	R	4/12/2023	614.24		013261		
I-11936	residential waste	R	4/12/2023	357.95		013261		
I-11941	commercial waste	R	4/12/2023	222.41		013261		
I-11944	commercial waste	R	4/12/2023	160.73		013261		
I-11953	commercial waste	R	4/12/2023	708.94		013261		
I-11954	residential waste	R	4/12/2023	788.00		013261		
I-11957	residential waste	R	4/12/2023	610.77		013261		
I-11979	residential waste	R	4/12/2023	421.37		013261		
I-11980	commercial waste	R	4/12/2023	429.19		013261		
I-11981	residential waste	R	4/12/2023	406.60		013261		
I-11990	commercial waste	R	4/12/2023	139.88		013261		
I-11999	residential waste	R	4/12/2023	334.49		013261		
I-12000	commercial waste	R	4/12/2023	226.76		013261		
I-12001	residential waste	R	4/12/2023	476.97		013261		
I-12012	commercial waste	R	4/12/2023	338.83		013261		
I-12024	residential waste	R	4/12/2023	513.46		013261		
I-12025	residential waste	R	4/12/2023	457.86		013261		
I-12026	commercial waste	R	4/12/2023	203.30		013261		
I-12028	commercial waste	R	4/12/2023	450.91		013261		
I-12040	commercial waste	R	4/12/2023	175.50		013261		
I-12046	commercial waste	R	4/12/2023	168.55		013261		
I-12052	commercial waste	R	4/12/2023	518.67		013261		
I-12064	commercial waste	R	4/12/2023	600.34		013261		
I-12067	residential waste	R	4/12/2023	502.17		013261		
I-12068	residential waste	R	4/12/2023	515.20		013261		
I-12091	residential waste	R	4/12/2023	115.55		013261		
I-12112	commercial waste	R	4/12/2023	526.49		013261		
I-12117	residential waste	R	4/12/2023	564.72		013261		
I-12118	residential waste	R	4/12/2023	753.25		013261		49,746.67

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VENDOR I.D.	NAME	STATUS	CHECK	INVOICE	CHECK NO	CHECK	CHECK
			DATE	AMOUNT		STATUS	AMOUNT
00786	WV Bureau for Public Health						
I-Hymes W CL IV	Whitney Hymes CL IV renewal	R	4/12/2023	200.00	013262		200.00
00786	WV Bureau for Public Health						
I-Johnson J CLII	Joseph Johnson CLII renewal	R	4/12/2023	150.00	013263		150.00
00786	WV Bureau for Public Health						
I-Mallow W CL I	William Mallow Jr CL I renewal	R	4/12/2023	125.00	013264		125.00
00812	WV Regional Jail and Correctio						
I-3123B49F	43 days inmate housing TVRJ	R	4/12/2023	2,076.75	013265		2,076.75
00815	WV State Auditor						
I-21011	CPA-A-133 Audit	R	4/12/2023	1,200.00	013266		1,200.00
00858	Capital Doors, Inc.						
I-58140	Garage Door Repair	R	4/12/2023	1,268.16	013267		1,268.16
00868	Sewer Equipment						
I-207775	nozzles	R	4/12/2023	638.96	013268		638.96
00992	McNeil & Company						
I-48095130	Comm Pkg MEPK08670407	R	4/12/2023	2,671.00	013269		
I-48100130	IM Renewal 05/01/2023	R	4/12/2023	1,098.75	013269		
I-48105130	Umbrella Renewal 05/01/2023	R	4/12/2023	437.50	013269		
I-7713202 CANAM	Add 2023 Canam Defender UTV	R	4/12/2023	436.00	013269		4,643.25
01245	Business First IT						
I-29700821	Yearly office/remote licenses	R	4/12/2023	9,361.00	013270		9,361.00
01292	COE Sewer O & M Account						
I-SWR OM 03/2023	Sewer O/M 03/2023	R	4/12/2023	13,153.88	013271		13,153.88
01390	Phoenix Solutions, LLC						
I-4755	Chemicals	R	4/12/2023	2,283.96	013272		
I-4984	Chemicals	R	4/12/2023	8,655.66	013272		
I-5004	Chemicals	R	4/12/2023	3,666.75	013272		14,606.37
01445	Linda Silva						
I-Reimb 041023	Reimb 4 bags potting soil	R	4/12/2023	63.80	013273		63.80
01563	BHM CPA Group, Inc						
I-032723	06/20/22 Single Audit Rpt	R	4/12/2023	15,000.00	013274		15,000.00

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VENDOR I.D.	NAME	STATUS	CHECK	INVOICE	DISCOUNT	CHECK	CHECK	CHECK
			DATE			NO	STATUS	AMOUNT
01571	The State Journal							
I-173434 032723	12 mo subscription	R	4/12/2023	60.00		013275		60.00
01681	Hdl Companies							
I-03312023	March collections	R	4/12/2023	255.07		013276		255.07
01727	Enterprise FM Trust							
I-FBN4711021	Fleet Leases 04/2023	R	4/12/2023	16,791.37		013277		16,791.37
01790	Crim Law Office PLLC							
I-338 02/2023	Attny Services 02/2023	R	4/12/2023	7,470.00		013278		7,470.00
01816	Lacal Equipment Inc							
I-0383713	BroomWeldmnt/FiberGd/Shaft	R	4/12/2023	1,710.76		013279		1,710.76
01836	Bob Evans							
I-675588	Toilet repairs Riverbend	R	4/12/2023	100.00		013280		100.00
01942	Elkins Municipal Building Comm							
I-1214756-11 041523	1214756-11 041523	R	4/12/2023	4,833.20		013281		4,833.20
01989	Mitchell Tree Care LLC							
I-1565	Install Red Oaks bike trail	R	4/12/2023	1,450.00		013282		
I-1566	Pruned/Planted trees	R	4/12/2023	13,400.00		013282		14,850.00
02157	Jerry A Marco							
I-Travel 0325-032923	Meeting w/Leg Washington DC	R	4/12/2023	584.27		013283		
I-Travel Fairmont	Travel-Cyber Security Lunch	R	4/12/2023	96.36		013283		680.63
02326	MFOA of WV							
I-Semi-Ann May 2023	Registration Fee-T Judy	R	4/12/2023	150.00		013284		150.00
02437	Maple Grove LLC							
I-040523	50 Red Spruce Plugs	V	4/12/2023	150.00		013285		150.00
02437	Maple Grove LLC							
M-CHECK	Maple Grove LLC	VOIDED	V	4/12/2023		013285		150.00CR
02438	Willard K. Fincham							
I-CKREQ 040523	Reimbursement door damage	R	4/12/2023	220.42		013286		220.42
02443	USDA APHIS WS							
I-2372549138RA	Canada Geese Control	R	4/12/2023	4,000.00		013287		4,000.00

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VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
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* * T O T A L S * *

NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
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REGULAR CHECKS:	83	461,352.51	0.00	461,202.51
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HAND CHECKS:	0	0.00	0.00	0.00
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DRAFTS:	2	368.00	0.00	368.00
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EFT:	0	0.00	0.00	0.00
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NON CHECKS:	0	0.00	0.00	0.00
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VOID CHECKS:	0 VOID DEBITS	0.00		
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VOID CREDITS	150.00CR	150.00CR	0.00	
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TOTAL ERRORS: 0

NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
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VENDOR SET: 01 BANK: Pool TOTALS:	85	461,570.51	0.00	461,570.51
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BANK: Pool TOTALS:	85	461,570.51	0.00	461,570.51
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VENDOR SET: 01 Elkins

BANK: SEWDP Sewer Depreciation

DATE RANGE: 4/03/2023 THRU 4/14/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00629	Service Pump & Supply							
I-CI-22388	1-Turbine Pump	R	4/04/2023	16,413.00		000039		
I-CI-22505	1-Turbine Pump	R	4/04/2023	4,974.90		000039		21,387.90

* * T O T A L S * *

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	1	21,387.90	0.00	21,387.90
HAND CHECKS:	0	0.00	0.00	0.00
DRAFTS:	0	0.00	0.00	0.00
EFT:	0	0.00	0.00	0.00
NON CHECKS:	0	0.00	0.00	0.00
VOID CHECKS:	0 VOID DEBITS	0.00		
	VOID CREDITS	0.00	0.00	0.00

TOTAL ERRORS: 0

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
VENDOR SET: 01 BANK: SEWDP TOTALS:	1	21,387.90	0.00	21,387.90
BANK: SEWDP TOTALS:	1	21,387.90	0.00	21,387.90
REPORT TOTALS:	88	509,061.13	0.00	509,061.13



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 20, 2023
Section:	New business
Category:	Ordinance
Agenda Item Name:	<i>Ordinance 312:</i> An ordinance to amend and reenact the rates, rules and regulations for furnishing sewer service at Elkins and vicinity, Randolph County, West Virginia by increasing the rates charged therefor (final reading).
Recommended By:	Sanitary Board
Summary:	The Sanitary Board, which manages the Elkins sewer system, has recommended raising rates charged to customers in two steps during 2023. This recommendation will be considered by the Elkins Common Council, which is responsible for setting sewer rates, at the meetings of April 6 and April 20. Once approved, a first increase, of around 17.5 percent for most customers, would be reflected on bills mailed July 31. A second increase, of around 15 percent for most customers, would be reflected on bills mailed January 31, 2024. After both increases, accounts using the average residential amount of water (3,400 gallons per month) would see an increase of \$13.16 per month, or about 44 cents a day. More information: https://cityofelkinswv.com/city-government/projects-initiatives/2023-sewer-rate-increase/ Utilities counsel Bob Rodecker and utilities accountant Michael Griffith will attend tonight's meeting to offer remarks on the necessity of this increase.
Fiscal Impact:	See above and attachments.
Recommendation:	Approve this ordinance on final reading.
Attachments:	1. 04-05-2023 Finalized Ordinance 312 - 2 Step Increase (01821013xA377B) 2. 04-05-2023 Finalized Timeline Sewer Rate Ordinance 312 (2 Step Increase) (01821019xA377B) 3. COE - Sewer increase - 2023 - rate comparison_v2

ORDINANCE NUMBER 312

AN ORDINANCE TO AMEND AND REENACT THE RATES, RULES AND REGULATIONS FOR FURNISHING SEWER SERVICE AT ELKINS AND VICINITY, RANDOLPH COUNTY, WEST VIRGINIA BY INCREASING THE RATES CHARGED THEREFOR

WHEREAS, Chapter 24, Article 2, Section 4b of the *West Virginia Code*, effective July 1, 1981, as amended, gives to municipally operated public utilities the approval authority to set their own rates and charges; and,

WHEREAS, the City of Elkins' current rates and charges for sewer service were adopted on November 21, 2019, and were placed into effect on January 5, 2020; and,

WHEREAS, the 2015 Legislature amended Chapter 24 of the *West Virginia Code* to require all municipalities to maintain a cash working capital reserve; and,

WHEREAS, the Public Service Commission of West Virginia, in 2021 issued a General Order which revised the method of calculation of the cash working capital reserve fund which requires adjustment of the frequency of the funding of such cash working capital reserve fund requiring the City to increase its rates; and

WHEREAS, the City Sanitary Board is experiencing difficulty in meeting its current obligations; and

WHEREAS, in order to provide revenues sufficient to pay the expenses of current and future operations, to provide working capital reserves and to provide sufficient funding for its ongoing debt service obligations, the Common Council of the City of Elkins deems it necessary to increase the rates and charges for the furnishing of sewer services in two phases.

THEREFORE, THE COMMON COUNCIL OF THE CITY OF ELKINS, WEST VIRGINIA HEREBY ORDAINS:

SECTION ONE – RATES, RULES AND REGULATIONS

The following rates, fees and charges for sewer service provided by it to customers throughout its territory served, are hereby fixed and determined as rates, fees and charges to be charged in lieu of those rates, fees and charges contained in its sewer tariff, P.S.C. W. Va. No. 13, currently on file with the Public Service Commission of West Virginia.

STEP 1 RATES
[TO BECOME EFFECTIVE 45 DAYS FOLLOWING PASSAGE]

SCHEDULE NO. 1

APPLICABILITY

Applicable within the entire territory served

AVAILABILITY OF SERVICE

Available for residential, commercial and industrial sewer service.

RATES

First	1,500 gallons used per month	\$13.74 per 1,000 gallons
Next	248,500 gallons used per month	\$12.43 per 1,000 gallons
Over	250,000 gallons used per month	\$ 4.96 per 1,000 gallons

MINIMUM CHARGE (Customers with metered water supply)

No minimum bill will be rendered for less than \$20.61 per month
(Equivalent of 1,500 gallons of water usage)

DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

MONTHLY OR BI-MONTHLY PAYMENT BILLINGS

The above rates and charges may be adjusted to a monthly or bi-monthly basis, providing no lower charges.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of \$25.00 will be imposed on any customer whose check for payment of charges is returned by the bank due to insufficient funds.

TAP FEE

The charge for an approved service connection to the sewer system will be seven hundred fifty dollars (\$750.00) or the actual cost of connection (solely determined by the Sewer Board), whichever is greater, for all new taps to the system.

LEAK ADJUSTMENT

\$1.00 per 1,000 gallons of water is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical usage.

SECURITY DEPOSIT

Not to exceed two-twelfths (2/12) of the average annual usage of the applicant's specific customer class, or fifty dollars, whichever is greater. This fee may be changed by applicable statutory provisions.

SCHEDULE NO. 2**APPLICABILITY**

Applicable within the Teaberry Hills Subdivision

AVAILABILITY OF SERVICE

Available for general domestic service in un-metered housing projects or subdivisions.

FLAT RATE CHARGE (Customers with non-metered water supply)

General Domestic customers with non-metered water supply: \$57.90 per month
(Equivalent to 4,500 gallons of water usage)

DELAYED PAYMENT PENALTY

The above tariff is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of \$25.00 will be imposed on any customer whose check for payment of charges is returned by the bank due to insufficient funds.

TAP FEE

The charge for an approved service connection to the sewer system will be seven hundred fifty dollars (\$750.00) or the actual cost of connection (solely determined by the Sewer Board), whichever is greater, for all new taps to the system.

LEAK ADJUSTMENT

\$1.00 per 1,000 gallons of water is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical usage.

SCHEDULE NO. 3**APPLICABILITY**

Applicable within and without the corporate limits of the City of Elkins

AVAILABILITY OF SERVICE

Available to Midland Public Service District

METERED RATES (Based on metered water sold)

\$4.11 per M gallons

SCHEDULE NO. 4

APPLICABILITY

Applicable within and without the corporate limits of the City of Elkins

AVAILABILITY OF SERVICE

Available to Leadsville Public Service District

METERED RATES (Based on metered water sold)

\$4.16 per M gallons

SCHEDULE NO. 5

APPLICABILITY

Applicable within and without the corporate limits of the City of Elkins

AVAILABILITY

Applicable where sewer customer obtains water wholly or partly from a source other than the Municipal Water Works of the City of Elkins

Sewer user shall make application in writing, showing type of waste to be delivered to the sanitary sewer system of the City of Elkins, and shall not deliver said waste until written permission has been given by the Sanitary Board of the City of Elkins. Sewer user shall provide, at the end of each calendar quarter, to the Sanitary Board of the City of Elkins, an officially signed notification showing the approximate quantity in gallons of waste delivered to the sanitary sewer system of the City of Elkins. Upon receipt of such notification, billing shall be made, applying the rates in Schedule No. 1.

SCHEDULE NO. 6

**SURCHARGE FORMULA TO BE APPLIED IN
THE CASE OF USERS PRODUCING UNUSUAL WASTE**

The charge for the treatment of unusual waste will be calculated on the basis of the following formula:

$$Ci = VoVi + BoBi + SoSi$$

Ci = charge to unusual users per year

Vo	=	average unit cost of transport and treatment chargeable to volume, in dollars per gallon
Vi	=	volume of wastewater from unusual users, in gallons per year
Bo	=	average unit cost of treatment, chargeable to Biochemical Oxygen Demand (BOD) in dollars per pound
Bi	=	weight of BOD from unusual users, in pounds per year
So	=	average unit cost of treatment (including sludge treatment) chargeable to total solids in dollars per pound
Si	=	weight of total solids from unusual users in pounds per year

When an unusual user is to be served, a preliminary study of its wastes, and the cost of transport and treatment thereof, will be made. Waste containing materials which, in the judgment of the City of Elkins Sanitary Board, should not be introduced into the sewer system need not be handled by it. The results of this preliminary study will be used to determine the feasibility of the proposed sewer service and the charge therefore, based upon the formula set out above.

Thereafter, unusual sewage will be monitored on a regular basis and at the conclusion of each fiscal year, based on the investigation aforesaid and audit of the City of Elkins Sanitary Board records, new cost figures will be calculated for use in the above formula. The cost of establishing the monitoring facilities shall be paid by the unusual user. Based on these audited figures, additional billings covering the past fiscal year will be made for payment by each unusual user, or refund given by the City of Elkins Sanitary Board, as the case may be. Such audited figures will then be used for the preliminary billing for the next fiscal year, at the end of which an adjustment will be made as aforesaid.

Where the amount of sanitary sewage discharged into the City of Elkin's wastewater collection and/or transmission system by certain industrial plants cannot be accurately determined by the use of the plant's water meter or meters, and said plant cannot install a flow meter to measure such waste, a special formula will be used whereby such plant will pay to the City of Elkins Sanitary Board a sewer charge calculated at fifty (50) gallons of water per each employee at the plant each working day.

SCHEDULE NO. 7

SURFACE OR GROUND WATER SURCHARGE

An additional amount shall be charged where surface or ground water is introduced into the sanitary system where evidence of a violation exists. Surcharge formula to be applied in cases where surface drainage is connected to the utility's sewer system.

APPLICABILITY

Wherever the utility has discovered that a customer's roof drain, downspout, storm sewer or other similar facilities conducting surface water have been connected to the utility's sewer system, and such customer has failed to take appropriate action, within thirty (30) days of receipt of a demand by the utility in accordance with the Rules and Regulations of the Public Service Commission, to eliminate such connection, a surcharge will be imposed upon the customer calculated on the basis of the following formula:

$$S = A \times R \times .0006233 \times C$$

S - The surcharge in dollars

A - The area under roof and/or the area of any other water collection surface connected to the City's sanitary sewer, in square feet

R - The measured monthly rainfall, in inches

0.0006233 - The conversion factor to change inches of rain x square feet of surface to thousand gallons of water

C - The utility's approved rate per thousand gallons of metered water usage

The Utility shall not impose the surcharge unless and until the customer has been notified by certified mail, return receipt requested, or by hand delivery, that it has been established by smoke testing, dye testing, or on-site inspection that rain or other surface water is being introduced into the sanitary sewer system at the customer's location, and that the customer has not acted within thirty (30) days from receipt of such notice to divert the water from the sanitary sewer system. Said surcharge shall be calculated and imposed for each month that said condition continues to exist. Failure to pay the surcharge and/or correct the situation shall give rise to the possible termination of water service in accordance with the Rules and Regulations of the Public Service Commission of West Virginia.

SCHEDULE NO. 8

APPLICABILITY

Applicable within the entire territory served

AVAILABILITY

Available for wastewater and leachate haulers

SEPTIC TANK CLEANING SERVICE REGISTRATION PERMIT FEE

For each septic tank cleaning business which uses the City's sanitation system there will be an annual registration fee of one hundred twenty-five dollars (\$125.00). In addition, the dumping fee will be a commodity charge below due to the concentrated nature of the hauling.

RATES

To be Charged To West Virginia Division of Environmental Protection Landfill Closure Assistance Program (LCAP):

Commodity Charge - \$25.00 per 1,000 gallons per load. Load will be the actual capacity of the truck or other transport method delivering wastewater and leachate. Actual capacity shall be determined, or verified solely, by the City.

To Be Charged To All Other Wastewater and Leachate Haulers:

Commodity Charge - Each hauler shall pay a commodity charge of \$40.00 per 1,000 gallons per load. Load will be the actual capacity of the truck or other transport method delivering wastewater and leachate. Actual capacity shall be determined, or verified solely, by the City.

DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of \$25.00 will be imposed on any customer whose check for payment of charges is returned by the bank due to insufficient funds.

SCHEDULE NO. 9

APPLICABILITY

Applicable within the entire territory served

AVAILABILITY

Available for City of Elkins Municipal Water Department for treatment of water plant backwash

TREATMENT RATE

\$0.51 per 1,000 gallons of water.

consumption above the customer's historical usage.

SECURITY DEPOSIT

Not to exceed two-twelfths (2/12) of the average annual usage of the applicant's specific customer class, or fifty dollars, whichever is greater. This fee may be changed by applicable statutory provisions.

STEP 2 RATES
**[TO BECOME EFFECTIVE FOR ALL BILLS RENDERED ON
AND AFTER DECEMBER 15, 2023]**

SCHEDULE NO. 1

APPLICABILITY

Applicable within the entire territory served

AVAILABILITY OF SERVICE

Available for residential, commercial and industrial sewer service.

RATES

First	1,500 gallons used per month	\$15.78 per 1,000 gallons
Next	248,500 gallons used per month	\$14.28 per 1,000 gallons
Over	250,000 gallons used per month	\$ 5.70 per 1,000 gallons

MINIMUM CHARGE (Customers with metered water supply)

No minimum bill will be rendered for less than \$23.67 per month
(Equivalent of 1,500 gallons of water usage)

DELAYED PAYMENT PENALTY

The above tariff is net. On all current usage billings not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

MONTHLY OR BI-MONTHLY PAYMENT BILLINGS

The above rates and charges may be adjusted to a monthly or bi-monthly basis, providing no lower charges.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of \$25.00 will be imposed on any customer whose check for payment of charges is returned by the bank due to insufficient funds.

TAP FEE

The charge for an approved service connection to the sewer system will be seven hundred fifty dollars (\$750.00) or the actual cost of connection (solely determined by the Sewer Board), whichever is greater, for all new taps to the system.

LEAK ADJUSTMENT

\$1.00 per 1,000 gallons of water is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical usage.

SECURITY DEPOSIT

Not to exceed two-twelfths (2/12) of the average annual usage of the applicant's specific customer class, or fifty dollars, whichever is greater. This fee may be changed by applicable statutory provisions.

SCHEDULE NO. 2**APPLICABILITY**

Applicable within the Teaberry Hills Subdivision

AVAILABILITY OF SERVICE

Available for general domestic service in un-metered housing projects or subdivisions.

FLAT RATE CHARGE (Customers with non-metered water supply)

General Domestic customers with non-metered water supply: \$66.51 per month
(Equivalent to 4,500 gallons of water usage)

DELAYED PAYMENT PENALTY

The above tariff is net. On all accounts not paid in full when due, ten percent (10%) will be added to the net current amount unpaid. This delayed payment penalty is not interest and is to be collected only once for each bill where it is appropriate.

RETURNED CHECK CHARGE

A service charge equal to the actual bank fee assessed to the sewer utility up to a maximum of \$25.00 will be imposed on any customer whose check for payment of charges is returned by the bank due to insufficient funds.

TAP FEE

The charge for an approved service connection to the sewer system will be seven hundred fifty dollars (\$750.00) or the actual cost of connection (solely determined by the Sewer Board), whichever is greater, for all new taps to the system.

LEAK ADJUSTMENT

\$1.00 per 1,000 gallons of water is to be used when a bill reflects unusual water consumption which can be attributed to eligible leakage on the customer's side of the meter. This rate shall be applied to all such consumption above the customer's historical usage.

SCHEDULE NO. 3**APPLICABILITY**

Applicable within and without the corporate limits of the City of Elkins

AVAILABILITY OF SERVICE

Available to Midland Public Service District

METERED RATES (Based on metered water sold)

\$4.55 per M gallons

SCHEDULE NO. 4

APPLICABILITY

Applicable within and without the corporate limits of the City of Elkins

AVAILABILITY OF SERVICE

Available to Leadsville Public Service District

METERED RATES (Based on metered water sold)

\$4.60 per M gallons

SCHEDULE NO. 5

Remains the same as set forth in Step 1 above.

SCHEDULE NO. 6

Remains the same as set forth in Step 1 above.

SCHEDULE NO. 7

Remains the same as set forth in Step 1 above.

SCHEDULE NO. 8

Remains the same as set forth in Step 1 above.

SCHEDULE NO. 9

Remains the same as set forth in Step 1 above.

SECTION TWO – EFFECTIVE DATE

Step 1 rates will become effective forty-five (45) days from passage for service rendered on and after the effective date.

Step 2 rates will become effective December 15, 2023 for all bills rendered on and after the effective date.

SECTION THREE – SEPARABILITY; REPEAL OF CONFLICTING ORDINANCES

The provisions of this Ordinance are separable, and if any clause, provision or section hereof be held void or unenforceable by any court of competent jurisdiction, such holding shall not affect the remainder of this Ordinance. Upon the effective date of the charges herein set forth, all ordinances, resolutions, orders or parts thereof in conflict with the provisions of this Ordinance are, to the extent that the provisions of this Ordinance do not touch upon the provisions of prior ordinances, resolutions, orders or parts thereof, the same shall remain in full force and effect.

SECTION FOUR – STATUTORY NOTICE AND PUBLIC HEARING

Upon introduction hereof, the City Clerk shall publish Notice of this Ordinance in *The Inter-Mountain*, being a newspaper published and of general circulation in Randolph County, West Virginia, as a Class I publication. The publication shall be made at least one (1) week prior to the meeting of the City Council at which a final reading and vote on the ordinance will be held. Said notice shall state that this Ordinance has been introduced, and that any person interested may appear before Council on the **20th day of April, 2023, at 7:00 p.m.** in the City Council Chambers, 401 Davis Avenue, Elkins, West Virginia, and present protests, if any. At such hearing all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper on the premises.

Further, said Notice shall advise the public that a copy of this ordinance is available for public inspection at the City Clerk's Office which is open to the public Monday through Friday during the hours of 8:00 a.m. to 4:30 p.m.

Passed on First Reading April 6, 2023

Passed on Second Reading
Following Public Hearing April 20, 2023

CITY CLERK

MUNICIPAL – “LRR MUNI”¹
CITY OF ELKINS
[A Combined System]
SEWER RATE ORDINANCE TIMELINE

Dates Based Upon Following

1. Thursday, April 6, 2023 - First reading of Ordinance
Thursday, April 20, 2023 - Public Hearing, Second Reading and Adoption of Ordinance
2. Only newspaper qualified by WV Secretary of State to accept legal advertisements in Randolph County is the Inter-Mountain.

Pre-Adoption Public Notice [Newspaper notice required by three statutes]

3. West Virginia Code §8-11-4 [Municipal Corporations]

§8-11-4(a)(2) requires Class I-O² legal publication of PRE-adoption notice with publication being **at least 5 days prior** to the date of the public hearing. Notice shall include subject matter, title of ordinance, date/time/place of hearing, place where proposed ordinance may be inspected and advise that public may appear at hearing and be heard with respect to proposed ordinance.

West Virginia Code §8-20-10 [Combined Systems]

§8-20-10 requires Class I legal publication of PRE-adoption notice **not less than one week prior** to the date of the public hearing. Does not set forth requirements for information to be contained in notice.³

West Virginia Code §16-13-16 [Sewage Works]

§16-13-16 After first reading . . . notice of hearing, setting forth the proposed schedule of rates, fees or charges, shall be given by Class I legal publication **at least 5 days prior** to the date of the public hearing.

¹ “LRR Muni” is a municipal water or sewer operation that serves **at least** 4,500 customers and has annual combined gross revenues of greater than \$3 million from its separate or combined services.

² Class I-O requires publication in two newspapers of opposite political affiliations if two newspapers exist. The Inter-Mountain is the only newspaper qualified for Randolph County by WV Secretary of State Office.

³ Bob Rodecker said should follow §8-20-10 “one week prior” based upon City of Elkins being combined system. For content of notice, will follow requirement set forth in §16-13-16 (i.e., include schedule of rates).

Post-Adoption Public Notice [Notice To Wholesale/Resale Customers]

Although there is no statute or PSC Tariff Rule requiring that a LRR give post-adoption notice, the PSC Staff is now requiring that all municipalities complete a Tariff Form No. 14 (Notice to Wholesale Customer) to each of its wholesale customers advising of the rate adoption and the customer's right to file a complaint with the PSC.

The utility is also required to file Tariff Form No. 6-A, Verification That Rate Notice Was Mailed To Wholesale Customers.

**CITY OF ELKINS
TIMELINE FOR ADOPTION OF
SEWER RATE INCREASE ORDINANCE**

<u>COUNCIL</u>	1.	COUNCIL MEETING/FIRST READING OF RATE ORDINANCE	<u>April 6</u> , 2023
<u>CITY</u>	2.	CITY CLERK SHALL POST ORDINANCE AT TOWN HALL AND MAKE COPIES AVAILABLE FOR PUBLIC	<u>April 6</u> , 2023
<u>CITY</u>	3.	SEND PUBLIC NOTICE OF PROPOSED ORDINANCE TO <i>INTER-MOUNTAIN</i> FOR <u>CLASS I</u> LEGAL PUBLICATION	<u>April 7</u> , 2023
<u>Newspaper</u>	4.	LEGAL PUBLICATION OF PUBLIC NOTICE OF ORDINANCE [At Least 1 Week Prior To Date of Public Hearing/2 nd Reading]	<u>April 12</u> , 2023
<u>COUNCIL</u>	5.	PUBLIC HEARING/SECOND READING (ADOPTION) OF RATE ORDINANCE	<u>April 20</u> , 2023
<u>RODECKER</u>	6.	MAIL TARIFF FORM NO. 14 TO RESALE CUSTOMERS [LEADSVILLE AND MIDLAND]	<u>April 21</u> , 2023
<u>RODECKER</u>	7.	FILE DOCUMENTS WITH PSC	<u>April 25</u> , 2023
	8.	<u>STEP 1</u> SEWER RATES BECOME EFFECTIVE	<u>June 4,</u> , 2023
	9.	<u>STEP 2</u> SEWER RATES BECOME EFFECTIVE FOR ALL BILLS RENDERED ON AND AFTER DECEMBER 15, 2023	<u>December 15,</u> 2023



City of Elkins

2023 Sewer Rate Increase

Comparison of Current and Proposed Rates at Selected Usage Levels

Gallons	Current	Step 1 rate	\$ inc.	% inc.	Step 2 rate	\$ inc.	% inc.
1,000 ¹	\$17.53	\$20.61	\$3.08	17.57%	\$23.67	\$3.06	15%
1500 (min.)	\$17.53	\$20.61	\$3.08	17.57%	\$23.67	\$3.06	15%
2,000	\$22.83	\$26.83	\$4.00	17.52%	\$30.81	\$3.99	15%
3,000	\$33.41	\$39.26	\$5.85	17.51%	\$45.09	\$5.83	15%
3400 (res. avg.)	\$37.64	\$44.23	\$6.59	17.51%	\$50.80	\$6.58	15%
4,000	\$43.99	\$51.69	\$7.70	17.51%	\$59.37	\$7.68	15%
5,000	\$54.57	\$64.12	\$9.55	17.50%	\$73.65	\$9.54	15%
6,000	\$65.15	\$76.55	\$11.40	17.50%	\$87.93	\$11.39	15%
7,000	\$75.73	\$88.98	\$13.25	17.50%	\$102.21	\$13.24	15%
8,000	\$86.31	\$101.41	\$15.10	17.50%	\$116.49	\$15.09	15%
9,000	\$96.89	\$113.84	\$16.95	17.49%	\$130.77	\$16.94	15%
10,000	\$107.47	\$126.27	\$18.80	17.49%	\$145.05	\$18.79	15%
15,000	\$160.37	\$188.42	\$28.05	17.49%	\$216.45	\$28.04	15%
20,000	\$213.27	\$250.57	\$37.30	17.49%	\$287.85	\$37.29	15%
25,000	\$266.17	\$312.72	\$46.55	17.49%	\$359.25	\$46.54	15%
50,000	\$530.67	\$623.47	\$92.80	17.49%	\$716.25	\$92.78	15%
100,000	\$1,059.67	\$1,244.97	\$185.30	17.49%	\$1,430.25	\$185.29	15%
250,000	\$2,646.67	\$3,109.47	\$462.80	17.49%	\$3,565.11	\$455.65	15%
500,000	\$3,701.67	\$4,349.47	\$647.80	17.50%	\$4,990.11	\$640.65	15%
4431917 (resale Midland avg.)	\$16,265.14	\$18,215.18	\$1,950.04	11.99%	\$20,165.22	\$1,950.04	11%
3712833 (resale Leadsville avg.)	\$13,774.61	\$15,445.39	\$1,670.77	12.13%	\$17,079.03	\$1,633.65	11%

The Step 1 increase would apply to the billing period June 15-July 15. The first increase would be reflected on bills mailed July 31, 2023.

The Step 2 increase would apply to the billing period December 15-January 15. The second increase would be reflected on bills mailed January 31, 2024.

¹ Customers are charged for a minimum of 1,500 gallons or actual usage, whichever is higher. A customer using only 1,000 gallons would pay the same amount as a customer using 1,500 gallons.



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 20, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1645:</i> Ratification of Industrial Access Road program agreement between West Virginia Division of Highways, Randolph County Development Authority, and City of Elkins for road work related to the RCDA's industrial park expansion.
Recommended By:	City attorney/Municipal Properties Committee
Summary:	From city attorney: This is the final version of the agreement with the DOH for this Industrial Park Access Road and for the funding. As part of this process which began in 2022, the City had to agree to give up its rights to certain public rights of way because of the State law concerning access to industrial parks. The Agreement provides that the City will transfer these specific parts of public roadways via a special warranty deed to the DOH without compensation. After completion of the project and acceptance by the DOH, it will, at no cost to the City, provide snow removal and ice control.
Fiscal Impact:	None.
Recommendation:	Approve agreement.
Attachments:	1. R-1645 - DOH Industrial Access Road agreement for Riverbend Road

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1645)
April 20, 2023

Authorizing the Execution of an Agreement between the West Virginia Division of Highways, the Randolph County Development Authority, and the City of Elkins to Implement an Industrial Access Road Project to Provide Access to a New Section of the Randolph County Industrial Park

WHEREAS, the Common Council of the City of Elkins, West Virginia (“Council”) approved, via Ordinance 297, an application by the Randolph County Development Authority (“RCDA”) for the annexation of certain tracts of real property in Leadsville District, Randolph County; and,

WHEREAS, the RCDA plans to use that property for industrial investment as an addition to the existing Randolph County Industrial Park (“Park”); and,

WHEREAS, the RCDA has applied to the West Virginia Division of Highways (“DOH”) for implementation of an Industrial Access Road project to make modifications to portions of Riverbend Road and construct a new roadway, the purpose of which project is to provide access to this new addition to the Park; and,

WHEREAS, Council finds this proposed project is in the public interest; and,

WHEREAS, in order to secure the participation of DOH in the implementation of this Industrial Access Road project, Council must ratify the attached agreement between DOH, RCDA, and Council;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby accepts the terms and conditions of and authorizes the Mayor to execute the attached agreement.

Jerry A. Marco, Mayor

Attest:

Sutton R. Stokes, City Clerk

**WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
AGREEMENT
RANDOLPH COUNTY INDUSTRIAL PARK
INDUSTRIAL ACCESS ROAD
RANDOLPH COUNTY**

THIS AGREEMENT, executed in triplicate, made and entered into this _____ day of _____, 20_____, by and between the West Virginia Department of Transportation, Division of Highways, hereinafter called “Division,” the Randolph County Development Authority, 10 11th Street, Suite A, Elkins, West Virginia 26241, hereinafter called “RCDA,” and the City of Elkins, a West Virginia municipality, 401 Davis Avenue, Elkins West Virginia 26241, hereinafter called “City,”

WITNESSETH that,

WHEREAS, RCDA desires the participation of Division in the implementation of an Industrial Access Road project that will provide access for the Randolph County Industrial Park (hereinafter “Park”) in Elkins, Randolph County; and

WHEREAS, RCDA has submitted an Industrial Access Road application and has provided assurance to the extent practicable that industrial investment is to occur, and the Randolph County Commission has, by resolution dated June 2, 2022, endorsed and supported the construction of said Industrial Access Road project; and

WHEREAS, Division considers it to be in the public interest to participate in this project, which furthers economic development in West Virginia and promotes a safe and efficient transportation system, and has approved the use of Fiscal Year 2022 Industrial Access Road funds;

NOW, THEREFORE, in consideration of the above premises and in further consideration of the agreement herein set forth by and between the parties hereto, it is mutually agreed as follows:

- I. RCDA is to submit for Division’s review and approval appropriate construction plans and related documents, which collectively are referred to as the “Plans,” for the performance of work that will be implemented through RCDA and for which Division will utilize Industrial Access Road funds to reimburse, to a maximum amount specified in this Agreement, actual eligible expenses incurred by RCDA. The scope of RCDA’s work, as it pertains to the State Highway System and which hereinafter is called “IAR Project,” is to consist primarily of, but is not necessarily limited to, the modification of approximately 0.04 miles of existing roadway (“Riverbend Park Road”) currently under the jurisdiction of the City, and construction of a new roadway extending approximately 0.02 mile from Riverbend Park Road to a dead end near the railroad owned by the West Virginia Division of Multimodal Transportation Facilities adjacent to the Park. No rail crossing is to be implemented under the terms of this Agreement. Division reserves the right to require RCDA to conduct, at RCDA’s expense, prior to construction of Project, a public informational meeting regarding IAR Project.

- II. As part of submission of Plans, RCDA shall provide Division with site plans identifying grading, drainage, access, lot layout, utilities, signing and other pertinent features of the Park. Any signing associated with Park and its tenants shall conform to Division's guidelines and with all pertinent outdoor advertising rules and regulations.
- III. The Plans are subject to the review and approval of Division and are to be developed, to the extent practicable, in accordance with Division's current Design Directives, criteria, and guidelines. Division's approvals, if given, shall be in writing.
- IV. For IAR Project, RCDA shall secure the approvals and/or permits, if any, required by other governmental agencies, and shall comply with all applicable Federal, State, and local environmental laws and regulations. Prior to any reimbursement by Division of any construction costs incurred by RCDA for IAR Project, RCDA shall furnish Division with acceptable documentation of such approvals, permits, and compliance. RCDA shall be responsible for coordinating with and obtaining any necessary approvals from the West Virginia Division of Multimodal Transportation Facilities concerning work pertaining to the railroad adjacent to Park.
- V. The implementation of IAR Project will necessitate additional right-of-way and possibly other easements to be obtained by Division. All right-of-way and any easements necessary for IAR Project shall be clearly indicated on RCDA's Plans. RCDA may be required to submit for Division's approval separate Right-of-Way plans that would be prepared in accordance with Division's Design Directives. RCDA shall verify, as part of the development of Right-of-Way plans, ownership of the surface rights and interest sufficient for public highway purposes pertaining to all properties from which additional right-of-way and easements are to be conveyed.
 - A. City shall convey to Division Riverbend Park Road between CR 219/34 and the intersecting point of the proposed new roadway to be constructed as part of IAR Project. City agrees to convey to Division, waiving its right to payment of just compensation in eminent domain for all property and property interests conveyed, as well as for all damages to the abutting property not conveyed, from City's property the additional right-of-way and any necessary easements including, without limitation, rights of subjacent and lateral support, as indicated on the Plans, free and clear of all encumbrances with covenants of a special warranty unless otherwise agreed by Division, and subject to the approval of the West Virginia Board of Public Works (hereinafter the "WVBPW").
 - B. As necessary for IAR Project, RCDA shall obtain, in RCDA's name and in accordance with Division's acquisition procedures and regulations, any right-of-way or other easements from any other property. RCDA agrees to convey to Division, waiving its right to payment of just compensation in eminent domain for all property and property interests conveyed, as well as for all damages to the abutting property not conveyed, from RCDA's property the additional right-of-way and any necessary easements including, without limitation, rights of subjacent and lateral support, as indicated on the Plans, free and clear of all encumbrances with covenants of general warranty unless otherwise agreed by Division, and subject to the approval of the West Virginia Board of Public Works (hereinafter the "WVBPW").
 - C. In the event the WVBPW does not approve the donation by RCDA or by City to Division and instead requires that RCDA or City be compensated for the right-of-way, Division then may utilize, subject to written concurrence of the RCDA, whatever amount of Industrial Access Road funds approved by Division for IAR Project is necessary for Division to acquire, in Division's name and in accordance

with Division's acquisition process, the right-of-way or easements necessary for IAR Project that otherwise would have been conveyed to Division by RCDA or City. Any cost incurred by Division for appraisals or residential relocations that may be necessary in this event shall be paid utilizing the Industrial Access Road funds approved by Division for the IAR Project. Division shall notify RCDA if Division's total cost of acquisition of right-of-way, including any cost to obtain appraisals, is expected to exceed three hundred thousand dollars (\$300,000.00).

- VI. Prior to reimbursement by Division to RCDA of more than one hundred thousand dollars (\$100,000.00) for construction costs associated with IAR Project and prior to Division's acceptance of construction of IAR Project and release by Division of any bond that may be provided by RCDA as part of the issuance by Division of an encroachment permit, RCDA and City shall convey to Division the right-of-way and any easements necessary as described in Paragraph V. of this Agreement.
- VII. RCDA is to provide for Division's review and approval appropriate legal descriptions and plats, prepared in accordance with Division's Design Directives, necessary for the conveyance to Division of right-of-way. After the legal descriptions and plats have been approved by Division, Division then shall prepare and cause to be recorded appropriate conveyance documents in the Office of the Randolph County Clerk.
- VIII. Prior to construction of IAR Project, RCDA shall be responsible for ensuring that all necessary relocation or adjustment of utilities associated with IAR Project is completed. Division shall bear none of the cost of such relocation or adjustment, or installation of any new utility within Park. All utility work within Division's right-of-way shall be performed in accordance with the West Virginia Division of Highways manual entitled, *Accommodation of Utilities on Highway Right of Way and Adjustment and Relocation of Utility Facilities on Highway Projects, June 2007*, or later version.
- IX. RCDA may install utilities as part of construction of IAR Project, however RCDA shall be responsible for all utility costs for such construction and Division shall have no financial obligation for the cost of utility installation. If RCDA installs or allows to be installed any such utility prior to acquisition by Division of the right-of-way associated with IAR Project, Division shall have no financial obligations or liability regarding any relocation of such utility that may be necessary in the future, nor any liability in eminent domain or otherwise for any taking of or damage to the RCDA's facilities, and RCDA agrees that RCDA shall be entirely responsible for such financial obligations, including any cost of design/engineering, construction, inspection, traffic control and any other activities necessary for such relocation. All occupancy of Division's right-of-way must be in accordance with the Division's policies and rules governing accommodation of utilities, except as may be provided in this Agreement.
- X. After receipt of Division's written approval of the Plans pertaining to IAR Project, after RCDA obtains from Division any necessary encroachment permit, and after Division provides to RCDA authorization to proceed with construction and related work, RCDA then shall administer the construction of IAR Project in the manner that follows.
 - A. RCDA shall advertise a construction contract for competitive bid, which contract shall include provisions regarding the payment by RCDA of any applicable State or Federal prevailing wage rates and conformance with the West Virginia Jobs Act.
 - B. RCDA shall accept and open bids.

- C. After opening bids, RCDA shall provide to Division a summary of the bids received, the RCDA's engineer estimate, and the RCDA's recommended award of the construction contract.
 - D. After obtaining Division's concurrence with RCDA's proposed award of the construction contract, RCDA then may, if desired, award and administer the construction contract for IAR Project.
- XI. For IAR Project, RCDA shall provide construction inspection and materials acceptance. RCDA shall provide to Division, as part of RCDA's submission of invoices for reimbursement, copies of all daily inspection reports and copies of materials certifications corresponding to the work performed for which the RCDA requests reimbursement for IAR Project.
- XII. Division's authorization to proceed is contingent upon receipt of any Federal Highway Administration approval and authorization that may be required and upon RCDA's compliance with all stipulations and requirements set forth herein.
- XIII. RCDA, and its Contractors and Subcontractors, shall furnish evidence of having at least the minimum amounts of insurance required of the Contractor in Section 103.6 through and including Section 103.6.5 of the *West Virginia Division of Highways, Standard Specifications, Roads and Bridges, Adopted 2017* (hereinafter the "Standard Specifications"), and supplements thereto for any work arising from, relating to or pertaining to, in any way, the IAR Project. RCDA shall require that its Contractor(s) and Subcontractor(s) have current West Virginia contractor's licenses and are authorized by the West Virginia Secretary of State to conduct business in West Virginia. The RCDA shall name the Division as an additional insured on all policies of insurance required by the Standard Specifications, except for worker's compensation. The RCDA shall require that its Contractor(s) and Subcontractor(s) shall name the Division as an additional insured on all policies of insurance, except worker's compensation.
- XIV. Funding for IAR Project shall be provided and administered in the manner that follows.
 - A. Using a maximum of two hundred eighty thousand dollars (\$280,000.00) in Unmatched FY 2022 Industrial Access Road funds, Division may reimburse RCDA for one hundred percent (100%) of the actual eligible construction costs incurred by RCDA. Division's maximum amount payable for IAR Project under the terms of this Agreement is two hundred eighty thousand dollars (\$280,000.00), without a supplemental agreement.
 - B. RCDA initially shall bear the cost of IAR Project. Upon submission by RCDA to Division of properly documented invoices that clearly identify the actual cost incurred by RCDA for construction of IAR Project, which invoices shall include copies of payments made by RCDA to its IAR Project consultant (associated only with construction) or Contractor, Division then shall reimburse RCDA for the actual eligible construction costs of IAR Project. Division shall reimburse RCDA no more than one hundred thousand dollars (\$100,000.00) until the conveyance to Division of all right-of-way and easements associated with IAR Project is complete, subject to the provisions of Paragraph V. of this Agreement.
 - C. RCDA may submit invoices for reimbursement at any time during IAR Project construction, but no more frequently than monthly. RCDA shall clearly indicate Final Invoice, when appropriate.
 - D. For IAR Project, Division shall have no financial responsibility for the cost associated with:
 - 1. utility installation, relocation, or adjustment.

2. acquisition of right-of-way or easements, unless Division purchases right-of-way subject to the provisions of Paragraph V. of this Agreement.
 3. site development associated with industrial or other parcel(s) within or adjacent to Park.
 4. preparation of Plans for IAR Project.
 5. construction that is performed prior to receipt by RCDA of written approval of and notice to proceed from Division.
 6. any construction activities that are performed by any entity not procured through appropriate competitive bidding.
 7. any cost that is not an allowable use of the Industrial Access Road Fund pursuant to the provisions of West Virginia Code Chapter 17, Article 3A.
- E. At the time of application for IAR funds, RCDA identified total qualified industrial investment of nine hundred fifty-seven thousand five hundred dollars (\$957,500.00) for IAR Project. Prior to advertisement by Division of a construction contract for IAR Project, RCDA shall submit to Division a surety acceptable to Division in the amount of one hundred eighty-four thousand two hundred fifty dollars (\$184,250.00) with corporate surety licensed to do business in the State of West Virginia and approved by Division. This surety shall be conditioned upon RCDA, within five (5) years of the date Division opens to public travel the new roadway constructed under the terms of this Agreement, constructing or having constructed an industrial site, as described in Chapter 17, Article 3A of the West Virginia Code, acceptable to Division, that would constitute an additional total qualified investment within the property served by the new roadway amounting to one million eight hundred forty-two thousand five hundred dollars (\$1,842,500.00), which is over and above the present nine hundred fifty-seven thousand five hundred dollars (\$957,500.00) investment, as ascertained by financial records. If no industrial site acceptable to Division is constructed and the required total qualified investment is not fulfilled within the period specified, then the surety shall be proportionally forfeited based on the ratio that the total investment within said five (5) years bears to the required two million eight hundred thousand dollar (\$2,800,000.00) total qualified industrial investment.
- XV. Any construction Change Order that will increase the cost of IAR Project, or any proposed revision of Plans, must be approved by Division prior to the performance of any work associated with such Change Order or any revision to the Plans.
- XVI. If a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that shall not affect:
- A. the validity or enforceability in that jurisdiction of any other provision of this Agreement; or
 - B. the validity or enforceability in other jurisdictions of that or any other provision of this Agreement.
- XVII. To the fullest extent permitted by law, RCDA at all times does, and shall, assume all risks of damage to its property, and property of others, and injury or death to all persons (including, but not limited to, any employee or agent of RCDA, Contractor or Subcontractor) resulting directly, indirectly or otherwise by (a) the actions or omissions of RCDA, any Contractor or any Subcontractor, or their respective agents and employees, (b) by any condition of the property, (c) by any failure of RCDA, any Contractor or any Subcontractor, or their respective agents and employees, to comply with any applicable law, rule, regulations or order of any governmental authority, or to comply with any

provision of this Agreement, or (d) by any other cause related to performance of work hereunder by RCDA, RCDA's Contractor, or RCDA's Subcontractor, including maintenance of the roadway or failure to maintain the roadway as required by this Agreement. RCDA hereby acknowledges that the allocation of risk set forth in this provision of the Agreement is a part of the consideration to be provided to Division by RCDA for performance of this Agreement.

- XVIII. Division may terminate this Agreement upon thirty (30) days' written notice to RCDA. Upon termination, Division shall be liable only for payment in accordance with the terms of this Agreement for work performed or costs irrevocably obligated prior to the effective date of termination.
- XIX. Division shall have the right to make reasonable use of RCDA's property and City property for purposes of ingress and egress at the site as may be necessary for Division's periodic review of IAR Project.
- XX. RCDA shall properly maintain the new roadway section until such time Division accepts construction of the IAR Project. After acceptance by Division of the construction of IAR Project, RCDA shall have no authority over or any maintenance responsibility for the new roadway to be constructed under the terms of this Agreement. After completion of the IAR Project, Division agrees to provide, at no cost to City, snow removal and ice control along Riverbend Park Drive.
- XXI. RCDA shall ensure that pavement markings and signing in conformance with the current Manual on Uniform Traffic Control Devices are installed and adequately maintained along all non-Division roadways open to the public within Park for as long as any portion of Park is occupied. RCDA shall address to the satisfaction of Division issues pertaining to Park that Division notifies RCDA represent a public safety or traffic operation concern.
- XXII. This Agreement shall be binding upon the successors and assigns of each party hereto. This agreement may not be assigned without the prior written consent of Division.
- XXIII. This Agreement constitutes the entire understanding and agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements or understandings, inducements or conditions, express or implied, written or oral, between the parties.
- XXIV. Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived, only by a writing signed by the party to be bound. The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of any party to enforce any of the provisions hereof shall not be construed to be a waiver of the right of such party thereafter to enforce such provisions.
- XXV. Any resolution of the RCDA or City Council necessary to authorize compliance with the terms of this Agreement is attached hereto. In the absence of any such attached resolution, the duly authorized officer by whose signature RCDA and City enter this Agreement warrant that no such resolution is necessary.
- XXVI. This Agreement is entered in and shall be construed in accordance with the laws of the State of West Virginia.

IN WITNESS WHEREOF, the parties hereto have caused their respective names to be signed by their duly authorized officers.

WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION,
DIVISION OF HIGHWAYS

APPROVED AS TO FORM THIS
6 DAY April, 2023,
ATTORNEY LEGAL DIVISION
WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION
DIVISION OF HIGHWAYS

David A. Foy
Legal Division Contract No. 2304004

By: Jimmy Wriston, P. E.
Secretary of Transportation/
Commissioner of Highways

RANDOLPH COUNTY
DEVELOPMENT AUTHORITY

(signature)
By: _____
(printed name)
Title: _____
(printed title)

CITY OF ELKINS

(signature)
By: _____
(printed name)
Title: _____
(printed title)

(To be executed in triplicate)

Distribution: Master File
RCDA
City



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 20, 2023
Section:	New business
Category:	Ordinance
Agenda Item Name:	<i>Ordinance 313:</i> Ordinance abandoning section of Riverbend Road to W. Va. DOH (first of two readings)
Recommended By:	City attorney/Municipal Properties Committee
Summary:	Passage of this ordinance is one of the conditions imposed for the Industrial Access Road agreement with DOH in Resolution 1645 (previous item).
Fiscal Impact:	
Recommendation:	
Attachments:	1. Ordinance 313 (Abandoning Section of Riverbend Road)

ORDINANCE 313

AN ORDINANCE ABANDONING A SECTION OF RIVERBEND ROAD TO WEST VIRGINIA DIVISION OF HIGHWAYS

WHEREAS, the Common Council has adopted Resolution 1645 ratifying an Agreement between the West Virginia Division of Highways, Randolph County Development Authority (RCDA) and the City of Elkins concerning road work for RCDA's expansion of the Industrial Park; and

WHEREAS, as part of the Agreement the City has agreed to transfer to the West Virginia Division of Highways by a special warranty deed what is known as Riverbend Park Road between CR 219/34 and the intersecting point of the proposed new roadway to be constructed as part of this project without compensation to the City; and

WHEREAS, the RCDA will furnish copies to the City of a legal description and survey plat in order for the City to transfer the exact portions of the City's rights of way that are part of this project; and

NOW, THEREFORE, BE IT ORDAINED AND ENACTED that the Common Council authorizes Mayor Marco to sign a special warranty deed describing the exact portions of rights of way to transfer upon the approval of the City Attorney and the West Virginia Board of Public Works.

If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and Common Council determines that it would have adopted this Ordinance without the invalid provision.

This Ordinance shall become effective upon the date of its final adoption.

PASSED AND APPROVED ON THE FIRST READING: _____, 2023.

PASSED AND APPROVED ON THE SECOND AND FINAL READING: _____, 2023.

Jerry A. Marco, Mayor

Attest:

ORDINANCE 313

Sutton Stokes, City Clerk

ORDINANCE 303

2



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 20, 2023
Section:	New business
Category:	Ordinance
Agenda Item Name:	<i>Ordinance 314:</i> Amending City Code Chapter 52: Sewers and Sewage (first of two readings)
Recommended By:	Sanitary Board, Rules & Ordinances Committee
Summary:	Makes changes resulting from removal of Wastewater System from the control of the Operations Department, such as striking mentions of "operations manager," etc.
Fiscal Impact:	None.
Recommendation:	Approve Ordinance 314.
Attachments:	1. Ordinance 314 (Chapter 52 Revisions)

ORDINANCE 314

AN ORDINANCE OF THE COMMON COUNCIL OF ELKINS, WEST VIRGINIA, AMENDING CITY CODE, CHAPTER 52, SEWERS AND SEWAGE

WHEREAS, the Common Council previously adopted ordinances which are reflected in City Code Chapter 52, Sewers and Sewage; and

WHEREAS, subsequent to the passage of these ordinances, the Common Council voted to change the Organizational Chart for the various departments within the City; and

WHEREAS, the Common Council voted to take the supervision and management of the sewers, sewer works and sewer treatment out of the Operations Department and place the control under the supervision and management of the Wastewater Superintendent /Chief Operator; and

WHEREAS, Chapter 52: Sewers and Sewage needs to be amended to reflect the changes in the Organizational Chart; and

WHEREAS, the Common Council has determined that by making these amendments it is in the best interest of the citizens of the City.

NOW THEREFORE BE IT ORDAINED AND ENACTED by the Common Council that City Code, Chapter 52, Sewers and Sewage be amended and shall read as follows:

CHAPTER 52: SEWERS AND SEWAGE

Section

General Provisions

- 52.01 Definitions
- 52.02 Unsanitary discharges
- 52.03 Private sewage disposal systems
- 52.04 Building sewer permits
- 52.05 Prohibited discharges
- 52.06 Tampering with equipment
- 52.07 Authorized employees permitted to enter premises
- 52.08 Rates; schedule

Sanitary Board

- 52.25 Established; composition; qualifications, appointment and term of members; vacancies
- 52.26 Eligibility of city personnel
- 52.27 Officers and by-laws
- 52.28 Compensation of members and allowances for expenses; bond of Treasurer
- 52.29 Authority as to supervision and control of sewerage system
- 52.30 Statutory authority of Board
- 52.99 Penalty

Cross-reference:

Garbage, refuse and weeds generally, see Ch. 50

Grades and elevations generally, see §§ 10.08 through 10.12

Obstructing, changing or diverting streams, sewers, drains and the like, see § 130.021

Water generally, see Ch. 51

Statutory reference:

Authority of city to establish and maintain a sewer system and sewage treatment and disposal system and to acquire property necessary therefor, see W.Va. Code §§ 8-12-5(32), (33), 8-18-1, 16-13-1

Authority of city to levy assessments for sewer improvements, and to regulate sewer connections, see W.Va. Code §§ 8-18-1 et seq.

Authority of city to make low cost improvements, including construction, repairing and the like, storm, sanitary and combined sewers, see W.Va. Code §§ 8-17-1 et seq.

Authority of city to require certain properties to be connected to public sewer, see W.Va. Code § 8-18-22

Extraterritorial jurisdiction of city for purposes of this chapter, see W.Va. Code §§ 8-12-5(43) and 8-12-19

Municipal sewage works and sanitary districts, see W.Va. Code §§ 16-13-1 et seq.

GENERAL PROVISIONS

§ 52.01 DEFINITIONS.

For the purpose of this chapter, the following definitions shall apply unless the context clearly indicates or requires a different meaning.

BOD (BIOCHEMICAL OXYGEN DEMAND). The quantity of oxygen utilized in the biochemical oxidation of organic matter under standard laboratory procedure in five days at 20° C., expressed in milligrams per liter.

BUILDING DRAIN. That part of the lowest horizontal piping of a drainage system which receives the discharge from soil, waste, and other drainage pipes inside the walls of the building and conveys it to the building sewer, beginning five feet (one and one-half meters) outside the inner face of the building wall.

BUILDING SEWER. The extension from the building drain to the public sewer or other place of disposal.

COMBINED SEWER. A sewer receiving both surface runoff and sewage.

GARBAGE. Solid wastes from the domestic and commercial prepared cooking and dispensing of food, and from the handling, storage and sale.

INDUSTRIAL WASTES. The liquid wastes from industrial manufacturing processes, trade, or business as distinct from sanitary sewage.

NATURAL OUTLET. Any outlet into a watercourse, pond, ditch, lake, or other body of surface or groundwater.

PERSON. Any individual, firm, company, association, society and corporation.

pH. The logarithm of the reciprocal of the weight of hydrogen ions in grams per liter of solution.

PROPERLY SHREDDED GARBAGE. The wastes from the preparation, cooking, and dispensing of food that have been shredded to such a degree that all particles will be carried freely under the flow conditions normally prevailing in public sewers, with no particle, greater than one-half inch (1.27 centimeters) in any dimension.

PUBLIC SEWER. A sewer in which all owners of abutting properties have equal rights and is controlled by public authority.

SANITARY SEWER. A sewer which carries sewage and to which storm, surface and groundwaters are not intentionally admitted.

SEWAGE. A combination of the water-carried wastes from residents, business buildings, institutions, and industrial establishments, together with such ground, surface, and stormwaters as may be present.

SEWAGE TREATMENT PLANT. Any arrangement of devices and structures used for treating sewage.

SEWAGE WORKS. All facilities for collecting, pumping, treating and disposing of sewage.

SEWER. A pipe or conduit for carrying sewage.

SLUG. Any discharge of water, sewage, or industrial waste which in concentration of any given constituent or in quantity of flow exceeds for any period of duration longer than 15 minutes more than five times the average 24-hour concentration or flows during normal operation.

STORM DRAIN (STORM SEWER). A sewer which carries storm and surface waters and drainage, but excludes sewage and industrial wastes, other than unpolluted water.

SUPERINTENDENT. The Wastewater Superintendent/Chief Operator for the city.

SUSPENDED SOLIDS. Solids that either float on the surface of, or are in suspension in water, sewage, or other liquids, and which are removable by laboratory filtering.

WATERCOURSE. A channel in which a flow of water occurs, either continuously or intermittently.

(Ord. 262, passed 8-15-2019)

§ 52.02 UNSANITARY DISCHARGES.

(A) It shall be unlawful for any person to place, deposit, or permit to be deposited in any unsanitary manner on public or private property within the city, or in any area under the jurisdiction of said city, any human or animal excrement, garbage, or objectionable waste.

(B) It shall be unlawful to discharge to any natural outlet within the city, or in any part under the jurisdiction of said city, any sewage or other polluted waters, except where suitable treatment has been provided in accordance with subsequent provision of this chapter.

(C) Except a hereinafter provided, it shall be unlawful to construct or maintain any privy, privy vault, septic tank, cesspool, or other facility intended or used for the disposal of sewage.

(D) The owner of all houses, buildings, or properties used for human employment, recreation, or other purposes, situated within the city and abutting on any street, alley, or rights-of-way in which there is now located or may in the future be located a public sanitary or combined sewer of the city, is hereby required at his or her expense to install suitable toilet facilities therein, and to connect such facilities directly with the proper public service in accordance with the provisions of this chapter, within 90 days after date of official notice to do so, provided that said public sewer is within 100 feet of the property line.

(Ord. 262, passed 8-15-2019) Penalty, see § 52.99

§ 52.03 PRIVATE SEWAGE DISPOSAL SYSTEMS.

(A) Where a public sanitary or combined sewer is not available under the provisions of § 52.02(D) of this chapter, the building sewer shall be connected to a private sewage disposal system complying with the provisions of this section.

(B) Before commencement of construction of a private sewage disposal system, the owner shall first obtain a written permit signed by the Wastewater Superintendent/Chief Operator. The application for such permit shall be made on a form furnished by the city, which the applicant shall supplement by any plans, specifications, and other information as are deemed necessary by the Wastewater Superintendent/Chief Operator. A permit and inspection fee shall be paid to the city at the time the application is filed according to the current fee schedule approved by the Sanitary Board.

(C) A permit for a private sewage disposal system shall not become effective until the installation is completed to the satisfaction of the Wastewater Superintendent/Chief Operator. He or she shall be allowed to inspect the work at any stage of construction and, in any event, the applicant for the permit shall notify the Wastewater Superintendent/Chief Operator when the work is ready for final inspection, and before any underground portions are covered. The inspection shall be made within 48 hours of the receipt of notice by the Wastewater Superintendent/Chief Operator.

(D) The type, capacities, location, and layout of a private sewage disposal system shall comply with all recommendations of the State Department of Public Health. No permit shall be issued for any private sewage disposal system employing subsurface soil absorption facilities where the area of the lot is less than 14,400 square feet. No septic tank or cesspool shall be permitted to discharge to any outlet.

(E) At such time as a public sewer becomes available to a property served by a private sewage disposal system, as provided in § 52.02(D) of this chapter, a direct connection shall be made to the public sewer in compliance with this chapter, and any septic tanks, cesspools, and similar private sewage disposal facilities shall be abandoned and filled with suitable material.

(F) The owner shall operate and maintain the private sewage disposal facilities in a sanitary manner at all times, at no expense to the city.

(G) No statement contained in this section shall be construed to interfere with any additional requirements that may be imposed by the Health Officer.

(H) When a public sewer becomes available, the building sewer shall be connected to said sewer within 60 days and the private sewage disposal system shall be cleaned of sludge and filled with clean bank-run gravel or dirt.

(Ord. 262, passed 8-15-2019) Penalty, see § 52.99

§ 52.04 BUILDING SEWER PERMITS.

(A) No unauthorized person shall uncover, make any connections with or opening into, use, alter, or disturb any public sewer or appurtenance thereof without first obtaining a written permit from the Wastewater Superintendent/Chief Operator.

(B) There shall be two classes of building sewer permits: for residential and commercial service; and for service to establishments producing industrial wastes. In either case, the owner or his or her agent shall make application on a special form furnished by the city. The permit

application shall be supplemented by any plans, specifications or other information considered pertinent in the judgement of the Wastewater Superintendent/Chief Operator. A permit and inspection fee for a residential or commercial building sewer permit and fee for an industrial building sewer permit shall be paid to the city at the time the application is filed according to the current fee schedule approved by the Sanitary Board.

(C) All costs and expense incident to the installation and connection of the building sewer shall be borne by the owner. The owner shall indemnify the city from any loss or damage that may directly or indirectly be occasioned by the installation of the building sewer.

(D) A separate and independent building sewer shall be provided for every building; except where one building stands at the rear of another on an interior lot and no private sewer is available or can be constructed to the rear building through an adjoining alley, court yard, or driveway, the building sewer from the front building may be extended to the rear building and the whole considered as one building sewer.

(E) Old building sewers may be used in connection with new buildings only when they are found on examination and test by the Wastewater Superintendent/Chief Operator, to meet all requirements of this chapter.

(F) The size, slope, alignment, materials of construction of a building sewer, and the methods to be used in excavating, placing of the pipe, jointing, testing and backfilling the trench, shall all conform to the requirements of the Building and Plumbing Code or other applicable rules and regulations of the city. In the absence of code provisions or in amplification thereof, the materials and procedures set forth in appropriate specifications of the A.S.T.M. and A.S.C.E. Manuals of Practice (MOP) MOP 60/WEF MOP FD-5.

(G) Whenever possible, the building sewer shall be brought to the building at an elevation below the basement floor. In all buildings in which any building drain is too low to permit gravity flow to the public sewer, sanitary sewage carried by such building drain shall be lifted by an approved means and discharged to the building sewer.

(H) No permit shall make connection of roof downspouts, interior and exterior foundation drains, areaway drains, or other sources of surface runoff or groundwater to a building sewer or building drain which in turn is connected directly or indirectly to a public sanitary sewer.

(I) The connection of the building sewer into the public sewer shall conform to the requirements of the Building and Plumbing Codes or other applicable rules and regulations of the city, or the procedures set forth in appropriate specifications of the A.S.T.M and A.S.C.E. Manuals of Practice (MOP) MOP 60/WEF MOP FD-5. All such connections shall be made gastight and watertight. Any deviation from the prescribed procedures and materials must be approved by the Wastewater Superintendent/Chief Operator before installation.

(J) The applicant for the building sewer permit shall notify the Wastewater Superintendent/Chief Operator when the building sewer is ready for inspection and connection to the public sewer. The connection shall be made under the supervision of the Wastewater Superintendent/Chief Operator or his or her representative.

(K) All excavations for building sewer installation shall be adequately guarded with barricades and lights so as to protect the public from hazard. Streets, sidewalks, parkways and other public property disturbed in the course of the work shall be restored in a manner satisfactory to the city.

(Ord. 262, passed 8-15-2019) Penalty, see § 52.99

§ 52.05 PROHIBITED DISCHARGES.

(A) No person shall discharge or cause to be discharged any stormwater, surface water, groundwater, roof runoff, subsurface drainage, including interior and exterior foundation drains, uncontaminated cooling water, or unpolluted industrial process waters to any sanitary sewer.

(B) Stormwater and all other unpolluted drainage shall be discharged to such sewers as are specifically designated as combined sewers or storm sewers, or to a natural outlet approved by the Wastewater Superintendent/Chief Operator. Industrial cooling water or unpolluted process waters may be discharged on approval of the Wastewater Superintendent/Chief Operator, to a storm sewer, combined sewer, or natural outlet.

(C) No person shall discharge or cause to be discharged any of the following described waters or wastes to any public sewers:

(1) Any gasoline, benzene, naphtha, fuel oil, or other flammable or explosive liquid, solid or gas;

(2) Any waters or wastes containing toxic or poisonous solids, liquids, or gases in sufficient quantity, either singly or by interaction with other wastes, to injure or interfere with any sewage treatment process, constitute a hazard to humans or animals, create a public nuisance, or create any hazard in the receiving waters of the sewage treatment plant, including but not limited to cyanides in excess of two mg/l as CN in the wastes as discharged to the public sewer;

(3) Any waters or wastes having a pH lower than 5.5 or having any other corrosive property capable of causing damage or hazard to structures, equipment, and personnel of the sewage works; or

(4) Solid or viscous substances in quantities or of such size capable of causing obstruction to the flow in sewers, or other interference with the proper operation of the sewage works such as, but not limited to, ashes, cinders, sand, mud, straw, shavings, metal, glass, rags, feathers, tar, plastics, wood, unground garbage, whole blood, paunch manure, hair and fleshings, entrails and paper dishes, cups, milk containers, and the like, either whole or ground by garbage grinders.

(D) No permit shall discharge or cause to be discharged the following described substances, materials, waters, or wastes if it appears likely in the opinion of the Wastewater Superintendent/Chief Operator that such wastes can harm either the sewers, sewage treatment process, or equipment, have an adverse effect on the receiving stream, or can otherwise endanger life, limb, public property, or constitute a nuisance. In forming his or her opinion as to the acceptability of these wastes, the Wastewater Superintendent/Chief Operator will give consideration to such factors as the quantities of subject wastes in relation to flows and velocities, in the sewers, materials of construction of the sewers, nature of the sewage treatment process,

capacity of the sewage treatment plant, degree of treatability of wastes in the sewage treatment plant, and other pertinent factors. The substances prohibited are:

- (1) Any liquid vapor having a temperature higher than one 150° F. (65° C.);
- (2) Any water or wastes containing fats, wax, grease or oils, whether emulsified or not, in excess of 100 mg/l or containing substances which may solidify or become viscous at temperatures between 32° F. and 150° F. (0° C. and 65° C.);
- (3) Any garbage that has not been properly shredded. The installation and operation of any garbage grinder equipped with a motor of three-fourths horsepower (0.76 hp metric) or greater shall be subject to the review and approval of the Wastewater Superintendent/Chief Operator;
- (4) Any waters or wastes containing strong acid iron pickling wastes, or concentrated plating solutions whether neutralized or not;
- (5) Any waters or wastes containing iron, chromium, copper, zinc and similar objectionable or toxic substances; or wastes exerting an excessive chlorine requirement, to such degree that any such material received in the composite sewage at the sewage treatment works exceeds the limits established by the Wastewater Superintendent/Chief Operator for such materials;
- (6) Any waters or wastes containing phenols or other taste- or odor-producing substances, in such concentrations exceeding limits which may be established by the Wastewater Superintendent/Chief Operator as necessary, after treatment of the composite sewage, to meet the requirements of state, federal, or other public agencies of jurisdiction for such discharge to the receiving waters;
- (7) Any radioactive wastes or isotopes of such half-life or concentration as may exceed limits established by the Wastewater Superintendent/Chief Operator in compliance with applicable state and federal regulations;
- (8) Any waters or wastes having a pH in excess of 9.5;
- (9) Materials which exert or cause:
 - (a) Unusual concentrations of inert suspended solids (such as, but not limited to Fullers earth, lime slurries, and lime residues) or of dissolved solids (such as, but not limited to, sodium chloride or sodium sulfate);
 - (b) Excessive discoloration (such as, but not limited to, dye wastes and vegetable tanning solutions);
 - (c) Unusual BOD, chemical oxygen demand or chlorine requirements in such quantities as to constitute a significant load on the sewage treatment works; or
 - (d) Unusual volume of flow or concentration of wastes constituting SLUGS as defined in this chapter.
- (10) Waters or wastes containing substances which are not amenable to treatment or reduction by the sewage treatment processes employed or are amenable to treatment only to such degree that

the sewage treatment plant effluent cannot meet the requirements of other agencies having jurisdiction over discharge to the receiving waters; or

(11) Any waters or wastes having a five-day BOD greater than 300 parts per million by weight; containing more than 350 parts per million by weight of suspended solids; or having an average daily flow greater than 2% of the average sewage flow of the city, shall be subject to the review of the Wastewater Superintendent/Chief Operator. Where necessary in the opinion of the Wastewater Superintendent/Chief Operator, the owner shall provide, at his or her expense, such preliminary treatment as may be necessary to reduce the biochemical oxygen demand to 300 parts per million by weight; reduce the suspended solids to 350 parts per million by weight; or control the quantities and rates of discharge of such waters or wastes. Plans, specifications, and any other pertinent information relating to proposed preliminary treatment facilities shall be submitted for the approval of the Wastewater Superintendent/Chief Operator and no construction of such facilities shall be commenced until said approvals are obtained in writing.

(E) (1) If any waters or wastes are discharged, or are proposed to be discharged to the public sewers, which waters contain the substances or possess the characteristics enumerated in division (D) of this section, and which in the judgement of the Wastewater Superintendent/Chief Operator, may have a deleterious effect upon the sewage works, processes, equipment, or receiving waters, or which otherwise create a hazard to life to constitute a public nuisance, the Wastewater Superintendent/Chief Operator may:

- (a) Reject the wastes;
- (b) Require pretreatment to an acceptable condition for discharge to the public sewers;
- (c) Require control over the quantities and rates of discharge; and/or

(d) Require payment to cover the added cost of handling and treating the wastes not covered by existing taxes or sewer charges under the provision of division (J) of this section.

(2) If the Wastewater Superintendent/Chief Operator permits the pretreatment or equalization of waste flows, the design and installation of the plants and equipment shall be subject to the review and approval of the Wastewater Superintendent/Chief Operator, and subject to the requirements of all applicable codes, ordinances and laws.

(F) Grease, oil, and sand interceptors shall be provided when, in the opinion of the Wastewater Superintendent/Chief Operator, they are necessary for the proper handling of liquid wastes containing grease in excessive amounts, or any flammable wastes, sand, or other harmful ingredients; except that such interceptors shall not be required for private living quarters or dwelling units. All interceptors shall be of a type and capacity approved by the Wastewater Superintendent/Chief Operator and shall be located as to be readily and easily accessible for cleaning and inspection.

(G) Where preliminary treatment or flow-equalizing facilities are provided for any waters or wastes, they shall be maintained continuously in satisfactory and effective.

(H) When required by the Wastewater Superintendent/Chief Operator, the owner of any property serviced by a building sewer carrying industrial wastes shall install a suitable control

manhole together with such necessary meters and other appurtenances in the building sewer to facilitate observation, sampling, and measurement of the wastes. Such manhole, when required, shall be accessibly and safely located, and shall be constructed in accordance with plans approved by the Wastewater Superintendent/Chief Operator. The manhole shall be installed by the owner at his or her expense and shall be maintained by him or her so as to be safe and accessible at all times.

(I) All measurements, tests, and analyses of the characteristics of waters and wastes to which reference is made in this chapter shall be determined in accordance with the latest edition of “Standard Methods for the Examination of Water and Wastewater”, published by the American Public Health Association, and shall be determined at the control manhole provided, or upon suitable samples taken at said control manhole. In the event that no special manhole has been required, the control manhole shall be the nearest downstream manhole in the public sewer to the point at which the building sewer is connected. Sampling shall be carried out by customarily accepted methods to reflect the effect of constituents upon the sewage works and to determine the existence of hazards to life, limb, and property. The particular analyses involved will determine whether a 24 hours composite of all outfalls of a premise is appropriate or whether a grab sample or samples should be taken. Normally, but not always, BOD and suspended solids analyses are obtained from 24-hour composites of all outfalls whereas pH’s are determined from periodic grab samples.

(J) No statement contained in this section shall be construed as preventing any special agreement or arrangement between the city and any industrial concern whereby an industrial waste of unusual strength or character may be accepted by the city for treatment, subject to payment therefore, by the industrial concern.

(Ord. 262, passed 8-15-2019) Penalty, see § 52.99

§ 52.06 TAMPERING WITH EQUIPMENT.

No unauthorized person shall maliciously, willfully, or negligently break, damage, destroy, uncover, deface, or tamper with any structure, appurtenance, or equipment which is part of the sewage works. Any person violating this section shall be subject to immediate arrest under criminal charges.

(Ord. 262, passed 8-15-2019) Penalty, see § 52.99

§ 52.07 AUTHORIZED EMPLOYEES PERMITTED TO ENTER PREMISES.

(A) The Wastewater Superintendent/Chief Operator and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all properties for the purpose of inspection, observation, measurement, sampling, and testing in accordance with the provisions of this chapter. The Wastewater Superintendent/Chief Operator or his or her representatives shall have no authority to inquire into any processes including metallurgical, chemical, oil, refining, ceramic, paper, or other industries beyond that point having a direct bearing on the kind and source of discharge to the sewers or waterways or facilities for waste treatment.

(B) While performing the necessary work on private properties referred to in division (A) of this section, the Wastewater Superintendent/Chief Operator or duly authorized employees of the city shall observe all safety rules applicable to the premises established by the company and the company shall be held harmless for injury or death to the city employees and the city shall indemnify the company against loss or damage to its property by city employees and against liability claims and demands for personal injury or property damage asserted against the company and growing out of the gauging and sampling operation, except as such may be caused by negligence or failure of the company to maintain safe conditions as required in § 52.05(H) of this chapter.

(C) The Wastewater Superintendent/Chief Operator and other duly authorized employees of the city bearing proper credentials and identification shall be permitted to enter all private properties through which the city holds a duly negotiated easement for the purposes of, but not limited to, inspection, observation, measurement, sampling, repair, and maintenance of any portion of the sewage works lying within said easement. All entry and subsequent work, if any, on said easement, shall be done in full accordance with the terms of the duly negotiated easement pertaining to the private property involved.

(Ord. 262, passed 8-15-2019) Penalty, see § 52.99

§ 52.08 RATES; SCHEDULE.

The rates and charges for sewage and sewage disposal service provided by it to customers throughout the territory served, are hereby fixed and determined by the Council pursuant to the sewer tariff, P.S.C. No. 12 and as set forth in schedules of rates on file in the office of the City Clerk.

(1991 Code, § 16-6) (Ord. passed 7-28-1949; Ord. passed 10-5-1953; Ord. passed 8-5-1954; Ord. passed 9-18-1958; Ord. passed 3-17-1966; Ord. passed 3-15-1984; Ord. passed 7-7-1994; Ord. 022, passed 2-6-2006; Ord. 057, passed 10-19-2006; Ord. 155, passed 6-21-2012; Ord. 257, passed 11-1-2018; Ord. 266, passed 11-21-2019)

Statutory reference:

Authority and duty of Council to establish and maintain just and equitable rates or charges for use of and services rendered by municipal sewage works and the like, see W.Va. Code § 16-13-16

City itself being subject to same charges and rates as established for other customers, see W.Va. Code § 16-13-17

SANITARY BOARD

§ 52.25 ESTABLISHED; COMPOSITION; QUALIFICATIONS, APPOINTMENT AND TERM OF MEMBERS; VACANCIES.

There is hereby created a Sanitary Board of the city, which shall be composed of the Mayor and two persons appointed by the Common Council, one of whom, during any construction period, must be a registered professional engineer, and the engineer member of the Board need not be a resident of the city. After the construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer. The appointed members of the Board shall serve their terms subject to the will and pleasure of the Common Council. 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, appointment of a successor shall be made in similar manner for a term of three years. Vacancies shall be filled for an unexpired term and such substitutions shall be made in the same manner as was the original appointment.

(1991 Code, § 16-11) (Ord. passed 7-18-1957)

Statutory reference:

Municipal Sanitary Boards, see W.Va. Code Ch. 16, Art. 13, especially §§ 16-13-18 and 16-13-18a

§ 52.26 ELIGIBILITY OF CITY PERSONNEL.

No officer or employee of the city holding a paid or unpaid office or position shall be eligible to appointment on the Sanitary Board until at least one year from the expiration of the term of his or her public office or employment.

(1991 Code, § 16-12) (Ord. passed 7-18-1957)

§ 52.27 OFFICERS AND BY-LAWS.

The Mayor shall be Chairperson of the Sanitary Board, which shall elect a Vice Chairperson from its members and shall designate a Secretary and Treasurer, though the Secretary and Treasurer may be one and the same person, who need not be members of the Sanitary Board. The Vice Chairperson, Secretary and Treasurer shall hold office, as such, at the will of the Sanitary Board. The Sanitary Board shall have power to establish by-laws, rules and regulations for its own government.

(1991 Code, § 16-13) (Ord. passed 7-18-1957)

§ 52.28 COMPENSATION OF MEMBERS AND ALLOWANCES FOR EXPENSES; BOND OF TREASURER.

(A) Each member of the Sanitary Board shall receive such compensation for his or her services as the Common Council may, from time to time, prescribe, and shall be entitled to payment for his or her reasonable expenses incurred in the performance of his or her duties. The Secretary and Treasurer shall be paid such reasonable compensation for their services as the Council may, from

time to time, prescribe, and the Treasurer shall give bond in such amount as the Council may, at any time, require.

(B) All compensation, as well as expenses incurred by the Sanitary Board, its officers and employees, shall be paid solely from funds provided under the authority of W.Va. Code Ch. 16, Art.13.

(1991 Code, § 16-14) (Ord. passed 7-18-1957)

§ 52.29 AUTHORITY AS TO SUPERVISION AND CONTROL OF SEWERAGE SYSTEM.

The construction, acquisition, improvement, equipment, custody, operation and maintenance of all works for the collection, treatment and disposal of sewage within or without the corporate limits of the city, the collection of revenues therefrom for the services rendered thereby and the employment of all engineers, architects, inspectors, superintendents, managers, collectors, attorneys and other personnel, as, in the judgment of the Sanitary Board, may be necessary to the execution of its powers and duties, shall be under the supervision and control of the Sanitary Board.

(1991 Code, § 16-15) (Ord. passed 7-18-1957)

§ 52.30 STATUTORY AUTHORITY OF BOARD.

The Sanitary Board shall have, in addition to the powers enumerated herein, all other powers provided for such boards by W.Va. Code Ch. 16, Art. 13.

(1991 Code, § 16-16) (Ord. passed 7-18-1957)

§ 52.99 PENALTY.

(A) Any person found to be violating any provision of this chapter except § 52.04 shall be served by the city with written notice stating the nature of the violation and providing a reasonable time limit for the satisfactory correction thereof. The offender shall, within the period stated in such notice, permanently cease all violations.

(B) Any person who shall continue any violation beyond the time limit provided for in division (A) of this section, shall be guilty of a misdemeanor, and on conviction thereof shall be fined in the amount not exceeding \$100 for each violation. Each 24-hour period, in which any such violation shall continue shall be deemed a separate offense.

(C) Any person violating any of the provisions of this chapter shall become liable to the city for any expense, loss, or damage occasioned the city by reason of such violation.

(Ord. 262, passed 8-15-2019)

If any portion of this Ordinance shall, for any reason, be declared invalid by any court of competent jurisdiction, such invalidity shall not affect the remaining provisions hereof and Common Council determines that it would have adopted this Ordinance without the invalid provision.

This Ordinance shall become effective upon the date of its final adoption.

PASSED AND APPROVED ON THE FIRST READING: _____, 2023.

PASSED AND APPROVED ON THE SECOND AND FINAL READING: _____, 2023.

Jerry A. Marco, Mayor

Attest:

Sutton Stokes, City Clerk



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 20, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1644:</i> Authorizing Conditions of Agreement between Avertium and the City of Elkins for an IT Assessment
Recommended By:	Mayor Marco
Summary:	Mayor Marco proposes contracting with Avertium for an assessment of IT and cybersecurity needs for the city government organization.
Fiscal Impact:	Work is proposed to be done for \$24,990. On the recommendation of the ARPA Advisory Committee, council allocated \$25,000 in ARPA funds for the purposes of an IT assessment at the meeting of April 6, 2023.
Recommendation:	As of Wednesday, April 19, the city attorney is still awaiting requested changes to the contract.
Attachments:	1. R-1644 - Avertium IT and cybersecurity assessment 2. Avertium MSA-City Of Elkins 2023-04-10 3. Avertium SOW-City Of Elkins 2023-04-10

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1644)
April 20, 2023

***Accepting Conditions of Agreement between Avertium
and the City of Elkins, and Authorizing Execution of Agreement***

WHEREAS, The City of Elkins, West Virginia (“City”) has determined to obtain services assessing its use of information technology and cybersecurity needs; and,

WHEREAS, the City has received a proposed Agreement with Avertium (copy attached) for the provision of such services; and,

WHEREAS, it appears that contracting for these goods and services is in the best interests of the citizens of the City of Elkins;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby accepts the terms of and authorizes execution of this Agreement with Avertium by the Mayor on behalf of the City of Elkins, after approval of said Agreement by the City Attorney.

Jerry Marco, Mayor

Attest:

Sutton R. Stokes, City Clerk

Master Services Agreement

THIS MASTER SERVICE AGREEMENT ("**Agreement**") is made and entered as of the execution date noted herein (the "**Effective Date**") between City Of Elkins, a(n) West Virginia ("**Client**") and Avertium, LLC, a Delaware limited liability company (collectively "**Avertium**"). Client and Avertium may each be referred to herein as a "**Party**" or collectively as the "**Parties**."

1.0 SERVICES; STATEMENTS OF WORK AND ORDERS. Avertium will provide the services ("Services") and deliverables ("Deliverables") described in a statement of work ("SOW") or order for items that may include hardware, software or a change order to Services ("Order") signed by Client and Avertium.

2.0 PAYMENT TERMS. Client will pay fees stated in Order(s) or SOW(s), plus expenses incurred by Avertium with Client's approval ("Fees"). Invoices are payable thirty (30) days after the invoice date, unless different terms are stated in a SOW or Order. If payment is late, Avertium may: (i) suspend Services until paid in full; (ii) charge interest at 1.5% per month, and (iii) invoice Client for collection costs (including without limitation attorneys' fees and expenses). Client shall pay any applicable VAT, other taxes or duties arising out of this Agreement other than Avertium's own payroll and income taxes. Client designates the following person(s) as having full authority to make all accounting and payment decisions for Client and all invoices shall be delivered electronically to these contacts:

Primary Accounting Contact

Secondary Accounting Contact

Name		
Address		
Phone		
Email		

Client shall promptly notify Avertium of any change to these Accounting Contacts. When travel is required to fulfill the requirements of an SOW or is requested by Client, Avertium will seek to gain approval from the Client for any travel costs estimated to exceed \$1,000. Client acknowledges that any delay in approving such requests could impact the ability of Avertium to deliver upon the SOW as requested by the Client and Avertium will not be held accountable for any delay caused by the length of time it takes the Client to approve any necessary travel fees. All expenses shall be subject to Avertium's travel and expense policies.

3.0 OBLIGATIONS.

3.1 Client Obligations. Client must: (a) provide and maintain its hardware, software, connectivity and other items Client needs to

receive Services, and if Client modifies network configurations for Services (e.g., to allow penetration testing) Client is responsible for restoring them to secure configuration; (b) provide access to premises, personnel, equipment and other resources of Client and its suppliers that Avertium needs to perform the Services, including a dedicated Client contact and appropriate workspace for onsite Services; (c) accurately identify all network resources to be tested (such as IP addresses), and obtain consent from third parties (such as Client's cloud or hosting providers) for Avertium to test their resources; (d) provide Avertium with data or information that Avertium needs to perform the Services, as requested ("Client Items"), and; (e) comply with the terms and conditions of any third-party product or service if Client purchases such items through Avertium. Avertium will be excused from delay or failure to perform Services if caused by Client's failure to provide items described in the previous sentence.

3.2 Avertium Obligations. If any Avertium user IDs, tokens, passwords, digital signatures or policies are needed for Client to receive the Services, Avertium shall provide these to Client. Such items are subject to the same terms and conditions that apply to the Services and Avertium Items.

4.0 INTELLECTUAL PROPERTY.

4.1 Work Product; License to Avertium Items. Client owns content created by Avertium which shows the results of the Services ("Work Product") that is incorporated into Deliverables, including all copyright, patent, trademark, trade secret and other rights ("IP Rights") in such Work Product. If any Avertium Items as defined in 4.2 below are incorporated into Deliverables, then Avertium grants Client a nonexclusive, royalty free United States license to: (a) use such Avertium Items as part of the Deliverables into which they are incorporated for Client's internal review, and; (b) share these Avertium Items with its Representatives as Confidential Information pursuant to Section 5.2 below.

4.2 Avertium Intellectual Property; License to Client Items. All ideas, know-how, inventions, data, managed services logs, code, software, communications, reports, templates, Deliverables or other work (but not Work Product) that are used, conceived, made or developed by Avertium, and all Services, are "Avertium Items." Except for the license granted to Client to use Avertium Items incorporated into Deliverables under Section 4.1, the Avertium Items and all IP Rights in them are owned by Avertium. For Services that are managed services, Avertium grants Client a limited, nonexclusive, royalty free United States license to use these Services in the manner described in the applicable SOW or Order (which may include limits on users or seats). If Client provides any Client Items to Avertium, Client grants Avertium a non-exclusive, royalty-free license to use, reproduce, and adapt such Client Items only to the extent needed to provide the Services or Deliverables to Client.

4.3 Restrictions. Client agrees not to: (i) resell, lease, loan or otherwise share the Services with third parties, whether on a timesharing, service bureau, ASP or other basis; (ii) modify, reverse engineer or try to gain unauthorized access to the Services, or alter any software or equipment available via the Services. If an Order or SOW grants Client a license to use Avertium or third party software as part of the Services, then: (x) access to such software is subject to restrictions established by Avertium or its owner; (y) access is limited solely to use of the Services and; (z) Avertium may monitor and record data concerning use of the software to track performance standards, system security and compliance with this Agreement. Client shall adopt reasonable means to prevent violation of this Section 4.4 by its users, and promptly notify Avertium if any violation occurs.

4.4 Infringement Remedies. If an IP Claim (as defined in Section 7.2 below) is filed (or in Avertium's opinion is likely to occur), Avertium may, at its option, obtain the right for Client to continue to use Services and Deliverables, substitute other work with similar capabilities and/or performance, modify Services and Deliverables so that they are no longer infringing, or terminate this Agreement and affected SOWs or Orders. If Avertium elects termination, Avertium shall refund Client any pre-paid Fees for the terminated Services and Deliverables, pro-rated over the remaining term of the applicable SOW or Order. THIS SECTION 4.4 (IN ADDITION TO INDEMNIFICATION IF APPLICABLE UNDER SECTION 7.2) STATES CLIENT'S EXCLUSIVE REMEDY FOR ANY ALLEGATION THAT SERVICES OR DELIVERABLES INFRINGE THIRD PARTY IP RIGHTS.

5.0 CONFIDENTIALITY.

5.1 General. Each Party ("Recipient") may receive Confidential Information from the other Party ("Discloser"). "Confidential Information" means information in any form that Discloser designates as confidential to the Recipient or which, due to the type of information or circumstances surrounding disclosure, a reasonable person would treat as confidential. Confidential Information shall not include information that: (i) is or becomes part of the public domain by any means (except a disclosure by Recipient that violates this Agreement); (ii) was previously known to Recipient without an obligation of confidentiality; (iii) is

independently developed by Recipient without use of Discloser's Confidential Information; or (iv) is rightfully obtained by Recipient from third parties that have no obligation of confidentiality to Discloser. Without limiting the previous sentence, the terms of this Agreement, all SOWs and Orders are Confidential Information, all Services and Avertium Items are Confidential Information of Avertium, and Work Product is the Confidential Information of Client. Upon Discloser's written request, Recipient shall return or destroy Discloser's Confidential Information and any copies or extracts, provided that Recipient may keep information needed to comply with its document retention policies or applicable law if Recipient continues to protect it as required by this Section 5.

5.2 Restrictions on Use. Recipient shall not disclose Confidential Information to any non-Party, provided that Client as Recipient may disclose Avertium Items within Deliverables (if identified as confidential and proprietary) to its own agents, subcontractors, consultants, counsel, accountants and advisors ("Representatives"), in each case who are bound by confidentiality restrictions as restrictive as those of this Agreement. Recipient shall take the same degree of care that it uses with its own confidential information (but not less than reasonable care) to protect the Discloser's Confidential Information from unauthorized use, disclosure, publication or dissemination.

5.3 Exceptions. Recipient may disclose Discloser's Confidential Information to the extent required: (i) by applicable law or regulation; (ii) by a subpoena or court order; or (iii) to be included in a regulatory report or audit. Recipient shall, however, give the Discloser prompt written notice of such requirement prior to disclosure and reasonable assistance (at Discloser's expense) in obtaining an order protecting the Confidential Information.

6.0 LIMITED WARRANTIES.

6.1 General. Each Party represents and warrants that it: (i) is duly organized and in good standing; and (ii) has the authority to sign, and perform its obligations under, this Agreement. Avertium represents that it will perform the Services in a professional and workmanlike manner. If Client notifies Avertium in writing within thirty (30) days after performance of Services that such Services do not conform to the warranty described in the previous sentence, then Avertium shall: (i) re-perform the non-conforming Services; or (ii) refund to Client that portion of the Fees that represent the non-conforming Services. The remedy set forth in the previous sentence is Client's sole and exclusive remedy for breach of this warranty. Client represents that Client Items and other information provided to Avertium for performance of Services are accurate and complete in all material respects, and that Client has all IP Rights necessary to provide the Client Items to Avertium. Avertium represents that it has all IP Rights necessary to provide the Services and Deliverables to Client.

6.2 DISCLAIMER. EXCEPT FOR THE WARRANTIES IN SECTION 6.1, AVERTIUM DISCLAIMS ALL WARRANTIES OF ANY KIND RELATING TO THE SERVICES OR DELIVERABLES, INCLUDING, WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. AVERTIUM MAKES NO WARRANTIES CONCERNING THIRD PARTY PRODUCTS OR SERVICES, BUT SHALL PASS THROUGH TO CLIENT ANY MANUFACTURER OR DEVELOPER WARRANTIES ON THEM IF PERMITTED BY THE MANUFACTURER OR DEVELOPER.

7.0 INDEMNIFICATION.

7.1 General. Avertium and Client (each as "Indemnitor") shall defend, indemnify and hold harmless the other Party and its officers, directors, employees, and agents (collectively, "Indemnitee,") against any third-party claims, suits or proceedings brought against the Indemnitees (each a "Claim"), and amounts payable as judgments or settlements against Indemnitee in such Claims, as well as costs and expenses (including reasonable attorneys' fees and costs) of defending such Claims (collectively, "Losses") if due to: (i) the Indemnitor's willful misconduct or gross negligence, or; (ii) bodily injury or loss or damage to tangible property of Indemnitee by the Indemnitor.

7.2 Intellectual Property. Avertium (as Indemnitor) shall defend, indemnify and hold harmless Client and its officers, directors, employees, and agents (as Indemnitees) against any Claim brought against Indemnitees alleging that Services or Deliverables infringe a valid United States copyright, trademark or trade secret right (an "IP Claim"), and shall pay all Losses incurred by Indemnitees in such IP Claim. Avertium's obligations under this Section 7.2 shall not apply to any IP Claim or Losses that arise from: (i) modifications to Services or Deliverables by any party other than Avertium; (ii) Client's combination of Services or Deliverables with third party products or services; or (iii) Client's use of Services or Deliverables in a manner not permitted by, or which violates, this Agreement, the applicable SOW or Order.

7.3 Conditions for Indemnity. As a condition precedent to an Indemnitor's indemnity obligation to an Indemnitee, the Indemnitee must: (i) give the Indemnitor prompt written notice of any Claim; (ii) allow Indemnitor to control, and fully cooperate with Indemnitor in, defense of the Claim, and; (iii) permit Indemnitor to settle any Claim, provided that the Indemnitee's consent is required if any settlement involves an admission of liability or injunctive relief.

7.4 Cooperation. If Client asks Avertium, or if Avertium is required by court order, subpoena or legal process, to produce information or witnesses concerning the Services or Deliverables, Avertium may charge Client for its professional time and expense and for the fees of Avertium counsel. Client shall pay such items according to the terms of Section 2 of this Agreement. This section does not apply to any suit or claim by Client against Avertium, or any Claim for which Avertium is obligated to indemnify Client under Section 7.1 or 7.2.

8.0 LIMITATIONS.

8.1 LIMITS OF LIABILITY. AVERTIUM SHALL NOT BE LIABLE FOR ANY LOST PROFITS, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOST OR CORRUPTED DATA OR SOFTWARE, LOSS OF USE OF SYSTEM(S) OR NETWORK(S), LOSS OF BUSINESS OPPORTUNITY, BUSINESS INTERRUPTION OR DOWNTIME. IN ADDITION TO THE PREVIOUS SENTENCE, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY TO THE OTHER FOR ALL SUITS, DAMAGES, CLAIMS, LOSSES, OR OTHER OBLIGATIONS OF ANY KIND ARISING UNDER ANY LEGAL THEORY, WHETHER IN TORT, CONTRACT OR OTHERWISE ("LIABILITY") EXCEED THE GREATER OF: (A) ALL MONIES PAID AND PAYABLE BY CLIENT TO AVERTIUM IN THE SIXTY (60) DAYS BEFORE THE CLAIM OF LIABILITY WAS FIRST ASSERTED, OR (B) THE TOTAL MONIES PAID AND PAYABLE BY CLIENT TO AVERTIUM FOR THE SERVICES THAT CAUSED THE LIABILITY IN THE TWELVE (12) MONTHS BEFORE THE CLAIM OF LIABILITY WAS FIRST ASSERTED. THE LIMIT IN THE PREVIOUS SENTENCE DOES NOT APPLY TO EITHER PARTY'S: (X) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, OR VIOLATION OF THE OTHER PARTY'S IP RIGHTS, OR (Y) CLIENT'S NONPAYMENT TO AVERTIUM. THE EXISTENCE OF MORE THAN ONE CLAIM OR CAUSE OF ACTION WILL NOT EXPAND THIS LIMIT.

8.2 Limitations Inherent to Services. The Services assess in-scope Client resources as described in the SOW or Order, and target the most common/likely weaknesses, vulnerabilities and exploits published in industry standards. As a result, a weakness, vulnerability or exploit may not be discovered if it affects an out-of-scope resource or is new, unknown or unlikely. If Services concern the requirements of laws, regulations or standards, Client acknowledges that such Services are not legal services and that resulting Deliverables are not legal advice or a guarantee or assurance of Client's compliance. Although such Services may assist Client in compliance efforts, Client (not Avertium) is ultimately responsible for Client's compliance requirements. Client determines the scope, overall goals and direction of the Services, and must implement any course of action based on their results. If Services are based on configuration of Client's environment as of the start of Services, Avertium shall not be responsible for any effect on Services caused by changes to Client's environment.

9.0 TERM AND TERMINATION.

9.1 Term. This Agreement begins on the Effective Date and remains in effect until terminated as permitted by this Section 9 (the "Term"). If the initial term of any SOW for managed services without auto-renewal provisions expires, the term of that SOW will automatically convert to month-to-month at the rate stated in the SOW plus CPI not to exceed 5%, for up to three (3) months provided Client and Avertium are negotiating an agreement to extend the services. The preceding language is intended only to assure the Client has uninterrupted services during any period of re-negotiation of a SOW for managed services.

9.2 Termination.

(a) Client may terminate any SOW for professional (not managed) services for convenience at any time by providing at least seven (7) days prior written notice to Avertium. Avertium will have another seven days to attempt to resolve any issues with the SOW during which time the Client and Avertium will jointly seek to resolve the issues in a professional and timely manner. Should said resolution not be achievable, the SOW will be cancelled and the Client will owe for all hours Avertium was engaged in the SOW.

(b) Client may terminate any SOW for managed services due to dissatisfaction with the quality of such Services by providing at least sixty (60) days prior written notice to Avertium, provided that if Avertium resolves Client's dissatisfaction during this sixty (60) day period termination shall not occur. The termination of any SOW for managed services will not absolve the Client of its obligations for any "third-party" software Avertium has acquired at the Clients request and Client will be responsible for

those amounts until the underlying agreement expires.

(c) Avertium may terminate this Agreement as permitted by Section 4.4 by providing at least seven (7) days prior written notice to Client.

(d) Either Party may terminate this Agreement: (i) if the other Party commits a material breach of this Agreement and does not cure such breach within such thirty (30) days after the non-breaching Party sends notice of the material breach; or (ii) immediately on written notice if the other Party files any bankruptcy or similar action or terminates or suspends its business operations.

9.3 Survival. Upon termination of this Agreement for any reason, the following Sections shall survive: 2(ii), 2(iii), 4.0, 5.0, 6.2, 7.0, 8.0, 9.3, 9.4, 10 and 11.

9.4 Effect of Termination. Termination of this Agreement terminate all SOWs and Orders in effect. Upon termination, Client shall pay Avertium for all Services and Deliverables provided before the effective date of termination, as well as any ongoing fees payable to third parties for their products or services that were obtained with Client consent by Avertium, even if payable after termination (Avertium may invoice all such fees in a lump sum at termination). Client shall return any equipment or hardware provided by Avertium (except equipment purchased by Client). If such equipment is not promptly returned, Client shall pay Avertium the then-current costs to replace such equipment. If the SOW is related to a managed services (also referred to as "MS") contract the following termination fees will apply as well: (i) the return of any discounts given under the agreement related to the length of the contract, (ii) a cancellation fee equal to three-months of service. Termination amounts for (ii) above will not be charged if termination occurs due to Avertium's material breach under 9.2(b), or under 9.2(d). Client agrees that the termination fees described in the previous sentence are liquidated damages, and not a penalty.

10.0 MISCELLANEOUS.

10.1 Assignment. Client may not assign this Agreement without the prior written approval of Avertium, which shall not be unreasonably withheld. Avertium may assign this Agreement, in whole or in part, to Avertium's successor pursuant to a change in control, reorganization, or transfer or sale of its ownership or assets.

10.2 Waivers. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the Party granting the waiver. A waiver of one provision shall not be construed as a waiver of any succeeding breach of such provision or the waiver of the provision itself.

10.3 No Third-Party Beneficiaries. The terms of this Agreement are intended solely for each Party and its respective successors and assigns. No third-party beneficiary rights are conferred upon any other person. Without limiting the foregoing, no third party shall be entitled to rely on Services, Deliverables, Avertium Items or Work Product for any purpose.

10.4 Disputes.

(a) This Agreement is governed by the laws of the State of Tennessee, not including its choice of law rules. Both Parties irrevocably consent to the exclusive jurisdiction of the courts in the State of Tennessee, County of Davidson for any dispute related to this Agreement. No legal action may be brought by one Party against the other Party more than one (1) year after the event giving rise to the cause of action, except for actions due to non-payment of Fees or violation of Avertium's IP Rights. EACH PARTY WAIVES ALL RIGHT TO A JURY TRIAL IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BETWEEN THEM.

(b) The Parties agree that a remedy at law for any breach or attempted breach of Sections 4.0 or 5.0 may be inadequate, and therefore, either Party may seek injunctive or other equitable relief for any breach or attempted breach of these Sections, in addition to its other rights or remedies at law, in equity or under this Agreement.

10.5 Severability; Integration; Construction. If any provision of this Agreement is deemed unenforceable or invalid under applicable law, such provision shall be changed and interpreted to best accomplish the objectives of the remaining terms. This Agreement, including all SOWs and Orders, contains the complete agreement between the parties relating to the Services and Deliverables, and supersedes all prior offers, negotiations, understandings, and agreements of any kind. This Agreement may only be amended by a written amendment signed by both Parties, provided that if any SOW provides for terms that govern (a) due dates for payment of Fees under that SOW that are different than the terms set forth in Section 2.0 of this Agreement, or; (b) termination of that SOW that are different than the terms set forth in Sections 9.2(a) or 9.2(b) of this Agreement, then those

Master Services Agreement

terms of that SOW shall prevail solely with respect to that SOW. Except as described in the previous sentence, if there is any conflict between this Agreement and the terms of a SOW, the terms of this Agreement will control.

10.6 Force Majeure. Neither Party shall be liable for any delay or failure to perform (other than failure to pay Fees) to the extent performance is delayed or made impossible by any cause beyond the control of a Party.

10.7 Notices. All notices given pursuant to this Agreement must be in writing, sent to the addresses below and will be effective: (i) upon receipt if hand delivered; (ii) on the next business day after being sent by email or facsimile; (iii) on the third business day following deposit with the postal service.

With respect to Avertium, notices must be delivered to:

Avertium, LLC
Attn: Legal Department
1431 Centerpoint Blvd, Suite 150
Knoxville, TN 37932
e-mail: legal@avertium.com

With respect to Client, notices must be delivered to:

City Of Elkins
Attn:
Addr 1:
Addr 2:
email:

10.8 Neutral Construction. This Agreement will be interpreted to have been jointly drafted by the Parties. The terms of this Agreement shall not be construed against a Party on the grounds that the Party drafted such term(s).

10.9 Non-Solicitation. Neither Party will hire or attempt to hire any employee of the other Party during the Term of this Agreement and for one (1) year afterwards. This restriction shall not apply to personnel who respond to publicly available job postings by hiring Party or its agents, but only if the hiring Party or its agents do not directly notify such personnel of these postings.

10.10 Independent Contractor Relationship. The relationship of Avertium and Client is that of independent contractors. This Agreement is not intended to create a partnership, joint venture, co-ownership or other joint undertaking. Avertium may employ agents and subcontractors to provide part of the Services.

11. TERMS SPECIFIC TO MANAGED SERVICES. If Services include managed services, the following terms shall apply solely to such managed services.

11.1 Commencement. Services consisting of managed services will begin billing on the date thirty (30) days after the signing of the MS SOW (the "Service Commencement Date"). Such date will be the start date for the billing and the end date will be the number of months defined within the applicable SOW. Client must designate a staff member with authority to make all management decisions concerning the Services.

11.2 Managed Devices. For SOW's that are dependent on Avertium's ability to manage or receive data from Client devices, Client must permit Avertium to connect directly to Client devices on the Client's network using an authenticated server in Avertium's secure operations center, and Client must make such connectivity available at all times during the Services. If Avertium access to managed or co-managed devices is unavailable due to failure of Internet, telco, or other resources or services of the Client or its agents or suppliers, Avertium (i) can make no guarantees or assurances with respect to such Services, and (ii) shall have no responsibility or liability for failure to perform or delay in performing its Services.

11.3 Additional Requirements. Additional requirements for managed services may also be set forth in a SOW or Order.

11.4 Third Party Software, Products or Services. If the Services require use of third-party software, products or services described in a SOW or Order ("Third-Party Items"), Client shall comply with any licenses, terms or other conditions required

by the providers of such Third Party Items ("Third Party Vendors"), whether these are presented to Client in a clickwrap, shrinkwrap or similar agreement, listed in the applicable SOW or Order, or maintained by the Third Party Provider on a web page or hyperlink and referenced by Avertium on its website.

City Of Elkins

Avertium, LLC

By:

By:

Printed:

Printed:

Title:

Title:

Date:

Date:



Professional Services Statement of Work

Prepared for:

City Of Elkins
Jerry Marco
Mayor
401 Davis Ave, Elkins, West Virginia, 26241

04-10-2023-O-10028-NIST CSF Security Assessment



ADAPT. ATTACK. EVOLVE

Purpose

This Statement of Work (the “SOW” or “Appendix”) is effective as of the last signature date noted herein (the “SOW Effective Date”) is entered into between Avertium, LLC, a Delaware limited liability company, successor in interest to Terra Verde Security and assignee of 1440 Security (“Avertium” or “Contractor”), or its affiliated company Avertium Tennessee, Inc., a Delaware corporation, successor in interest to Sword & Shield Enterprise Security, Inc., (collectively “Avertium”) and City Of Elkins (“Client”).

This SOW is subject to the terms and conditions of the Master Service Agreement, Master Consulting Agreement or Reseller Partner Agreement ("the Agreement" or "Master Agreement") between the Parties, or *Avertium Services Terms and Conditions*, should no Master Agreement be in place. All capitalized terms used, but not otherwise defined herein, shall have the meanings set forth in the Agreement. This SOW is incorporated by reference into the Agreement.

This Statement of Work describes the following Service(s) the Client is contracting from Avertium:

- NIST Cybersecurity Framework (CSF) Compliance Assessment

Company Overview

Avertium is the security partner companies turn to for end-to-end cybersecurity solutions that attack the chaos of the cybersecurity landscape with context. By fusing together human expertise and a business-first mindset with the right combination of technology and threat intelligence, Avertium delivers a more comprehensive, more programmatic approach to cybersecurity - one that drives action on the ground and influence in the boardroom. That's why over 1,200 mid-market and enterprise-level organizations across 15 industries turn to Avertium want to be more efficient, more effective, and more resilient when waging today's cyber war.

NIST Cybersecurity Framework (CSF) Compliance Assessment

Description of Service(s)

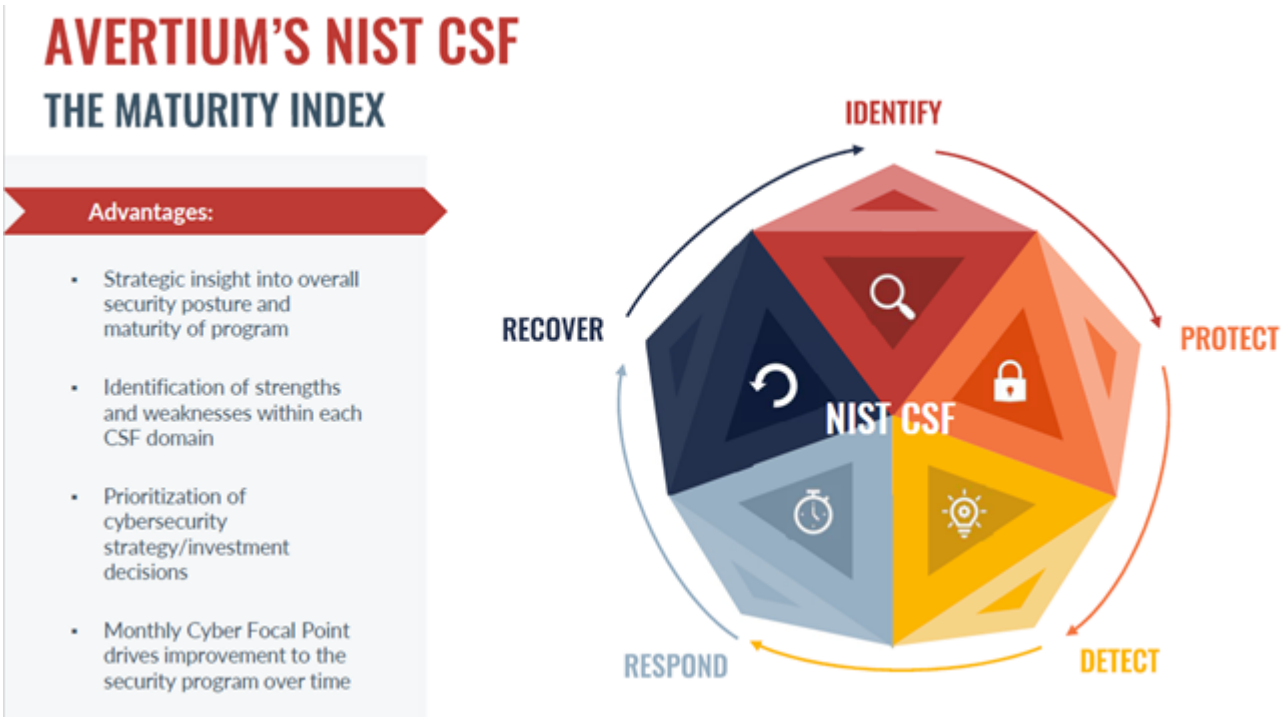
Avertium will perform the following tasks in order to evaluate the organization’s compliance with NIST CSF control guidance:

- Perform a gap analysis utilizing the NIST CSF control set.
- Produce a gap analysis report that compares the baseline technical controls in place today and NIST CSF control requirements.
- Develop recommendations that can be used as a guide for remediating control gaps.

Avertium will assess the organization’s infrastructure to include systems, architecture, processes, and procedures. Additionally, Avertium will interview key technical and administrative personnel, in order to determine gaps between NIST CSF recommendations and the organization’s current operations. The compliance guidance from the NIST CSF is broken down into five functions; Identify, Protect, Detect, Respond, and Recover.

The NIST CSF provides a common language for understanding, managing, and expressing cybersecurity risk to internal and external stakeholders. It can be used to help identify and prioritize actions for reducing cybersecurity risk, and it is a tool for aligning policy, business, and technological approaches to managing that risk.

The results of the assessment are used to identify deviations in organizational control environment from what is recommended by the NIST CSF, where gaps are identified between what the controls require and what is currently in place, recommendations will be provided that provide guidance on how the organization can become compliant.



Scoping Assumptions

Risk Assessment is subjected to customer managed/owned systems, architecture, processes, and procedures.

Engagement Approach / Methodology

Avertium will assess, evaluate and report on findings associated with risk acceptance, mitigation and compensating controls. The following framework functions will be assessed:

- Asset Management – ID.AM
- Business Environment – ID.BE
- Governance – ID.GV
- Risk Assessment – ID.RA
- Risk Management Strategy – ID.RM
- Supply Chain Risk Management – ID.SC
- Identity Mgmt. & Access Control – PR.AC
- Awareness & Training – PR.AT
- Data Security – PR.DS
- Information Protection Processes and Procedures – PR.IP
- Maintenance – PR.MA
- Protective Technology – PR.PT
- Anomalies and Events – DE.AE
- Security Continuous Monitoring – DE.CM
- Detection Processes – DE.DP
- Response Planning – RS.RP
- Communications – RS.CO
- Analysis – RS.AN
- Mitigation – RS.MI
- Improvements – RS.IM
- Recovery Planning – RC.RP
- Improvements – RC.IM
- Communications – RC.CO

Task Specific Deliverables

Avertium will provide an Overall Cybersecurity Posture Report (PDF Format) with the following deliverables:

- Executive Summary
- Detailed Analysis of NIST CSF Control Compliance
- RMF Risk and Maturity Metrics
- Remediation Recommendations
- Strategic Roadmap to accomplish the mission of improving the overall cybersecurity posture in a phased and prioritized approach

Fees and Expenses

Non-Recurring Services

Code	Name	Quantity	Unit Price	Extended Price
Assessment-NIST-CSF	NIST Cybersecurity Framework (CSF) Compliance Assessment	1	\$24,990.00	\$24,990.00
Terms This SOW contains project based Professional Services which will be completed in a timely manner not to exceed twelve (12) months from the signature date. Invoicing This SOW includes one or more fixed fee professional services projects. The Client will be invoiced for fifty percent (50%) of the fixed fee projects upon execution of this Statement of Work with the remainder invoiced upon delivery of the final deliverable(s) as noted herein, and project close out. Taxes, shipping, handling, and other fees may apply and will be invoiced to Client, as applicable. Additional Terms During the term of this SOW and for one (1) year thereafter, Client will not hire or attempt to hire any Avertium personnel who performed Services under this SOW and with whom Client personnel had regular contact. If Client violates the previous sentence, Client shall pay Avertium a sum equal to thirty percent (30%) of the last annual salary of the Avertium personnel hired by Client. The parties agree that the sum described in the previous sentence represents a reasonable agreement by the parties to quantify loss due to the difficulty of calculating actual damages, and is therefore intended to act as liquidated damages and not as a penalty. This restriction shall not apply to personnel who respond to publicly available job postings by Client or its agents, but only if Client or its agents do not directly notify such personnel of these postings.				

Description	Amount
Total Fees:	\$24,990.00

Prepared by:
Avertium LLC



Kevin White
1431 Centerpoint Drive
Suite 150
Knoxville, Tennessee 37932
kevin.white@avertium.com

Prepared for:
City Of Elkins
Jerry Marco
Mayor
401 Davis Ave, Elkins, West Virginia, 26241

Contract Information:
CON-002529
Date Issued:
04-10-2023
Expires:
05-10-2023

Payment terms are as agreed upon in Client's fully executed master document. Pricing offered is valid as noted in this Statement of Work. Sales tax may be applied where applicable.

Avertium LLC

City Of Elkins

By:	By:
Printed:	Printed:
Title:	Title:
Date:	Date:



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 20, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1646: Compensation increase for police chief.</i>
Recommended By:	Personnel Committee
Summary:	The Personnel Committee recommends increasing the compensation of the police chief from \$55,000 to \$58,000. The chief's salary has been \$55,000 since his original appointment in 2019.
Fiscal Impact:	Cost of total compensation package will increase approximately \$3,000.
Recommendation:	Approve compensation increase for the police chief from \$55,000 to \$58,000.
Attachments:	1. R-1646 - Compensation increase for police chief

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1646)
April 20, 2023

Establishing a New Compensation Level for the Police Chief

WHEREAS, the Elkins Common Council Personnel Committee has recommended a compensation increase for Travis Bennett, the Chief of the Elkins Police Department, from \$55,000 to \$58,000 per annum; and,

WHEREAS, Elkins City Code, § 30.02 provides Council with the power to prescribe and set forth compensation paid in the annual budget or through other ordinances; and,

WHEREAS, West Virginia Code, §8-5-12 provides that every municipality shall by ordinance or budget fix or cause to be fixed the salary or compensation of every municipal officer and employee; and,

WHEREAS, sufficient funds are available within the Police Department account of the current fiscal year's General Fund budget;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Common Council of the City of Elkins hereby prescribes a new salary of \$58,000 per annum for Travis Bennett, Chief of the Elkins Police Department, effective April 21, 2023.

Jerry Marco, Mayor

Attest:

Sutton R. Stokes, City Clerk



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 20, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1647: EFD Fund Budget Revision (#2 for FY 23)</i>
Recommended By:	Finance Committee
Summary:	EFD requests to transfer \$4,220 from its Capital Outlay Equipment line to its Capital Outlay Buildings line for repairs to the station's furnace.
Fiscal Impact:	No net increase to budgeted costs.
Recommendation:	Approve budget revision.
Attachments:	1. R-1647 - EFD fund FY 23 budget revision #2

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1647)
April 20, 2023

Resolution to Approve EFD Fund Budget Revision 2023-036-02

WHEREAS, the City of Elkins has previously prepared and submitted its Budget for the Fiscal Year 2023; and,

WHEREAS, it has become necessary to make a revision to said Budget; and,

WHEREAS, Budget Revision 2023-036-02 (copy attached) transfers funds within the Elkins Fire Department as shown;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Common Council of the City of Elkins hereby approves Budget Revision 2023-036-02.

Jerry Marco, Mayor

Attest:

Sutton R. Stokes, City Clerk

Interdepartmental Budget Revision

Revision Number 2

Fund	Department	Transfer From/Description	Amount	Transfer To/Description	Amount
036	Fire	459-0000 Capital Outlay Equipment	\$4,220.00	457-0000 Capital Outlay Buildings	\$4,220.00
TOTAL			\$4,220.00		\$4,220.00

Admin Signature: 

Date: 3/22/23



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 20, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1648:</i> Establishing compensation rates for city election officials
Recommended By:	City clerk.
Summary:	Council must set rates of pay for election officials. These were previously set by ordinance, but, with recent revisions to Chapter 35, those rates were removed. This resolution sets rates of pay for election officials until superseded by a later resolution.
Fiscal Impact:	Total personnel costs for Election Commissioners, Ballot Commissioners, Poll Clerks, and Emergency Absentee Ballot Commissioners are estimated at \$6,664.21. There will be an additional \$1,664 in early voting costs, but council is not required to set this amount in this resolution.
Recommendation:	Vote to approve these compensation levels for Elkins election officials.
Attachments:	1. R-1648 - Establishing compensation for election officials

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1648)
April 20, 2023

Establishing Sums to be Paid to City Election Officials

WHEREAS, the Charter of the City of Elkins, W. Va. stipulates that the City shall hold a regular election for the offices of Mayor and Councilor; and,

WHEREAS, West Virginia Code §3-1-30 and Elkins City Code §35-15 stipulate that such elections shall be conducted by a Uniform Election Board comprising two Election Commissioners and two Poll Clerks in each of the city's five precincts, appointed by Council; and,

WHEREAS, West Virginia Code §3-3-5c stipulates that Council shall also appoint two Emergency Absentee Ballot Commissioners; and,

WHEREAS, West Virginia Code §3-1-19 stipulates that Council shall also appoint two Ballot Commissioners; and,

WHEREAS, Elkins City Code §35.16 stipulates that Council shall set, from time to time, sums to be paid to these various officials for their training and services;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby establishes the following sums to be paid as shown, after satisfactory completion of all required service:

- *Election Commissioners and Poll Clerks*: \$125 for training; \$175 for service on election day; and \$10 and standard mileage rate if assigned to pick up/drop off election supplies;
- *Ballot Commissioners*: \$75 for the ballot drawing; \$75 for the ballot-proof certification;
- *Emergency Absentee Ballot Commissioners*: \$125 for training; \$125 and standard mileage rate for emergency absentee ballot services provided on election day, if any; and
- *Alternate Election Commissioners and Poll Clerks*: \$125 for training; \$175 if required to serve on election day; and \$10 and standard mileage rate if assigned to pick up/drop off election supplies.

Jerry A. Marco, Mayor

Sutton R. Stokes, City Clerk



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 20, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	<i>Resolution 1649: Appointing election officials for the 2023 city election.</i>
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. R-1649 - Election officials for 2023 election

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1649)
April 20, 2023

Appointing Officials for the 2023 Municipal Election

WHEREAS, the Charter of the City of Elkins, W. Va., stipulates that elections for city offices shall be conducted every odd-numbered year on the first Tuesday of June; and,

WHEREAS, this year's election is to be held June 13; and

WHEREAS, as part of the preparations for any municipal election, Elkins City Code §35.15 requires the following:

No later than the forty-ninth day before the election, the Council shall appoint a Uniform Election Board, consisting of two Election Commissioners and two poll clerks, to conduct each election in each precinct of the city. At the same time as the appointment of election officials or at a subsequent meeting the Council shall appoint persons as alternates.

; and,

WHEREAS, the individuals listed on the document "2023 Elkins Municipal Election: Proposed Election Officials" (attached and made part of this record) have all agreed to serve in the various specified capacities; and,

WHEREAS, the Elkins City Clerk recommends that these individuals be appointed to serve as election officials for the 2023 Municipal Election; ***now, therefore, be it***

RESOLVED, that the Elkins Common Council hereby appoints the individuals listed on the attached "2023 Elkins Municipal Election: Proposed Election Officials" document to serve as officials for the 2023 Municipal Election.

Attest:

Sutton Stokes, City Clerk

Jerry Marco, Mayor

2023 Elkins Municipal Election
Proposed Election Officials
Presented to council April 18, 2023

	Last Name	First Name
<i>First Ward</i>	Siler	Sue
	Isner	Debra
	Proudfoot	Lynn
	Stanley	Taylor
<i>Second Ward</i>	McMahon	Mary
	Friddle	Charlie
	Friddle	Penny
	Helmick	Glenda
<i>Third Ward</i>	Richards	Mary
	Tyre	Edward
	Woolwine	Bob
	Woolwine	Joanne
<i>Fourth Ward</i>	Hinzman	Brooke
	Nevada	Tribble
	Corbin	Marlene
	Slawter	Cathy
<i>Fifth Ward</i>	McCauley	Linda
	Skidmore	Jeff
	Humphrey	Richard
	Gola	Carolyn
<i>Emergency</i>	Corcoran	Tina
	Belan	Corina
<i>Early Voting</i>	Proudfoot	Lynn
	Richards	Mary
	Humphrey	Richard



CITY OF ELKINS AGENDA ITEM REPORT

Meeting Date:	April 20, 2023
Section:	New business
Category:	Action Item
Agenda Item Name:	<i>Resolution 1650:</i> Absorbing increases in PEIA medical insurance costs for FY 2024.
Recommended By:	Finance Committee
Summary:	PEIA costs for municipal plans are increasing 15.6 percent, effective July 1, 2023, for Fiscal Year 2024. The Finance Committee has recommended that the city absorb this 15.6 percent, instead of increasing the cost to any employees.
Fiscal Impact:	The total cost to the General Fund, Fire Fund, Sanitation Fund, Sewer Fund, Water Fund, and Parks Fund to absorb the 15.6 percent increase is \$141,335.81. Absorbing the original 9.7 percent increase has been budgeted for. Covering the additional 5.9 percent will require finding FY 2024 funds to cover an additional \$39,328.36.
Recommendation:	Approve absorbing the total 15.6 percent increase.
Attachments:	1. R-1650 - changes in PEIA health insurance costs for FY 2024

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1650)
April 20, 2023

Absorbing Increased Medical Insurance Premiums for Fiscal Year 2024

WHEREAS, the Common Council of the City of Elkins (“Council”) has previously taken action on an announced 9.7 percent increase in PEIA medical insurance premiums for Fiscal Year 2024, via Resolution 1610; and

WHEREAS, PEIA has notified the City of an additional increase in PEIA medical insurance premiums for Fiscal Year 2024, for a total increase of 15.6 percent over Fiscal Year 2023; and,

WHEREAS, the Finance Committee recommends the City absorb the total increased amount for every employee enrolled in any PEIA plan in FY 2024; ***now, therefore, be it***

RESOLVED, that the Elkins Common Council hereby approves absorbing the total 15.6 percent increase in PEIA medical insurance premiums for Fiscal Year 2024, effective July 1, 2023; ***and be it***

FURTHER RESOLVED, that Resolution 1610 is superseded and shall have no effect.

Jerry A. Marco, Mayor

Attest:

Sutton R. Stokes, City Clerk