City of Elkins

Regular Council Meeting

May 18, 2023
7:00 PM
401 Davis Avenue
Council Chamber, 2nd Floor

AGENDA

1. **Public Hearing: TIF Ordinance**
   a. To conduct a public hearing regarding the proposed adoption by the Common Council of The City of Elkins (the "City") of an Ordinance which would approve and create a new tax increment financing district in the City to be known as "The City of Elkins Redevelopment District No. 1"; approve Project Plan No. 1 as approved by the West Virginia Department of Economic Development; establish a tax increment financing fund for such district; and provide for other matters in connection therewith.
2. **Invocation and Pledge of Allegiance**
3. **Call to order and roll call**
4. **Public comment**
5. **Minutes**
   a. Proposed minutes for the meeting of May, 4, 2023
6. **Presentation**
   a. Elkins-Randolph County Chamber of Commerce
7. **Committee Reports**
8. **Staff reports**
   a. Treasurer's report
9. **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: May 1-May 12.

10. **New business**
    a. Ordinance 315: To consider for adoption on final reading following a public hearing of an Ordinance of the City which would approve and create a new tax increment financing district in the City to be known as "The City of Elkins Redevelopment District No. 1"; approve Project Plan No. 1 as approved by the West Virginia Department of Economic Development; establish a tax increment financing fund for such district; and provide for other matters in connection therewith.
    b. PEIA benefit for council members.
    c. Resolution 1655: Appointment of S. Peet as Mon Forest Towns Partnership Board of Directors Elkins Backup Representative

d. Resolution 1656: Retaining the WVU Land Use and Sustainable Development Law Clinic to Assist with Updating the City's Comprehensive Plan

e. Resolution 1657: Classifying the HR Generalist position as exempt and assigning a salary

f. Resolution 1658: Amending the city's personnel policy concerning probationary employees

g. Resolution 1659: Accepting conditions and authorizing execution of agreement with W. Va. DOH for the replacement or rehabilitation of the Davis Avenue Bridge

h. Resolution 1660: Accepting conditions and authorizing execution of an election and release agreement concerning opioid-related settlement with the Kroger Company

11. Mayor's comments

12. Adjournment

ELKINS COMMON COUNCIL
REGULAR COUNCIL MEETING
MINUTES

401 Davis Avenue
Council Chamber, 2nd Floor
May 4, 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, 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.

Cw. J.A. Guye was absent.

MINUTES

Cm. Lowther **MOVED APPROVAL OF THE MINUTES OF THE MEETING OF APRIL 20, 2023.** The motion carried.

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 April 17-28, 2023.

NEW BUSINESS

Cm. Chenoweth **MOVED APPROVAL OF RESOLUTION 1651: AUTHORIZING CONDITIONS OF LEASE & ADDENDUM AND MAINTENANCE AGREEMENT BETWEEN HART OFFICE SOLUTIONS AND THE CITY OF ELKINS (MUNICIPAL COURT).** The motion carried.

Cw. Cuonzo **MOVED APPROVAL OF RESOLUTION 1652: ACCEPTING CONDITIONS OF AGREEMENT BETWEEN CINTAS AND THE CITY OF ELKINS, AND AUTHORIZING EXECUTION OF AGREEMENT.** The motion carried.

Cm. Hinchman **MOVED APPROVAL OF RESOLUTION 1653: INTRADEPARTMENTAL BUDGET REVISIONS (FY 2023 GENERAL FUND #8-17 AND EFD FUND #3).** The motion carried.

Cm. Hinchman **MOVED APPROVAL OF RESOLUTION 1654: APPROVE INTERDEPARTMENTAL BUDGET REVISION (FY 2023 GENERAL FUND STATE BUDGET REVISION #3).** In accordance with the requirements of the state auditor's office for inter-departmental budget revisions, the chair ordered a roll-call vote. The clerk called the roll in random order. The motion carried. Council votes were as follows:

N. Bross-Fregonara	yes	C. Griggs	yes	L. Severino	yes
R. Chenoweth	yes	M. Hinchman	yes	L. Vest	yes
M. Cuonzo	yes	C. Lowther	yes	Mayor J. Marco (in case of tie)	n/a
J. Guye	absent	D. Parker	yes		

<u>The motion carried.</u>

Cm. Lowther **MOVED APPROVAL OF ORDINANCE 313: ORDINANCE ABANDONING SECTION OF RIVERBEND ROAD TO W. VA. DOH (FINAL READING).** <u>The motion carried.</u>

Cw. Cuonzo **MOVED APPROVAL OF ORDINANCE 314: AMENDING CITY CODE CHAPTER 52: SEWERS AND SEWAGE (FINAL READING).** <u>The motion carried.</u>

Cm. Hinchman **MOVED APPROVAL OF ORDINANCE 315: TO CONSIDER FOR APPROVAL ON FIRST READING OF AN ORDINANCE OF THE COMMON COUNCIL OF THE CITY OF ELKINS (THE "CITY") WHICH WOULD APPROVE AND CREATE A NEW TAX INCREMENT FINANCING DISTRICT IN THE CITY TO BE KNOWN AS "THE CITY OF ELKINS REDEVELOPMENT DISTRICT NO. 1"; APPROVE PROJECT PLAN NO. 1 AS APPROVED BY THE WEST VIRGINIA DEPARTMENT OF ECONOMIC DEVELOPMENT; ESTABLISH A TAX INCREMENT FINANCING FUND FOR SUCH DISTRICT; AND PROVIDE FOR OTHER MATTERS IN CONNECTION THEREWITH. (FIRST OF TWO READINGS.)** <u>The motion carried.</u>

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:	May 18, 2023
Section:	Presentation
Category:	Presentation
Agenda Item Name:	Elkins-Randolph County Chamber of Commerce
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	None

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	May 18, 2023
Section:	Staff reports
Category:	Presentation
Agenda Item Name:	Treasurer's report
Recommended By:	City Treasurer
Summary:	
Fiscal Impact:	
Recommendation:	For review.
Attachments:	1. Treasurer Report - 2023_05_18

General Fund Revenue Detail

	April Revenues	YTD Revenues	Percent of Revenues Collected Per Budget	Percent of Yr. Completed 83.33
Unassigned Fund Balance				270,054.00
County Tax	$86,930.11	$1,027,709.71	93.91%	1,094,407.00
B & O Tax	$327,831.83	$1,597,439.33	122.41%	1,305,000.00
Hotel/Motel Tax	$17,995.45	$189,678.28	118.47%	160,100.00
Gas & Oil Severance Tax	$0.00	$40,323.89	336.03%	12,000.00
2% City Utility Tax	$5,901.97	$61,036.17	91.10%	67,000.00
Utility Excise Tax	$61,572.28	$287,086.57	99.00%	290,000.00
Liquor Tax	$26,077.78	$93,429.26	98.35%	95,000.00
Police	$1,995.15	$23,338.29	101.03%	23,100.00
Municipal Court	$4,937.35	$71,623.18	149.84%	47,800.00
Code Enforcement	$8,004.97	$29,593.58	96.40%	30,700.00
Business License	$435.00	$11,745.00	40.50%	29,000.00
Intergovernmental	$25,300.80	$299,517.98	93.45%	320,503.00
Franchise/IRP Fees	$34,019.04	$128,175.51	95.65%	134,000.00
Phil Gainer Community Center	$1,395.00	$49,176.25	163.92%	30,000.00
Misc. Revenue	$17,999.57	$236,912.56	328.77%	72,060.00
Municipal Sales Tax	$353,073.14	$1,466,879.11	104.78%	1,400,000.00
TOTAL	**$973,469.44**	**$5,613,664.67**	**104.33%**	5,380,724.00

Bank Account Name	Balance as of 4/30/2023
ARPA	$1,106,009.71
Elkins Building Comm. Sinking Fund	$0.00
Elkins Municipal Building Comm.	$0.00
Financial Stabilization	$1,135,247.43
Fire Pension Fund	$2,375,243.31
Firemen's Pension & Relief Fund	$0.00
Landfill Access Escrow	$1,791,757.86
Landfill Post Closure	$48,679.15
Payroll	$552.57
Police Forfeitures	$12,126.68
Police Pension Fund	$4,090,283.75
Police Seizures	$24,088.78
Policemen's Pension & Relief Fund	$0.00
Pooled Cash-Coal Severance Fund	$148,693.65
Pooled Cash-Fire Fund	$519,949.41
Pooled Cash-General Fund	$1,840,456.53
Pooled Cash-Landfill Fund	$123,234.63
Pooled Cash-Parks Fund	$1,012,230.57
Pooled Cash-Sanitation Fund	$1,228,970.07
Pooled Cash-Sewer Fund	$272,269.73
Pooled Cash-Water Fund	$115,449.95
Sewer Depreciation	$224,950.80
Sewer O&M	$313,584.28
Sewer Project-Phase II	$49.26
Water Depreciation	$107,614.89
Water O&M	$291,418.05

FY2023 Budget Control Summary

General Fund

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Revenues Over Expenses	YTD TOTALS
Revenues	$789,526.04	$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	$973,469.44	$0.00	$0.00	$1,193,002.38	$5,613,070.57
Expenses	$539,656.21	$507,079.46	$424,155.49	$455,380.71	$385,791.35	$516,766.02	$383,763.43	$422,107.12	$425,489.23	$359,879.17	$0.00	$0.00		$4,420,068.19

Sanitation Fund

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Revenues Over Expenses	YTD TOTALS
Revenues	$120,645.45	$119,372.54	$133,307.40	$141,334.45	$122,103.24	$128,929.99	$115,827.47	$126,402.44	$123,868.58	$105,826.51	$0.00	$0.00	$19,195.62	$1,237,618.07
Expenses	$136,876.45	$120,282.93	$123,237.98	$120,910.12	$132,835.31	$137,600.87	$123,903.61	$100,347.18	$120,426.75	$102,001.25	$0.00	$0.00		$1,218,422.45

Sewer Fund

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Revenues Over Expenses	YTD TOTALS
Revenues	$146,783.84	$204,684.63	$201,750.37	$211,507.19	$201,442.20	$200,168.64	$172,822.92	$222,058.52	$222,085.61	$171,765.37	$0.00	$0.00	-$497,754.65	$1,955,069.29
Expenses	$230,600.11	$237,612.50	$235,426.57	$269,300.47	$235,245.13	$258,723.18	$237,877.08	$231,840.19	$275,034.49	$241,164.22	$0.00	$0.00		$2,139,198.04

Water Fund

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Revenues Over Expenses	YTD TOTALS
Revenues	$240,176.58	$321,348.32	$291,325.28	$351,391.12	$398,778.11	$414,032.60	$406,343.47	$360,926.74	$333,270.91	$333,621.26	$0.00	$0.00	$118,501.50	$3,451,214.39
Expenses	$344,166.21	$321,974.85	$341,440.58	$365,028.31	$291,489.07	$357,558.74	$352,557.27	$292,877.72	$366,974.31	$298,645.83	$0.00	$0.00		$3,332,712.89

Fire Fund

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Revenues Over Expenses	YTD TOTALS
Revenues	$171,787.41	$97,384.71	$89,552.05	$50,255.73	$82,767.87	$79,181.94	$28,842.66	$91,073.92	$79,115.05	$34,523.10	$0.00	$0.00	-$36,320.40	$804,484.44
Expenses	$108,586.69	$73,773.16	$79,332.40	$84,690.06	$97,422.80	$107,534.67	$76,408.49	$68,466.15	$71,242.27	$73,348.15	$0.00	$0.00		$840,804.84

Landfill Fund

	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Revenues Over Expenses	YTD TOTALS
Revenues	$13.19	$30.88	$12.15	$25.29	$29.75	$379.95	$379.16	$440.88	$396.90	$299.64	$0.00	$0.00	-$4,163.79	$2,007.79
Expenses	$2,152.54	$12.33	$1,315.71	$12.46	$11.22	$1,327.57	$0.00	$15.59	$1,317.47	$6.69	$0.00	$0.00		$6,171.58

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	May 18, 2023
Section:	Approval of vendor invoice payments
Category:	Action Item
Agenda Item Name:	Vendor invoices presented for approval: May 1-May 12.
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. AP check report - 2023_05_18

VENDOR SET: 01 Elkins

BANK: ARPA America Rescue Plan Act

DATE RANGE: 5/01/2023 THRU 5/12/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00041	Baker Truck Equipment Co							
I-E-37648	stainless steel dump bed	R	5/02/2023	7,558.00		000097		7,558.00

* * T O T A L S * *	NO			INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	1			7,558.00	0.00	7,558.00
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:	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:	1	7,558.00	0.00	7,558.00
BANK: ARPA TOTALS:	1	7,558.00	0.00	7,558.00

VENDOR SET: 01 Elkins
BANK: Pool Pooled Cash
DATE RANGE: 5/01/2023 THRU 5/12/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00741	Great-West Trust Company LLC							
I-VF 202305021507	Voya	D	5/02/2023	490.00		004689		
I-VF2202305021507	Voya AT	D	5/02/2023	50.00		004689		540.00
1	COONTS, MARSHALL							
I-000202304271504	US REFUND	R	5/02/2023	425.00		013357		425.00
1	H & K EQUIPMENT							
I-000202305021506	US REFUND	R	5/02/2023	255.97		013358		255.97
00116	Child Support Enforcement							
I-CDS202305021507	Child Support	R	5/02/2023	571.48		013359		571.48
00121	Citizens Bank of WVFP							
I-FP 202305021507	Fire Pension	R	5/02/2023	487.34		013360		487.34
00122	Citizens Bank of WVPp							
I-PP 202305021507	Police Pension	R	5/02/2023	143.63		013361		
I-PPN202305021507	Police Pension-2010 Forward	R	5/02/2023	403.01		013361		546.64
00147	COE Misc							
I-MIS202305021507	Misc Reimbursements	R	5/02/2023	493.90		013362		493.90
00150	COE Payroll							
I-T1 202305021507	Federal Withholding	R	5/02/2023	11,545.66		013363		11,545.66
00151	COE Payroll							
I-T3 202305021507	FICA	R	5/02/2023	12,834.52		013364		
I-T4 202305021507	Medicare	R	5/02/2023	4,357.24		013364		17,191.76
00152	COE Payroll							
I-T2 202305021507	State Withholding	R	5/02/2023	4,869.00		013365		4,869.00
00203	Davis Trust Company							
I-CC 202305021507	Employee Christmas Club	R	5/02/2023	2,510.00		013366		2,510.00
00747	Washington National Insurance							
I-WN 202305021507	Washington National Insurance	R	5/02/2023	438.31		013367		438.31
00837	COE Payroll Reimbursement							
I-001202305021507	Payroll Reimbursement	R	5/02/2023	46,704.02		013368		
I-006202305021507	Payroll Reimbursement	R	5/02/2023	5,104.07		013368		
I-036202305021507	Payroll Reimbursement	R	5/02/2023	14,131.53		013368		
I-400202305021507	Payroll Reimbursement	R	5/02/2023	19,976.12		013368		
I-401202305021507	Payroll Reimbursement	R	5/02/2023	13,601.04		013368		
I-404202305021507	Payroll Reimbursement	R	5/02/2023	10,693.10		013368		110,209.88

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 5/01/2023 THRU 5/12/2023

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
01885		Colonial Life							
	I-CL 202305021507	Colionial Life-AT	R	5/02/2023	112.10		013369		
	I-CLP202305021507	Colonial Life-PT	R	5/02/2023	52.52		013369		164.62
02459		Applied Trails Research, LLC							
	I-412	contracted services	R	5/02/2023	24,740.00		013370		24,740.00
00041		Baker Truck Equipment Co							
	I-37648	stainless steel dump bed	R	5/02/2023	11,902.00		013371		11,902.00
00032		Absolute Assurance Drug Test L							
	I-08053103B	J Rosier	R	5/03/2023	77.00		013372		77.00
00047		Truist Governmental Finance							
	I-00007 051923	9948000234-07 05/19/23	R	5/03/2023	4,984.55		013373		4,984.55
00082		Builders Group, Inc.							
	I-713857	50 bags sand	R	5/03/2023	175.00		013374		175.00
00119		CIT Technology Finance Serv, I							
	I-42202396	Konica 050823 9000321255000	R	5/03/2023	55.00		013375		55.00
00126		City of Clarksburg							
	I-202304206667	Compost 04/03/23	R	5/03/2023	176.60		013376		
	I-202304276720	Yardwaste/Compost #1013	R	5/03/2023	110.40		013376		287.00
00149		COE Parks and Recreation							
	I-05/2023 Support	Monthly Support 05/2023	R	5/03/2023	25,483.00		013377		25,483.00
00154		COE Sanitation							
	I-202304254185	Brush #189 INV 1013	R	5/03/2023	299.48		013378		299.48
00156		COE Sewer Depreciation Account							
	I-Sewer Depr 04/2023	Sewer Depreciation Dep 04/2023	R	5/03/2023	4,205.66		013379		4,205.66
00235		Elkins Building Comm.							
	I-05/2023	Monthly Payment 05/2023	R	5/03/2023	3,483.79		013380		3,483.79
00250		Elkins-Randolph County Regiona							
	I-CKREQ 050123	1/2 insurance package	R	5/03/2023	16,898.65		013381		16,898.65
00283		Frontier							
	I-042023	Phone charges 04/20/23	R	5/03/2023	1,175.29		013382		1,175.29

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 5/01/2023 THRU 5/12/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00334	Core & Main LP							
I-S669787	3-5 MIN SET MS PLUG BLUE	R	5/03/2023	210.00		013383		210.00
00381	Grover C Jackson Jr							
I-05/2023 Rent	Rent 05/2023	R	5/03/2023	1,800.00		013384		1,800.00
00471	Mon Power							
I-LT Barron 041923	LT 31 Barron 031623-041423	R	5/03/2023	11,546.77		013385		
I-RRAVE 041723	RR Ave 031523-041323	R	5/03/2023	42.91		013385		11,589.68
00484	Mountaineer Gas Company							
I-Nat'l Gas 042723	Natural Gas 042723	R	5/03/2023	9,122.48		013386		9,122.48
00628	Seneca Designs							
I-45027	Embrod - Iron Horse Logo	R	5/03/2023	56.00		013387		56.00
00701	Toshiba Financial Services							
I-499412617	Lex M5255/ Tosh E4515AC	R	5/03/2023	662.57		013388		
I-499563633	LX C4150/TE3005AC	R	5/03/2023	221.37		013388		
I-499803203	Tosh E4515AC 0414-051523	R	5/03/2023	125.59		013388		
I-500004700	XM3250 051323	R	5/03/2023	69.00		013388		1,078.53
00707	Trickett Hardware, Inc.							
I-3695	2 keys	R	5/03/2023	5.00		013389		5.00
00712	Tyler Technologies, Inc.							
I-041223	KWeaver Executime SIA Review	R	5/03/2023	65.00		013390		65.00
00803	WV Division of Motor Vehicles							
I-CITELKINS 042523	IDs Kesecker/Wagler	R	5/03/2023	50.00		013391		50.00
00808	WV Municipal League							
I-WVML Fall Bd Mtg	Mayor - WVML Fall Bd Mtg	R	5/03/2023	1,150.00		013392		1,150.00
00884	Colonial Court Service Station							
I-578031	2 195 steel wheels	R	5/03/2023	1,000.00		013393		
I-578100	2 Tires 225/70/195	R	5/03/2023	1,000.00		013393		2,000.00
01092	Civil War Trails							
I-23-W-54	CWT Membership FY23	R	5/03/2023	200.00		013394		200.00
01292	COE Sewer O & M Account							
I-Sewer OM 04/2023	Sewer O&M Dep 04/2023	R	5/03/2023	13,153.88		013395		13,153.88

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 5/01/2023 THRU 5/12/2023

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
01764		Marilynn Cuonzo							
	I-CKREQ 042623	Reimb trim string	R	5/03/2023	13.77		013396		13.77
01957		Zoro Tools, Inc.							
	I-12369048	Bray rebuild kits	R	5/03/2023	294.32		013397		
	I-12394410 12392202	safety vests/glasses/hard hats	R	5/03/2023	167.85		013397		
	I-WB5969847551	Web Sling	R	5/03/2023	321.15		013397		783.32
02322		Badger Meter							
	I-80126140	Beacon MBL hosting 04/2023	R	5/03/2023	211.00		013398		211.00
02347		LEAF							
	I-14619788	Tosh E4515AC 05/11/23	R	5/03/2023	317.44		013399		
	I-14630350	Tosh ES4515AC 05/13/23	R	5/03/2023	226.84		013399		
	I-14656988	Tosh E478S 1007161391002	R	5/03/2023	96.74		013399		
	I-14656989	Toshiba E478S 1007161391003	R	5/03/2023	96.74		013399		737.76
02460		Michael Hayes							
	I-Reimburse5/2023	reimbursement sewer backup	R	5/03/2023	4,822.30		013400		4,822.30
00030		The Art Medium Company							
	I-5421	Vinyl Letters PM Code/OpsAdmnA	R	5/09/2023	50.00		013401		
	I-5422	Vinyl Lettering Operations	R	5/09/2023	80.00		013401		130.00
00047		Truist Governmental Finance							
	I-00006 052723	9948000234-06 052723	R	5/09/2023	2,643.26		013402		2,643.26
00143		COE General Fund 2							
	I-IND 5/2023	Monthly Indirects 05/2023	R	5/09/2023	24,270.24		013403		24,270.24
00158		COE Water Depreciation Account							
	I-Water Depr 04/2023	Water Deprec Dep 04/2023	R	5/09/2023	8,055.26		013404		8,055.26
00267		Fastenal Company							
	I-173839	24 pr Safety Glasses	R	5/09/2023	266.76		013405		266.76
00471		Mon Power							
	I-042023	Consumption/lighting 042023	R	5/09/2023	46,620.20		013406		46,620.20
00479		Amtower Auto Supply, Inc.							
	I-188558 189457	wrenches/Blue DEF	R	5/09/2023	84.57		013407		
	I-189095	Oil Filter	R	5/09/2023	7.06		013407		
	I-189735	Antifreeze/fittings/hose	R	5/09/2023	109.17		013407		200.80

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 5/01/2023 THRU 5/12/2023

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00498		Naylor's Ace Hardware							
	I-456889	gasket maker/clamp hose	R	5/09/2023	42.90		013408		
	I-456904	Adptr Barbxmpt	R	5/09/2023	20.93		013408		
	I-456928	supplies for log stop	R	5/09/2023	82.91		013408		146.74
00540		Pitney Bowes Bank Inc							
	I-Postage Alloc 4/23	Postage Allocation 04/2023	R	5/09/2023	986.25		013409		986.25
00688		Terra Flora Landscaping							
	I-0104	mulch/delivery	R	5/09/2023	205.00		013410		205.00
00701		Toshiba Financial Services							
	I-500722913	E4515AC 042723-052723	R	5/09/2023	214.24		013411		214.24
00711		Tygart Valley Transfer, Inc.							
	I-00012535	Comm	R	5/09/2023	121.63		013412		
	I-00012539	Res	R	5/09/2023	105.99		013412		
	I-00012551	Comm	R	5/09/2023	198.96		013412		
	I-00012555	Res	R	5/09/2023	765.41		013412		
	I-00012556	Comm	R	5/09/2023	880.96		013412		
	I-00012557	Res	R	5/09/2023	813.20		013412		
	I-00012582	Comm	R	5/09/2023	151.17		013412		
	I-00012588	Comm	R	5/09/2023	437.88		013412		
	I-00012615	Res	R	5/09/2023	525.62		013412		
	I-00012616	Res	R	5/09/2023	539.52		013412		
	I-00012617	Comm	R	5/09/2023	490.87		013412		
	I-00012642	Comm	R	5/09/2023	211.12		013412		
	I-00012645	Res	R	5/09/2023	81.67		013412		
	I-00012648	Comm	R	5/09/2023	164.20		013412		
	I-00012657	Comm	R	5/09/2023	131.19		013412		
	I-00012663	Res/tires	R	5/09/2023	212.22		013412		
	I-00012670	Comm	R	5/09/2023	283.23		013412		
	I-00012676	Res	R	5/09/2023	576.01		013412		
	I-00012677	Res	R	5/09/2023	701.12		013412		
	I-00012678	Comm	R	5/09/2023	642.91		013412		
	I-00012712	Comm	R	5/09/2023	99.04		013412		
	I-00012713	Comm	R	5/09/2023	66.90		013412		
	I-00012717	Res	R	5/09/2023	375.32		013412		
	I-00012722	Res	R	5/09/2023	609.03		013412		
	I-00012723	Res	R	5/09/2023	754.99		013412		
	I-00012724	Comm	R	5/09/2023	576.88		013412		
	I-00012726	Comm	R	5/09/2023	209.38		013412		
	I-00012762	Comm	R	5/09/2023	417.02		013412		
	I-00012773	Comm	R	5/09/2023	943.52		013412		
	I-00012776	Res	R	5/09/2023	932.22		013412		
	I-00012777	Res	R	5/09/2023	758.46		013412		
	I-00012805	Comm	R	5/09/2023	183.32		013412		
	I-00012808	Comm	R	5/09/2023	290.18		013412		

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 5/01/2023 THRU 5/12/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
I-00012816	Res	R	5/09/2023	175.50		013412		
I-00012831	Res	R	5/09/2023	569.93		013412		
I-00012835	Comm	R	5/09/2023	357.08		013412		
I-00012836	Res	R	5/09/2023	547.34		013412		
I-00012863	Comm	R	5/09/2023	142.48		013412		
I-00012877	Comm	R	5/09/2023	337.96		013412		
I-00012886	Comm	R	5/09/2023	589.92		013412		
I-00012889	Res	R	5/09/2023	553.43		013412		
I-00012890	Res	R	5/09/2023	691.56		013412		
I-00012913	Comm	R	5/09/2023	195.48		013412		
I-00012921	Comm	R	5/09/2023	501.30		013412		
I-00012926	Res	R	5/09/2023	77.32		013412		
I-00012946	Comm	R	5/09/2023	498.69		013412		
I-00012948	Res	R	5/09/2023	562.98		013412		
I-00012951	Res	R	5/09/2023	564.72		013412		
I-00012976	Comm	R	5/09/2023	457.86		013412		
I-00012988	Comm	R	5/09/2023	125.11		013412		
I-00012999	Comm	R	5/09/2023	117.29		013412		
I-00013006	Comm	R	5/09/2023	116.42		013412		
I-00013012	Comm	R	5/09/2023	682.88		013412		
I-00013016	Res	R	5/09/2023	788.87		013412		
I-00013017	Comm	R	5/09/2023	174.63		013412		
I-00013018	Res	R	5/09/2023	436.14		013412		
I-00013048	Comm	R	5/09/2023	209.38		013412		
I-00013057	Comm	R	5/09/2023	87.75		013412		
I-00013067	Comm	R	5/09/2023	810.59		013412		
I-00013071	Res	R	5/09/2023	844.47		013412		
I-00013089	Comm	R	5/09/2023	112.08		013412		
I-00013092	Comm	R	5/09/2023	194.61		013412		
I-00013098	Comm	R	5/09/2023	211.99		013412		
I-00013108	Comm	R	5/09/2023	139.88		013412		
I-00013116	Res	R	5/09/2023	540.39		013412		
I-00013117	Res	R	5/09/2023	417.02		013412		
I-00013119	Comm	R	5/09/2023	481.32		013412		
I-00013151	Res	R	5/09/2023	477.84		013412		
I-00013152	Comm	R	5/09/2023	534.31		013412		
I-00013155	Res	R	5/09/2023	680.27		013412		
I-00013169	Comm	R	5/09/2023	344.04		013412		
I-00013186	Comm	R	5/09/2023	196.35		013412		
I-00013198	Comm	R	5/09/2023	448.30		013412		
I-00013203	Res	R	5/09/2023	562.11		013412		
I-00013204	Res	R	5/09/2023	524.76		013412		
I-00013236	Res	R	5/09/2023	111.21		013412		
I-00013250	Comm	R	5/09/2023	719.37		013412		
I-00013251	Res	R	5/09/2023	429.19		013412		
I-00013252	Res	R	5/09/2023	536.05		013412		
I-00013270	Comm	R	5/09/2023	97.31		013412		
I-00013274	Comm	R	5/09/2023	415.29		013412		

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 5/01/2023 THRU 5/12/2023

VENDOR I.D.		NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
	I-00013282	Comm	R	5/09/2023	231.97		013412		
	I-00013299	Comm	R	5/09/2023	838.39		013412		
	I-00013300	Res	R	5/09/2023	700.25		013412		
	I-00013301	Res	R	5/09/2023	839.26		013412		
	I-00013340	Res	R	5/09/2023	508.25		013412		
	I-00013341	Comm	R	5/09/2023	315.37		013412		
	I-00013344	Res	R	5/09/2023	411.81		013412		
	I-00013347	Comm	R	5/09/2023	439.61		013412		
	I-00013364	Comm	R	5/09/2023	192.00		013412		
	I-00013370	Comm	R	5/09/2023	210.25		013412		
	I-00013388	Res	R	5/09/2023	462.20		013412		
	I-00013389	Comm	R	5/09/2023	571.67		013412		
	I-00013390	Res	R	5/09/2023	476.97		013412		
	I-00013409	Comm	R	5/09/2023	158.12		013412		
	I-00013412	Comm	R	5/09/2023	251.08		013412		
	I-00013434	Res	R	5/09/2023	495.22		013412		
	I-00013435	Comm	R	5/09/2023	589.92		013412		
	I-00013437	Res	R	5/09/2023	540.39		013412		
	I-00013472	Comm	R	5/09/2023	224.15		013412		
	I-00013475	Res	R	5/09/2023	452.64		013412		
	I-00013476	Res	R	5/09/2023	776.71		013412		
	I-00013477	Comm	R	5/09/2023	622.93		013412		
	I-00013669	Res	R	5/09/2023	871.41		013412		
	I-112696	Comm DMH	R	5/09/2023	117.29		013412		
	I-112704	Comm	R	5/09/2023	216.33		013412		45,156.10
00712		Tyler Technologies, Inc.							
	I-025-421365	M Starbird/TimeAttendance	R	5/09/2023	4,160.00		013413		4,160.00
00730		Valley Steel							
	I-17266/17251/17255	Angle Iron/Argon/Acetylene	R	5/09/2023	475.33		013414		475.33
00779		Woodford Oil Company							
	I-4445025	235 Dyed Diesel Lift Station	R	5/09/2023	799.00		013415		
	I-4449839	CHV Havoline 55 gal	R	5/09/2023	483.00		013415		
	I-4451287	CHV Multifak EP	R	5/09/2023	725.00		013415		2,007.00
00812		WV Regional Jail and Correctio							
	I-4123B49F	28 days Inmate Housing TVRJ	R	5/09/2023	1,351.00		013416		1,351.00
00884		Colonial Court Service Station							
	I-578260	8 trans fluid/gasket/labor	R	5/09/2023	918.21		013417		918.21

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 5/01/2023 THRU 5/12/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00900	National Road Utility Supply,							
I-335155	Y Branch MIP/3 CTS PJ	R	5/09/2023	470.56		013418		
I-335156	2 YBranch MIP/VM 810 MetroTech	R	5/09/2023	4,000.00		013418		4,470.56
01313	COE Water O & M Account							
I-Water OM 04/2023	Water OM Deposit 04/2023	R	5/09/2023	12,902.14		013419		12,902.14
01390	Phoenix Solutions, LLC							
I-5052	Chemicals	R	5/09/2023	2,427.91		013420		
I-5080	Chemicals	R	5/09/2023	3,666.75		013420		6,094.66
01447	Heritage Fire Equipment							
I-8036	ENFO III	R	5/09/2023	1,223.06		013421		1,223.06
01454	Ron's Tree Service, LLC							
I-2418	Cut dead trees BearHntr BStatn	R	5/09/2023	2,500.00		013422		2,500.00
01594	Pace Analytical Services LLC							
I-2330436960	April 2023 Lab Analysis	R	5/09/2023	2,018.00		013423		2,018.00
01681	HdL Companies							
I-04302023	Addt'l Bus Lic Rev 04/2023	R	5/09/2023	843.33		013424		843.33
01727	Enterprise FM Trust							
I-FBN4746876	Fleet Leases 05/2023	R	5/09/2023	16,784.17		013425		16,784.17
01790	Crim Law Office PLLC							
I-331	Water Board 12/2022	R	5/09/2023	500.00		013426		
I-336	Water Board 01/2023	R	5/09/2023	1,600.00		013426		
I-341	Water Board 02/2023	R	5/09/2023	1,520.00		013426		
I-343	Water Bd March 2023	R	5/09/2023	1,120.00		013426		
I-351	City Attny Serv 04/2023	R	5/09/2023	5,730.00		013426		
I-352	Muncipal Ct Matters 04/2023	R	5/09/2023	3,830.00		013426		14,300.00
02361	Triple K Kustomz							
I-7314	front and rear brakes	R	5/09/2023	708.47		013427		708.47
02364	WVIAEI							
I-23 Spring Seminar	P Isner - 23 Spring Seminar	R	5/09/2023	150.00		013428		150.00
02461	The Thraser Group Inc							
I-1026721	Geotech Investigation/Report	R	5/09/2023	16,700.00		013429		16,700.00

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 5/01/2023 THRU 5/12/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
02462	Charleston Fleet Services							
I-9854	Accessories on 21 Ram 5500	R	5/09/2023	4,428.20		013430		4,428.20
00085	Burgess & Niple, Inc.							
I-1075366	flow meter install	R	5/09/2023	419.50		013431		419.50

* * T O T A L S * *	NO			INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	75			511,873.18	0.00	511,873.18
HAND CHECKS:	0			0.00	0.00	0.00
DRAFTS:	1			540.00	0.00	540.00
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: Pool TOTALS:	76	512,413.18	0.00	512,413.18
BANK: Pool TOTALS:	76	512,413.18	0.00	512,413.18

VENDOR SET: 01 Elkins

BANK: SEWDP Sewer Depreciation

DATE RANGE: 5/01/2023 THRU 5/12/2023

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00457	Metalworks, Inc.							
I-12087	areator drum repair	R	5/02/2023	4,480.00		000040		4,480.00

* * T O T A L S * *	NO			INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	1			4,480.00	0.00	4,480.00
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:	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	4,480.00	0.00	4,480.00
BANK: SEWDP TOTALS:	1	4,480.00	0.00	4,480.00
REPORT TOTALS:	78	524,451.18	0.00	524,451.18

SELECTION CRITERIA

VENDOR SET: 01-Elkins
VENDOR: ALL
BANK CODES: Exclude: PCARD
FUNDS: All

CHECK SELECTION

CHECK RANGE: 000000 THRU 999999
DATE RANGE: 5/01/2023 THRU 5/12/2023
CHECK AMOUNT RANGE: 0.00 THRU 999,999,999.99
INCLUDE ALL VOIDS: YES

PRINT OPTIONS
SEQUENCE: CHECK NUMBER

PRINT TRANSACTIONS: YES
PRINT G/L: NO
UNPOSTED ONLY: NO
EXCLUDE UNPOSTED: NO
MANUAL ONLY: NO
STUB COMMENTS: NO
REPORT FOOTER: NO
CHECK STATUS: NO
PRINT STATUS: * - All

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	May 18, 2023
Section:	New business
Category:	Ordinance
Agenda Item Name:	Ordinance 315: To consider for adoption on final reading following a public hearing of an Ordinance of the City which would approve and create a new tax increment financing district in the City to be known as "The City of Elkins Redevelopment District No. 1"; approve Project Plan No. 1 as approved by the West Virginia Department of Economic Development; establish a tax increment financing fund for such district; and provide for other matters in connection therewith.
Recommended By:	City clerk
Summary:	This ordinance creates the TIFdistrict, establishes a TIF fund for deposits of incremental property tax increases within the district, and approves Project Plan 1, which is described in the approved application as follows: • Waterlines, waterworks facilities, sanitary sewer lines, sewerage facilities, stormwater facilities, telecommunications, cable, fiber optic, electric, natural gas and related public infrastructure improvements and relocations; • Construction of roads, sidewalks, street lighting, traffic signals and other roadway and streetscape improvements and related appurtenances including curbing and gutters; • Acquisition of land within the TIF District or outside of the TIF District which contains or will contain infrastructure or other facilities which serve the TIF District; • Demolition, site preparation and excavation and other earthwork necessary for and incidental to the construction and installation of infrastructure and other improvements; • Other related improvements, extensions, renovations and additions; and • All professional service fees and consultant fees in connection with the foregoing, including but not limited to engineering and other design fees, legal fees, fees of property tax revenue consultants, property tax consultants, trustees, continuing disclosure agents and all fees and costs

	incurred in connection with the preparation and approval of the Project Plan. This ordinance does not issue bonds. Separate action would be needed for that and would not occur until 2024 at the earliest. For more information about the Elkins TIF, see: https://cityofelkinswv.com/tif-application-approved/
Fiscal Impact:	No one pays higher taxes as a result of TIF. School system revenues are unaffected by the TIF, because they are protected by the state School Aid Formula. The $25 million figure is based on a projection of what the property tax revenue increases in the district might amount to over the next 30 years in the best-case scenario. A more realistic projection would be under $10 million. Although these sounds like large sums, it is important to keep them in perspective and remember the timeframe. If Randolph County's revenues—just estimated for Fiscal Year 2024 at $12,639,190—were to remain flat for the next 30 years, the county's full income during that period would be about $380 million. Even the optimistic project of $25 million in revenue for the city would be less than seven percent of the county's revenues during that period, and it seems reasonable to expect that the county's revenues will not remain flat for the next 30 years. Indeed, the TIF district itself will help fuel increased revenues over the next 30 years at the county level as well.
Recommendation:	Approve the TIF ordinance on second and final reading.
Attachments:	1. Notice of Public Hearing - Creating TIF District 2. Ordinance Creating TIF District

[TO BE PUBLISHED IN *THE INTER-MOUNTAIN*
ONCE A WEEK FOR TWO SUCCESSIVE WEEKS
ON TUESDAY, MAY 4, 2023, AND
TUESDAY, MAY 11, 2023]

NOTICE OF PUBLIC HEARING

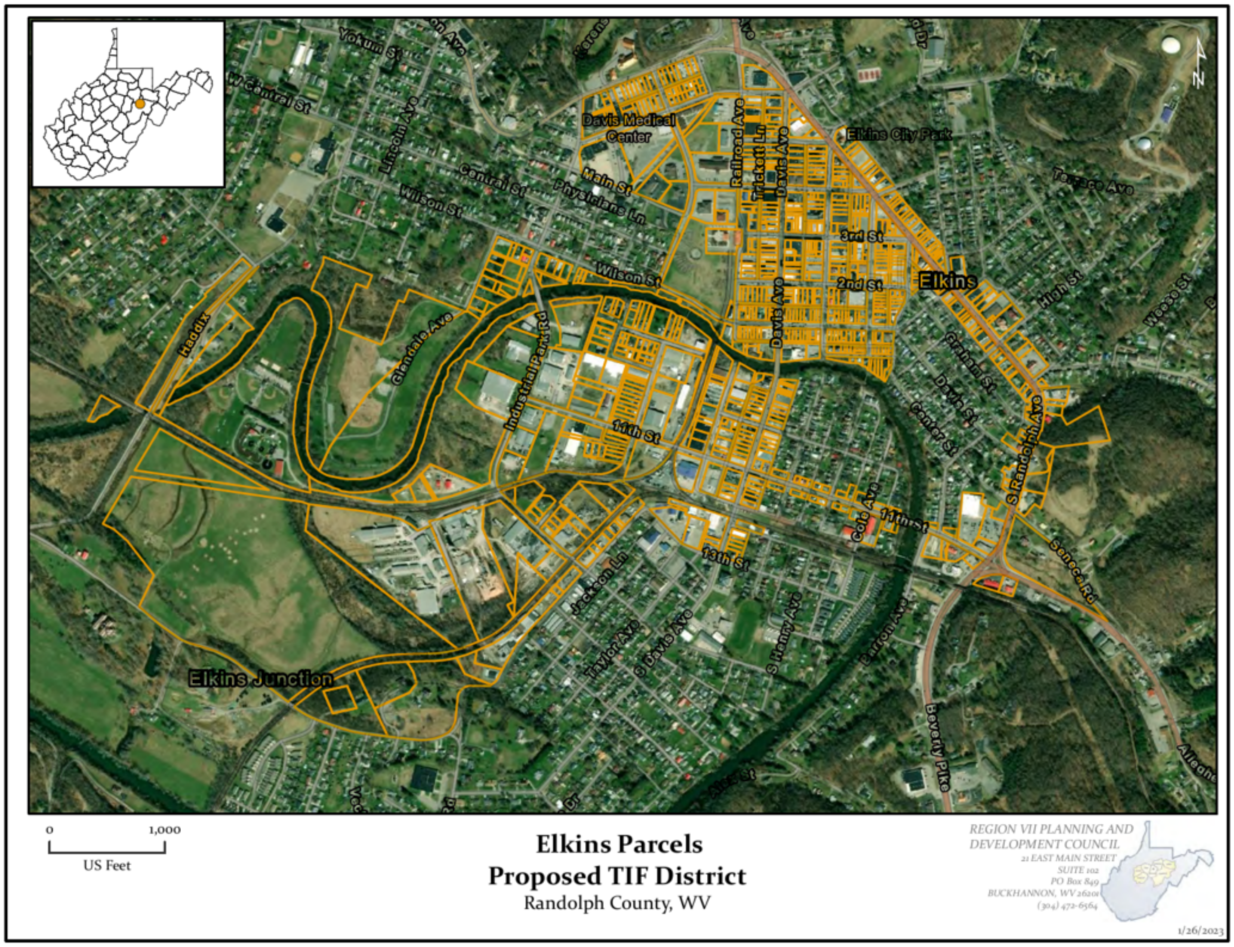
REGARDING CREATION OF THE CITY OF ELKINS REDEVELOPMENT DISTRICT NO. 1 AND APPROVAL OF PROJECT PLAN NO. 1 AND ISSUANCE OF TAX INCREMENT FINANCING OBLIGATIONS

A public hearing will be held at a regular meeting of The Common Council of The City of Elkins (the "City"), on May 18, 2023, at 7:00 p.m. in the Common Council Chambers located at City Hall, 401 Davis Avenue, Elkins, WV, and at such hearing any person interested may appear and present comments, protests, suggestions and otherwise express their views respecting an ordinance of the City regarding the creation of a tax increment redevelopment district to be designated as "The City of Elkins Redevelopment District No. 1" (the "TIF District") in the City, and the financing of certain projects described in a Project Plan for the TIF District to be designated as "Project Plan No. 1" (the "Project Plan"). All comments, protests, suggestions and views shall be heard at such public hearing, and the City shall thereafter take such actions as it shall deem proper in the premises regarding the approval, pursuant to Chapter 7, Article 11B of the Code of West Virginia, 1931, as amended (the "Act"), respecting the ordinance creating the TIF District and the approval of the Project Plan. Following is a brief summary of such matters.

Creation of TIF District

The proposed TIF District is located in the City and includes approximately 437 acres of contiguous real property in the Elkins Corporation property tax district of Randolph County as set forth on the map below. The proposed TIF District is comprised of parts of the downtown business district, the Industrial Park managed by the Randolph County Development Authority, and the Elkins Railyard. The proposed TIF District is generally bounded to the north by Seneca Trail, to the east by Randolph Avenue and Livingston Avenue, to the south by Georgetown Road, and to the west by portions of Haddix Road and is bisected by the Tygart Valley River. The TIF District is being proposed by the City for the purpose of facilitating the planning, acquisition, construction and equipping of public infrastructure improvements within the TIF District.

Map of the TIF District



Approval of Project Plan

The City proposes to develop certain capital improvements within or which serve the TIF District and include the design, permitting, acquisition, construction and equipping of site, infrastructure and other improvements, both public and private, that will facilitate development within, or for the benefit of, the TIF District (collectively, the "TIF Projects"), including, but not limited to, the following:

- Waterlines, waterworks facilities, sanitary sewer lines, sewerage facilities, stormwater facilities, telecommunications, cable, fiber optic, electric, natural gas and related public infrastructure improvements and relocations;
- Construction of roads, sidewalks, street lighting, traffic signals and other roadway and streetscape improvements and related appurtenances including curbing and gutters;
- Acquisition of land within the TIF District or outside of the TIF District which contains or will contain infrastructure or other facilities which serve the TIF District;
- Demolition, site preparation and excavation and other earthwork necessary for and incidental to the construction and installation of infrastructure and other improvements;
- Other related improvements, extensions, renovations and additions; and
- All professional service fees and consultant fees in connection with the foregoing, including but not limited to engineering and other design fees, legal fees, fees of property tax revenue consultants, property tax consultants, trustees, continuing disclosure agents and all fees and costs incurred in connection with the preparation and approval of the Project Plan.

The TIF Projects are expected to include, but not be limited to, (i) riverfront development and beautification along the Tygart Valley River; (ii) recreational trail system improvements throughout the proposed TIF District; (iii) streetscaping, wayfinding, lighting, and sidewalk improvements in the downtown business district; (iv) improvements to the Elkins Railyard, including the Roundhouse Plaza and construction of a new event center; and (v) improvements to the Randolph County Industrial Park.

Tax Increment Financing Obligations

To finance all or portions of the TIF Projects, the City proposes to initially issue tax increment revenue bonds or other obligations (the "TIF Obligations") in an amount not to exceed $25,000,000, with maturities not to exceed 30 years from the date of the creation of the TIF District. Such TIF Obligations may be issued from time to time in one or more series. Proceeds of the TIF Obligations are generally planned to be used to (i) finance costs of the TIF Projects, including architectural, engineering, legal and other professional fees and expenses; (ii) finance costs of creating the TIF District and obtaining approval of the TIF Projects; (iii) fund reserves for the TIF Obligations, as necessary; (iv) fund capitalized interest on the TIF Obligations, as necessary; and (v) pay costs of issuance of the TIF Obligations and related costs. To the extent that surplus tax increment funds are available, portions of the TIF Projects may be financed directly with such surplus on a pay-as-you-go basis.

Further information regarding the proposed Application and the TIF Obligations are on file and available for inspection at the office of the Clerk of the City during regular business hours, located at the City Clerk's office in City Hall, 401 Davis Avenue, Elkins, West Virginia.

Dated: May 4, 2023

By: /s/ Sutton Stokes
City Clerk

ORDINANCE

AN ORDINANCE APPROVING AND CREATING A NEW TAX INCREMENT FINANCING DISTRICT IN THE CITY OF ELKINS, RANDOLPH COUNTY, WEST VIRGINIA TO BE KNOWN AS "THE CITY OF ELKINS REDEVELOPMENT DISTRICT NO. 1"; APPROVING PROJECT PLAN NO. 1 AS APPROVED BY THE WEST VIRGINIA DEPARTMENT OF ECONOMIC DEVELOPMENT; ESTABLISHING A TAX INCREMENT FINANCING FUND AND PROVIDING FOR OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, The City of Elkins, West Virginia (the "City") is authorized by the West Virginia Tax Increment Financing Act, Chapter 7, Article 11B of the Code of West Virginia 1931, as amended (the "Act") to create tax increment financing districts, approve project plans, issue tax increment financing obligations and take such other actions as necessary or desirable to facilitate the orderly development and economic stability of the City, all as more fully set forth in the Act;

WHEREAS, the City desires to create and establish a redevelopment district to be known and designated as "The City of Elkins Redevelopment District No. 1", as more fully described in **Exhibit A** hereto (the "TIF District"), and to approve a redevelopment project plan to be known and designated as "Project Plan No. 1", as more fully described in **Exhibit B** hereto (the "Project Plan"), all in order to facilitate the issuance of tax increment financing obligations to finance the costs of planning, acquiring, constructing and equipping the Project Plan, being necessary public infrastructure improvements within the TIF District;

WHEREAS, the City did, on January 5, 2023, following proper notice thereof, hold a public hearing with respect to the Application wherein interested parties were afforded a reasonable opportunity to express their views on the proposed creation of the TIF District, its proposed boundaries and the proposed Project Plan;

WHEREAS, the City submitted the Application to the Secretary of the West Virginia Department of Economic Development (the "Secretary") for his review and approval, all in accordance with the applicable provisions of the Act;

WHEREAS, the Secretary has, by letter dated April 6, 2023, notified the City that the West Virginia Department of Economic Development has reviewed the Application and has found the Application regarding both the TIF District and the Project Plan to be complete, and has further provided that the City may now enter an ordinance creating the TIF District, approving the Project Plan and creating a Tax Increment Financing Fund for the TIF District;

WHEREAS, it is hereby found and determined that the Application meets the criteria set forth in the Act for creation of a redevelopment district, formulation of a project plan and creation of a tax increment financing fund (the "TIF Fund"); and

WHEREAS, the Common Council of The City of Elkins (the "Council") has determined to enact this Ordinance that approves, certifies and creates the TIF District, approves and certifies the Project Plan and creates the TIF Fund.

NOW, THEREFORE, BE IT ORDERED BY THE COMMON COUNCIL OF THE CITY OF ELKINS, AS FOLLOWS:

1. Justification for Approval of TIF District. It is hereby found and determined that the real property within the TIF District will be benefitted by eliminating or preventing the development or spread of slums or blighted, deteriorated or deteriorating areas, discouraging the loss of commerce, industry or employment, increasing employment therein or any combination thereof; that development or redevelopment thereof will not be solely used for development of commercial businesses that will unfairly compete in the local economy; and that development or redevelopment is in the public interest because it will discourage commerce, industry or manufacturing from moving their operations to another state, result in increased employment in the City or result in preservation or enhancement of the tax base of the City.

2. Justification for Approval of Project Plan. It is hereby found and determined that the real property within the TIF District will be benefitted by implementing the Project Plan by eliminating or preventing the development or spread of slums or blighted, deteriorated or deteriorating areas, discouraging the loss of commerce, industry or employment, increasing employment therein or any combination thereof.

3. Approval and Creation of TIF District. The TIF District, to be known as "The City of Elkins Redevelopment District No. 1" is hereby approved, certified and created as of the date of adoption and entry of this Ordinance. The TIF District shall have the boundaries set forth in **Exhibit A**.

4. Approval of Project Plan. The Project Plan, as set forth in **Exhibit B**, is hereby expressly found to be economically feasible and is hereby approved and certified. The projects set forth in the Project Plan, or any portion of it subsequently deemed by the City to be included (the "Projects"), are hereby approved and declared to be eligible for funding in whole or in part, from tax increment financing obligations and from moneys remaining in the TIF Fund after there has first been paid all debt service, reserve fund deficiency and other payments payable in connection with any bonds, notes or other obligations payable from the TIF Fund, which the City, in its discretion, may determine to issue from time to time in accordance with the provisions of the Act.

5. Establishment of TIF Fund. The TIF Fund is hereby established as a separate fund into which all tax increment revenues and other revenues designated by the City, for the benefit of the TIF District shall be deposited, and from which all costs of the Projects shall be

paid, which may be assigned to and held by a trustee for the benefit of bondholders if tax increment financing obligations are issued by the City.

6. Allocation of Property Taxes. All ad valorem property taxes on real and tangible personal property having a tax situs in the TIF District shall be assessed, collected and allocated in the following manner for so long as any tax increment financing obligations payable from the TIF Fund are outstanding and unpaid:

(a) For each tax year, the Randolph County Assessor shall record in the land and personal property books both the Base Assessed Value and the Current Assessed Value of the real and tangible personal property having a tax situs in the TIF District, as such terms are defined in the Act. The Base Assessed Value shall be the value of all real and tangible personal property located within the TIF District as of July 1, 2022.

(b) Ad valorem taxes collected from regular levies upon real and tangible personal property having a tax situs in the TIF District that are attributable to the lower of the Base Assessed Value or the Current Assessed Value of real and tangible personal property located in the TIF District shall be allocated to the levying bodies situate in the County (the County Commission of Randolph County, the City and the Randolph County Board of Education) in the same manner as applicable to the tax year commencing July 1, 2022

(c) The positive tax increment, if any, with respect to real and tangible personal property in the TIF District shall be allocated and paid into the TIF Fund and shall be used (i) to pay the principal of and interest on tax increment financing bonds, notes or other obligations outstanding and payable from the TIF Fund, including the principal of and interest on the tax increment financing obligations anticipated to be issued to finance a portion of the costs of the Projects, funding any reserve fund deficiency and any other payments payable in connection with such bonds, notes or obligations and (ii) to pay or reimburse costs of projects in the TIF District. Any levying body having the TIF District within its jurisdiction shall not receive any portion of the annual tax increment except as otherwise provided in the Act.

(d) In no event shall the tax increment include any taxes collected from excess levies, levies for general obligation bonded indebtedness or any levies other than the regular levies provided for in the Act.

7. Use of Proceeds of Tax Increment Financing Obligations. Proceeds from tax increment financing obligations anticipated to be issued under the Act and revenues available in the TIF Fund may only be used to pay for costs of development or redevelopment projects to foster economic development in the TIF District, when such development or redevelopment project or projects would not reasonably be expected to occur without tax increment financing.

8. Need for TIF Financing. The Council hereby expressly finds and states that the Projects included in the Project Plan are not reasonably expected to occur without the use of tax increment financing.

9. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance.

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

11. Conflicting Provision Repealed. All ordinances, resolutions, indentures or orders, or parts thereof, that conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed with respect to the subject matter of this Ordinance.

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

13. Effective Date. This Ordinance shall take effect immediately upon enactment.

14. Statutory Notice and Public Hearing. Following the first reading by title hereof, an abstract of this Ordinance, determined by the City to contain sufficient information as to give notice of the contents hereof, shall be published once a week for two successive weeks within a period of fourteen consecutive days, with at least six full days intervening between each publication, in *The Inter-mountain*, a newspaper published and of general circulation in the City, together with a notice stating that this Ordinance has been introduced and that the Council of the City contemplates the final enactment thereof and that any person interested may appear before Council upon a date certain, not less than ten days subsequent to the date of the first publication of said abstract and notice, and present protests, and that a certified copy of the Ordinance is on file in the office of the City Clerk for review by interested parties during the office hours of the City Clerk.

At such hearing, all objections and suggestions shall be heard and the Council shall take such action as it shall deem proper in the premises.

First Reading	May 4, 2023
Second Reading following public hearing	May 18, 2023

[Signature Page Follows]

Adopted this _________, 2023.

THE CITY OF ELKINS

By:___________________________
Its Mayor

ATTEST:

By:___________________________
City Clerk

CERTIFICATION

The undersigned, being the duly qualified, elected and acting Clerk of The City of Elkins, does hereby certify that the foregoing Ordinance was duly adopted by the Common Council of The City of Elkins following a public hearing thereon, at regular meetings duly held, pursuant to proper notice thereof, on May __, 2023 and May __, 2023, a quorum being present and acting throughout, and which Ordinance has not been modified, amended or revoked and is a true, correct and complete copy thereof as of this ___ day of __________ 2023.

By:___________________________

City Clerk

Exhibit A

TIF District Boundaries

The proposed TIF District is located in the City of Elkins, West Virginia, and includes approximately 437 acres of contiguous real property located in Elkins Corporation property tax district, as set forth on the map below, including the specifically delineated TIF District boundary.

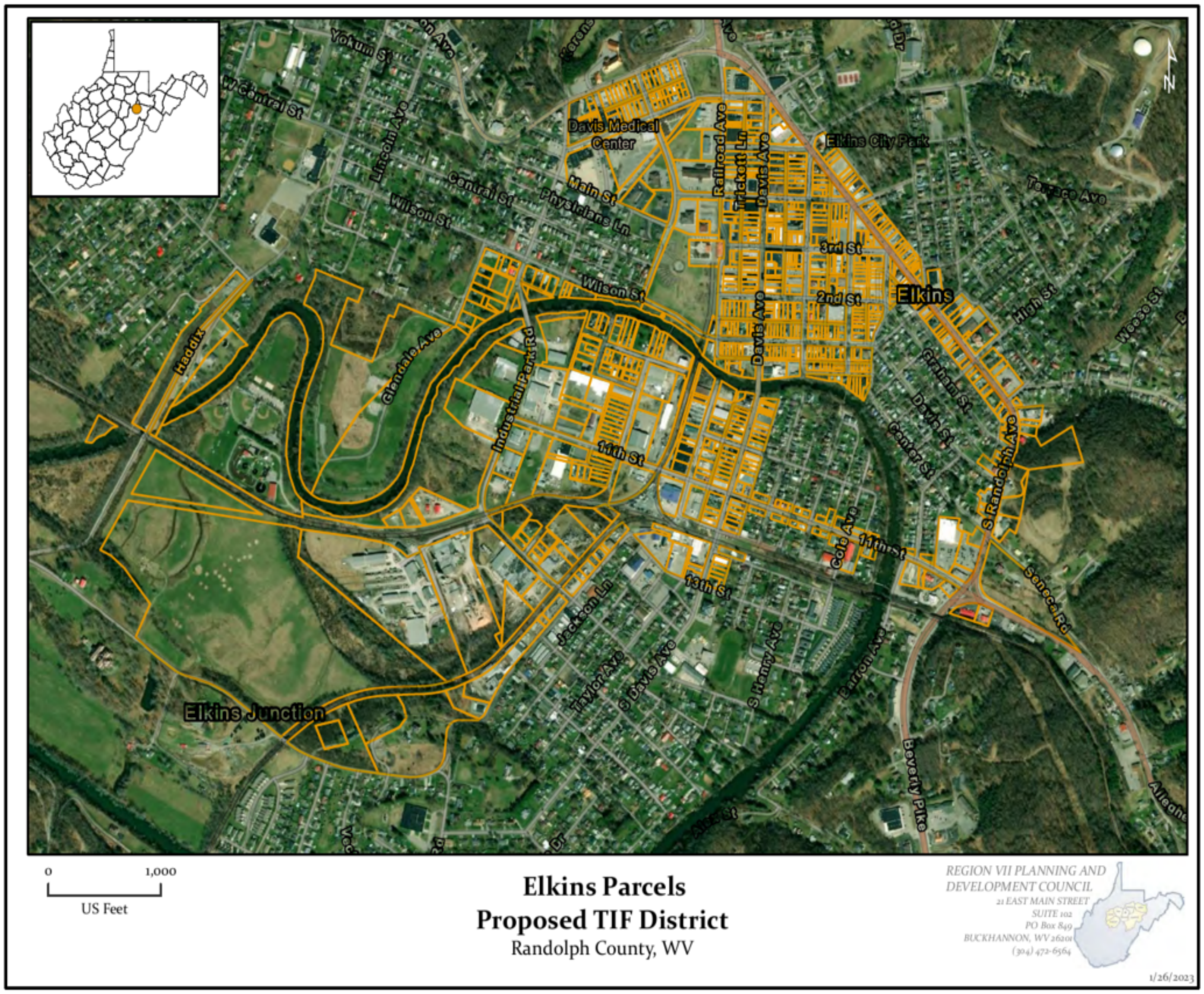


Exhibit B

Project Plan

(attached hereto)

SECTION II. PROJECT INFORMATION

A. DETAILED DESCRIPTION OF PROJECT

Include a description of how the project fits with the overall development plans for the Redevelopment District or the overall development plans of the city, county, or region.

The TIF District

The City of Elkins (the "City") is proposing the creation of the "City of Elkins Redevelopment District No. 1" (the "TIF District"). The proposed TIF District includes approximately 437 acres of contiguous real property located in Elkins Corporation property tax district. A map of the TIF District boundaries is provided in **Attachment 1**. The proposed TIF District is comprised of parts of the downtown business district, the Industrial Park managed by the Randolph County Development Authority, and the Elkins Railyard. The proposed TIF District is generally bounded to the north by Seneca Trail, to the east by Randolph Avenue and Livingston Avenue, to the south by Georgetown Road and to the west by portions of Haddix Road and is bisected by the Tygart Valley River. The TIF District is being created by the City for the purposes of facilitating the planning, design, acquisition, construction and equipping of capital improvements within the TIF District or on land not in the TIF District that is contiguous to the TIF District and which contains infrastructure or other facilities which serve the TIF District.

The TIF Projects

The City proposes to develop certain capital improvements within or which serve the TIF District and include the design, permitting, acquisition, construction and equipping of site, infrastructure and other improvements, both public and private, that will facilitate development within, or for the benefit of, the TIF District (collectively, the "TIF Projects"), including, but not limited to, the following:

- Waterlines, waterworks facilities, sanitary sewer lines, sewerage facilities, stormwater facilities, telecommunications, cable, fiber optic, electric, natural gas and related public infrastructure improvements and relocations;
- Construction of roads, sidewalks, street lighting, traffic signals and other roadway and streetscape improvements and related appurtenances including curbing and gutters;
- Acquisition of land within the TIF District or outside of the TIF District which contains or will contain infrastructure or other facilities which serve the TIF District;
- Demolition, site preparation and excavation and other earthwork necessary for and incidental to the construction and installation of infrastructure and other improvements;
- Other related improvements, extensions, renovations and additions; and
- All professional service fees and consultant fees in connection with the foregoing, including but not limited to engineering and other design fees, legal fees, fees of property tax revenue consultants, property tax consultants, trustees, continuing disclosure agents and all fees and costs incurred in connection with the preparation and approval of the Project Plan.

The TIF Projects are expected to include, but not be limited to, (i) riverfront development and beautification along the Tygart Valley River; (ii) recreational trail system improvements throughout the proposed TIF District; (iii) streetscaping, wayfinding, lighting, and sidewalk improvements in the downtown business district; (iv) improvements to the Elkins Railyard, including the Roundhouse Plaza and construction of a new event center; and (v) improvements to the Randolph County Industrial Park.

The TIF Projects which are currently contemplated for the TIF District are more particularly indicated on the maps provided in **Attachment 2**. The proposed TIF Projects and the capital improvements and expenditures currently contemplated pursuant to such phases are presented by way of example only and the actual capital improvements and expenditures for each phase or project may differ substantially from those described herein so long as such improvements and expenditures are included within the description of the TIF Projects described herein.

Tax Increment Financing Obligations

To finance all or portions of the TIF Projects, the City proposes to issue tax increment revenue bonds or other obligations (the "TIF Obligations") in an estimated amount not to exceed $25,000,000, with maturities not to exceed 30 years from the date of the creation of the TIF District. Such TIF Obligations may be issued from time to time in one or more series. Proceeds of the TIF Obligations are generally planned to be used to (i) finance costs of the TIF Projects, including architectural, engineering, legal and other professional fees and expenses; (ii) finance costs of creating the TIF District and obtaining approval of the TIF Projects; (iii) fund reserves for the TIF Obligations, as necessary; (iv) fund capitalized interest on the TIF Obligations, as necessary; and (v) pay costs of issuance of the TIF Obligations and related costs. To the extent that surplus tax increment funds are available, portions of the TIF Projects may be financed directly with such surplus on a pay-as-you-go basis. See **Section II.E** for more detailed Financing information and **Section II.G** for additional information on the proposed TIF Obligations.

B(1): ESTIMATES

Projected increases in Assessed Values of the TIF District:

Please see the attachments to **Section II.G Tax Increment Financing Obligations** herein for the Preliminary Development Schedule prepared by the City, and the Projection of Net Property Tax Increment, which includes projected increases in assessed values of the TIF district.

B(2):	ESTIMATES

Number of jobs to be created by this project in the TIF District. Estimated jobs are as follows:

Estimated Job Creation within the TIF District

<u>Job Category: Professional</u>

Wages:	$75,000 - $150,000
Benefits:	Industry Standard
Number of Construction Jobs:	3
Number of Permanent Jobs:	15

<u>Job Category: Clerical and Admin</u>

Wages:	$25,000 - $75,000
Benefits:	Industry Standard
Number of Construction Jobs:	2
Number of Permanent Jobs:	20

<u>Job Category: Skilled</u>

Wages:	$40,000 - $75,000
Benefits:	Industry Standard
Number of Construction Jobs:	60
Number of Permanent Jobs:	26

<u>Job Category: Semi-Skilled</u>

Wages:	$20,000 - $40,000
Benefits:	Industry Standard
Number of Construction Jobs:	40
Number of Permanent Jobs:	27

<u>Job Category: Unskilled</u>

Wages:	$20,000 - $40,000
Benefits:	Industry Standard
Number of Construction Jobs:	38
Number of Permanent Jobs:	49

Total Estimated Number of Construction Jobs: 153

Total Estimated Number of Permanent Jobs: 137

C. CAPITAL IMPROVEMENTS

The City proposes to develop certain capital improvements within or which serve the TIF District and include the design, permitting, acquisition, construction and equipping of site, infrastructure and other improvements, both public and private, that will facilitate development within, or for the benefit of, the TIF District (collectively, the "TIF Projects"), including, but not limited to, the following:

- Waterlines, waterworks facilities, sanitary sewer lines, sewerage facilities, stormwater facilities, telecommunications, cable, fiber optic, electric, natural gas and related public infrastructure improvements and relocations;
- Construction of roads, sidewalks, street lighting, traffic signals and other roadway and streetscape improvements and related appurtenances including curbing and gutters;
- Acquisition of land within the TIF District or outside of the TIF District which contains or will contain infrastructure or other facilities which serve the TIF District;
- Demolition, site preparation and excavation and other earthwork necessary for and incidental to the construction and installation of infrastructure and other improvements;
- Other related improvements, extensions, renovations and additions; and
- All professional service fees and consultant fees in connection with the foregoing, including but not limited to engineering and other design fees, legal fees, fees of property tax revenue consultants, property tax consultants, trustees, continuing disclosure agents and all fees and costs incurred in connection with the preparation and approval of the Project Plan.

The TIF Projects are expected to include, but not be limited to, (i) riverfront development and beautification along the Tygart Valley River; (ii) recreational trail system improvements throughout the proposed TIF District; (iii) streetscaping, wayfinding, lighting, and sidewalk improvements in the downtown business district; (iv) improvements to the Elkins Railyard, including the Roundhouse Plaza and construction of a new event center; and (v) improvements to the Randolph County Industrial Park. The TIF Projects which are currently contemplated for the TIF District are more particularly indicated on the maps provided in **Attachment 2**. The TIF Projects and the capital improvements and expenditures currently contemplated pursuant to such phases are presented by way of example only.

The City has prepared preliminary cost estimates for the TIF Projects, as summarized in the following table and described on the following page:

Type of Improvements	Estimated Cost*
Riverfront Development	$3,300,000
Recreational Trails	$3,000,000
Streetscaping	$1,800,000
Railyard	$3,600,000
Industrial Park	$3,000,000
Total:	**$14,700,000***

* Assumes the maximum estimated cost.

1. **<u>Riverfront Development and Related Improvements</u>**

There has been a dismissive or negative attitude surrounding the section of the Tygart Valley River that flows through the heart of Elkins for many years. Past efforts to change this perception and revitalize the river were recently stimulated by the rehabilitation of the Tygart Hotel and the community's participation in HubCAP. As a result, the Elkins Riverfront Development plan was created by GAI Consultants. The cost of this design work was paid for by the City and HubCAP. The plan provides a vision to restore ecological function, provide safe alternative transportation routes, and incorporate recreational opportunities. Projected costs as part of the design work are estimated to cost between $2,400,000 to $3,300,000 to implement.

2. **<u>EAST Trail Design and Related Improvements</u>**

The City is a uniquely situated to access unparalleled recreational opportunities in the eastern United States, including whitewater runs, climbing routes, and down-hill/cross country ski resorts, all within an hour and half. However, the City itself lacks high-quality, purpose-built, accessible trails. To address this limitation, the City has partnered with Elkins Area Shared Trails (EAST), a collaborative organization that brings together land managers, trail development and design experts, community development organizations, and civic leaders to improve trail systems within the City. To facilitate trail master planning in the area, EAST has been awarded $80,000 in grant funding from two sources, to be matched by over $23,000 of in-kind partner-based support and $30,000 cash. Current cost estimates for construction are between $1,300,000 to $3,000,000.

3. **<u>Streetscaping and Related Improvements</u>**

In 2016, the Design Committee of Elkins Main Street, Inc. prepared the Elkins Streetscape Vision to provide a framework to advance streetscape improvements in downtown. In 2017, the Common Council adopted its 2018-2023 Strategic Plan which emphasizes improvements to downtown streetscapes, signage, signage, lighting, and sidewalks. The City has engaged an architectural and engineering firm to produce design plans and standard drawings suitable for plan implementation. The cost of design is $30,000 and implementation costs are estimated at $200,000 to $300,000 per block, with a total estimated cost of $1,200,000 to $1,800,000 (based on 6 blocks).

4. **<u>Elkins Railyard and Related Improvements</u>**

The City intends to facilitate the development of the Elkins Railyard, including roadways, the construction of a new public events center, development of the Roundhouse Plaza, and public infrastructure improvements. The City estimates the total cost of these projects at $3,600,000.

5. **<u>Industrial Park Property Development and Related Improvements</u>**

The City intends to make necessary investments in the Randolph County Industrial Park to include site preparation, sidewalks, lighting and other infrastructure improvements at an estimated cost of $2,000,000 to $3,000,000.

D. ESTIMATED BREAKDOWN OF PROJECT COSTS*

The below preliminary breakdown of estimated costs of the TIF Project is anticipated to be fully financed from TIF Obligations and/or from Pay-As-You-Go funds from the TIF Fund. See **Section II.G – Tax Increment Financing Obligations** and **Section II.E – Financing** for more detailed information. The Costs of the TIF Projects set forth on this and the prior pages are based on the best available information at the time of this Application. Some of these costs are based on conceptual layouts using a cost per linear foot and other costs are based on allocated budgets to the anticipated scope of the work. All indicated costs are estimates only and are subject to change and the actual costs will likely differ from the amounts stated herein.

	TOTAL*	Proposed Financing Method
1. Capital Costs	$ (see 8 below)	
2. Estimated Financing Costs	$ 423,514	TIF Obligations
3. Professional Services	$ (see footnote)	
4. Land	$ unknown	
5. Relocation Costs	$ -0-	
6. Environmental Impact Studies	$ -0-	
7. Public Information	$ -0-	
8. Construction of Capital Improvements	$7,000,000	TIF Obligations
9. Costs of the sale/lease of County property that results in a loss to County	$ -0-	
10. Capitalized Interest Fund	$ 462,786	TIF Obligations
11. Reserve Fund	$ 570,700	TIF Obligations
Total Project Cost:	**$8,457,000**	**TIF Obligations**
12. Additional Capital Improvements	$7,700,000	TIF Obligations/Pay-As-You-Go

*Notes to Items 1 through 12:

2) Estimated Financing Costs for the TIF Obligations are provided in **Section II.G.**

3) Estimated Professional Services costs are included in Construction of Capital Improvements.

6) Estimated Environmental Impact Studies costs are included in Construction of Capital Improvements.

8) See **Section II.C** for estimated breakdown of costs.

10) Estimated capitalized interest are provided in **Section II.G.**

11) Estimated Reserve Fund for the TIF Obligations are provided in **Section II.G.**

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	May 18, 2023
Section:	New business
Category:	Action Item
Agenda Item Name:	PEIA benefit for council members.
Recommended By:	
Summary:	PEIA benefits are currently extended to council members, in lieu of salary ($600/month). This agenda item is to facilitate council discussion of next steps for this benefit.
Fiscal Impact:	TBD.
Recommendation:	Council discusses and reaches consensus on next step.
Attachments:	1. R-692 PEIA Health Insurance for Members of Council 2. PEIA Costs - plan year FY 2024

<u>IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV</u>

<u>A RESOLUTION OF COMMON COUNCIL</u>

(#692)
January 15, 2015

Public Employees Insurance Agency
Health Insurance for Members of Council

WHEREAS, currently Council members of the City of Elkins have the option of purchasing health insurance through the Public Employees Insurance Agency ("PEIA"), provided that no portion of the cost of said insurance shall be borne by the City of Elkins, as provided for in Resolution 041, duly adopted March 22, 2005; and

Whereas, Council's Finance Committee has considered the option of providing access to health insurance to members of Council with the cost of said insurance to be borne by the City of Elkins; now therefore be it

RESOLVED as follows:

1. That Council members shall have the option of obtaining PEIA health insurance at the same cost charged to all other City employees with the remaining cost to be borne by the City of Elkins.

2. That if a member of Council shall choose the option of obtaining the PEIA health insurance said member of Council shall also forego the monthly compensation provided for Council members by ordinance.

____
Van Broughton, Mayor

Attest:

____
Sutton R. Stokes, City Clerk

PEIA Plan/Coverage	15.6% Premium Increase	Employer's Bi-Weekly Portion	Employer's Annual Portion	Employee's Bi-Weekly Portion	Employee's Annual Portion	Employees in Plan	General Fund Employees	Fire Fund Employees	Sanitation Fund Employees	Sewer Fund Employees	Water Fund Employees	Parks Fund Employees
Plan A Single	$6,880.51	$203.73	$5,296.98	$31.77	$826.02	16	5	6	1	2	2	n/a
Plan A Emp/Children	$13,414.22	$388.89	$10,111.14	$69.61	$1,809.86	2	n/a	1	n/a	n/a	n/a	1
Plan A Family	$15,647.62	$461.45	$11,997.70	$77.55	$2,016.30	23	12	2	1.5	1.25	5.25	1
							$170,457.30	$65,888.42	$23,293.53	$25,591.09	$73,581.89	$22,108.84
Plan B Single	$6,117.55	$199.23	$5,179.98	$8.77	$228.02	14	3	n/a	3	4	4	n/a
Plan B Emp/Children	$11,721.84	$384.39	$9,994.14	$13.11	$340.86	2	1	n/a	n/a	n/a	1	n/a
Plan B Family	$13,622.30	$448.45	$11,659.70	$17.55	$456.30	12	8	n/a	n/a	2	1	1
							$118,811.68	n/a	$15,539.94	$44,039.32	$42,373.76	$11,659.70
Health Plan A Single	$8,420.30	$0.00	n/a	$0.00	$0.00	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Health Plan A Emp/Childre	$12,193.49	$0.00	n/a	$0.00	$0.00	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Health Plan A Family	$20,641.54	$614.98	$15,989.48	$104.02	$2,704.52	1	1	n/a	n/a	n/a	n/a	n/a
							$15,989.48	n/a	n/a	n/a	n/a	n/a
Health Plan B Single	$5,077.15	$0.00	n/a	$0.00	$0.00	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Health Plan B Emp/Childre	$7,823.81	$0.00	n/a	$0.00	$0.00	n/a	n/a	n/a	n/a	n/a	n/a	n/a
Health Plan B Family	$12,817.73	$442.56	$11,506.56	$19.44	$505.44	1	1	n/a	n/a	n/a	n/a	n/a
						71	$11,506.56	n/a	n/a	n/a	n/a	n/a
City's Portion							**$316,765.02**	**$65,888.42**	**$38,833.47**	**$69,630.41**	**$115,955.65**	**$33,768.54**
									$640,841.50			

PEIA offers a tobacco-free premium discount of $25/month employee only or $50/month for employee, children and family which effects premiums

*****24 employees are reimbursed for not taking health insurance ranging from $2,032.42 to $4,340.70 per employee annually*****

***** The city pays $70.00 per month per employee into the Retiree Health Benefit Trust. There will be no increase in FY2024 *****

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	May 18, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1655: Appointment of S. Peet as Mon Forest Towns Partnership Board of Directors Elkins Backup Representative
Recommended By:	Clerk
Summary:	Appoints an alternate member to the board of directors of the Mon Forest Towns. Members cannot bind or commit the city without permission of city council. See attached excerpt from establishing Memorandum of Understanding.
Fiscal Impact:	None.
Recommendation:	Adopt the resolution.
Attachments:	1. R-1655 - Appointment of S. Peet to Mon Forest Towns - alternate 2. Excerpt from THE MON FOREST TOWNS PARTNERSHIP

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1655)
May 18, 2023

Appointment of S. Peet as Alternate Mon Forest Towns Partnership Board of Directors Elkins Representative

---

WHEREAS, the City of Elkins, West Virginia ("City") has, per Resolution #12997, adopted January 16, 2020, the City accepted and executed a Memorandum of Understanding ("MOU") with the Monongahela National Forest ("MNF"), for the purpose of participating in the Mon Forest Towns Partnership ("MFTP") meant to diversify economic development and enhance the quality of life for residents and visitors; and,

WHEREAS, the MOU requires that each participating community appoint both a primary representative to the Board of Directors and an alternate representative to attend in the primary representative's place as needed; and,

WHEREAS, the City appointed Jessica Sutton as its primary representative via Resolution 1542, effective July 13, 2022; and

WHEREAS, Samantha Peet has been nominated as the City's alternate representative; and,

WHEREAS, it appears that this appointment is in the best interest of the citizens of the City of Elkins;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby appoints Samantha Peet as the City's backup representative to the Mon Forest Towns Partnership Board of Directors, effective May 17, 2023. Any other appointments or agreements concerning the City's representation on the Mon Forest Towns Partnership Board of Directors are hereby cancelled.

____
Jerry A. Marco, Mayor

Attest:

____
Sutton Stokes, City Clerk

Excerpt from THE MON FOREST TOWNS PARTNERSHIP MEMORANDUM OF UNDERSTANDING AND OPERATIONAL GUIDELINES

SECTION 3.2

TOWNS: The MFTP Board will be comprised of one voting representative, from the list of Mon Forest TOWNS set forth below. The TOWN must appoint a representative who will consistently attend meetings and have the authority to act on behalf of the community that they represent. The TOWN will also appoint an alternate to attend in the representative's place as needed. The representative/alternate will be required to report back the work of MFTP to the municipality on a regular basis. This representative does not have the power to commit or act on behalf of the municipality without specific approval from their municipal governing body. It is the responsibility of each TOWN representative to ensure they have the proper approval for their respective TOWN before obligating the municipality in any way, fiscal or otherwise. Each board member serves at the pleasure of their respective TOWN. The MFTP Board may elect to invite other TOWNS to participate with a two-thirds agreement of the MFTP voting membership. TOWNS can terminate this MOU if they choose by sending written notification to the MFTP Board.

The following TOWNS comprise the MFTP.

1. Cowen, WV
2. Davis, WV
3. Elkins, WV
4. Franklin, WV
5. Marlinton, WV
6. Parsons, WV
7. Petersburg, WV
8. Richwood, WV
9. Thomas, WV
10. White Sulphur Springs, WV

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	May 18, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1656: Retaining the WVU Land Use and Sustainable Development Law Clinic to Assist with Updating the City's Comprehensive Plan
Recommended By:	Elkins Planning Commission
Summary:	This agreement retains the WVU Land Use and Sustainable Development Law Clinic to assist the Elkins Planning Commission in preparing an update to the 2015 Elkins Comprehensive Plan. Under state law, comprehensive plans must be updated every ten years or jurisdictions lose the authority to enforce zoning laws. The updated plan is due by 2015. The LUSD Law Clinic assisted in the creation of the 2015 plan and supported the planning commission in the development of a comprehensive new zoning code that was adopted by council in 2022. The commission and city staff have found their assistance to be invaluable. This agreement has been reviewed by the city attorney; her memo recommending approval and providing additional context is attached.
Fiscal Impact:	The agreement quotes a not-to-exceed cost of $15,960. This cost would be paid out of the city's General Fund can be broken across two fiscal years (FY 2024 and FY 2025). The planning commission plans to request $10,000 in FY 2023 carryover monies to fund initial work in FY 2024.
Recommendation:	Adopt the resolution accepting the agreement with the WVU Land Use and Sustainable Development Law Clinic and designating the city clerk as the city's representative.
Attachments:	1. Memo - Agreement with LUSDC 2. R-1656 - agreement for comprehensive plan services with WVU Land Use and Sustainable Development Law Clinic 3. 2023.05.15.Elkins Comp Plan Retainer Agreement

MEMO

TO: **Mayor Marco and Council**
FROM: **Geraldine S. Roberts**
RE: **Resolution 1656- Retainer Agreement with LUSDC**
DATE: **May 17, 2023**

The City adopted its first Comprehensive Plan in 2015 with the valuable assistance of the WVU Law Clinic . WV Code §8A-3-11(a) requires that the Plan be updated at least every 10 years. WV Code §8A-3-1et seq. specifies the procedures for the adoption and updating of the Plan. Under this Chapter of the Code, the Planning Commission is tasked with this work and then making recommendations for the changes or updates to Council. If you recall, the Commission made some changes to the Plan recently, recommended the changes to Council and then the changes were adopted by Council prior to the adoption of the zoning ordinance in 2022.

What needs to be done is not just changes but a complete update. The update of the Plan that needs to be completed and adopted by Council no later than January,2025 is already being worked on by the Commission. In order to enforce zoning, cities must have a current comprehensive plan. That is why the first Plan was adopted 10 years ago. The update is a complete review of the current Plan and it is a large undertaking . The Commission has been meeting monthly for several months to get the process started. However, to prepare an updated version of the Plan to be presented to Council for adoption, it is recommended that the WVU Law Clinic be involved again to lend their expertise to the updating of the Plan. All of the work provided to the City previously (and countless other WV cities) was provided free of charge. However, to sustain their mission going forward, the Clinic is charging a fee for their expert assistance. I have reviewed the Retainer Agreement and it is my recommendation that Council approve it to facilitate the work on the update of the Comprehensive Plan. The fee in the Retainer Agreement is more than reasonable and substantially less than any fee that would be charged by a private company offering such services. The source for the funds to pay for these services has been discussed with both Tracy and Sutton and several solutions have been considered. If you have any questions, please let me know.

cc: Tracy Judy, Sutton Stokes

ATTORNEY WORK PRODUCT
ATTORNEY – CLIENT PRIVILEGED

<u>IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV</u>

<u>A RESOLUTION OF COMMON COUNCIL</u>

(#1656)
May 18, 2023

Accepting Conditions of Agreement between the WVU Land Use and Sustainable Development Law Clinic and the City of Elkins, and Authorizing Execution of Agreement

---

WHEREAS, The City of Elkins, West Virginia ("City") has determined to obtain services for updating its Comprehensive Plan; and,

WHEREAS, the City has received a proposed Agreement with WVU Land Use and Sustainable Development Law Clinic (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 the WVU Land Use and Sustainable Development Law Clinic by the City Clerk on behalf of the City of Elkins, after approval of said Agreement by the City Attorney. The City Clerk is hereby made the Designated Representative for the purposes of this agreement.

____
Jerry Marco, Mayor

Attest:

____
Sutton Stokes, City Clerk

RETAINER AGREEMENT

THIS RETAINER AGREEMENT (“Agreement”) is between the West Virginia University College of Law Land Use and Sustainable Development Clinic (“LUSDC”) and the City of Elkins, West Virginia (“Client”), on May 18, 2023. This Agreement establishes an attorney-client relationship solely between the LUSDC and Client.

SCOPE OF THE AGREEMENT

1. If Client is not a business entity or has not yet formed a business entity at the time this Agreement is signed, then this Agreement is entered into between the LUSDC and the person signing.

2. If Client is a business entity, this Agreement does not establish an attorney-client relationship between the LUSDC and any of the owners, directors, officers, employees, or agents of Client.

3. Any legal services to be performed by the LUSDC on behalf of any owners, directors, officers, employees, or agents of Client, must be the subject of a separate retainer agreement. Representation can only occur if:
    a. The representation is not adverse to the interests of Client as a business entity; and
    b. Client consents to the representation. Consent must be given by:
        i. An appropriate official of Client other than the individual who is to be represented, or
        ii. The unanimous vote of the shareholders, members, directors, or owners of Client.
4. All previous retainer agreements executed between the LUSDC and the Client are no longer effective.

AUTHORITY TO REPRESENT/SCOPE OF SERVICES

5. Client seeks representation and legal services and agrees to representation and legal services by the LUSDC, and the LUSDC agrees to represent and provide legal services (“Representation and Services”) for Client in connection with drafting an update to the City of Elkins 2015 Comprehensive Plan.

6. When the services are completed, the LUSDC shall invoice Client for payment. The amount of the invoice shall not exceed fifteen thousand and nine hundred and sixty dollars ($15,960.00). The amount of the invoice includes the optional service of facilitating one (1) additional open house with the public.

7. Client authorizes the LUSDC to take any steps which, in its discretion, are reasonably necessary or appropriate to protect Client’s interests in this Matter.

8. Client authorizes student clinicians to work on and take the lead in investigating factual and legal issues, drafting documents, communicating with Client, in order to assist in this Matter. A licensed attorney or attorneys shall at all times supervise the law student or students working on this Matter. The licensed attorney’s or attorneys’ supervision shall be consistent with applicable law and rules of professional conduct.

9. The LUSDC agrees to take action as may be necessary, in the LUSDC’s professional judgment, to further the interests of the Client in connection with this Matter. These actions include, but are not limited to, legal advice, research, drafting documents for a transactional matter, on-site visits,

and recording documents with the appropriate government agency. **At no point may the LUSDC represent the Client in litigation or take any action or participate in any action that moves this Matter, or any other matters that arise within the scope of representation, toward litigation**. The LUSDC's services to Client under this Agreement are limited to those that the LUSDC agrees to in paragraph five (5), or in a subsequent written amendment to this Agreement signed by both parties.

10. The LUSDC shall terminate the Representation and Services upon completion of this Matter or upon the failure to consummate this Agreement. Any further representation must be the subject of a new retainer agreement. If, in the absence of a new retainer agreement, the LUSDC provides further services, the terms of this Agreement will continue in effect.

AUTHORITY TO BIND

11. Client designates City Clerk Sutton Stokes ("Designated Representative") as the individual who has the legal power and authority to bind Client.

12. Client authorizes the LUSDC to rely upon the acts and directions of the Designated Representative as the binding acts and direction of Client.

13. Upon the termination or withdrawal of the Designated Representative's legal power and authority to bind Client, the Designated Representative shall provide written notice to the LUSDC of such termination or withdrawal. The LUSDC is entitled to rely upon the Designated Representative's legal power and authority to bind Client until actual receipt of such written notice.

CLIENT INFORMATION

14. Client agrees to promptly provide all information and documents, which are either requested or helpful to assisting with the Representation and Services, and to attend all scheduled meetings. Client further agrees to be active participants in the completion of the scope of work which may include, but is not limited to, assisting in the identification of stakeholders, gathering background information, and helping to publicize and organize any public meetings or public hearings.

15. Client consents to the release of all information regarding its legal issue(s) or legal matter(s), as related to the Representation and Services and this Matter, to all student clinicians and faculty supervisors of the LUSDC.

TERMS OF PROPOSED REPRESENTATION

16. Client may terminate the LUSDC's Representation and Services in this Matter for any reason by providing the LUSDC with written notice of termination. Should the Client elect to terminate this Agreement, it remains obligated to reimburse the LUSDC for any out-of-pocket expenses not already paid.

17. Client understands that the law allows the LUSDC to decline Representation and Services or to withdraw as counsel for Client and terminate Representation and Services in this Matter for any reason consistent with the West Virginia Rules of Professional Conduct by providing Client with written notice of termination. Some examples of appropriate reasons for declining or terminating Representation and Services by the LUSDC include:

a. The representation will result in violation of the West Virginia Rules of Professional Conduct or other law;
b. Withdrawal can be accomplished without material adverse effect on the interests of Client;
c. Client persists in a course of action involving the LUSDC's Representation and Services that the LUSDC reasonably believes is criminal or fraudulent;
d. Client has used the LUSDC's Representation and Services to perpetrate a crime or fraud;
e. Client insists upon taking action that the LUSDC considers repugnant or with which the LUSDC has a fundamental disagreement;
f. Client fails substantially to fulfill an obligation to or renders Representation and Services unreasonably difficult for the LUSDC and has been given reasonable warning that the LUSDC will withdraw unless the obligation is fulfilled;
g. The Representation and Services will result in an unreasonable financial burden on the LUSDC or, the LUSDC experiences a loss of funding, which jeopardizes continued operation of the LUSDC

18. Client understands that if this Matter is not closed by the time the student clinicians complete their LUSDC course, the LUSDC may transfer this Matter to another student clinician or attorney.

19. Client further understands that some delay in processing this Matter may occur during the summer months or during times of academic recess.

20. Client understands that there may be instances where meeting by way of telephonic or virtual means in accordance with West Virginia Open Meetings Laws is acceptable and preferable to LUSDC staff and student clinicians.

21. Client further understands that the LUSDC staff will have to drive considerable distances pursuant to this representation. In cases of inclement weather or potential inclement weather, Client understands that the LUSDC will err on the side of safety and will not travel whenever traveling may pose a safety risk to staff and/or students.

22. Client further understands that the LUSDC cannot guarantee that the services outlined in Section 5 of this agreement will be completed by a particular date. The LUSDC will proceed in this matter with due diligence but factors out of the control of the LUSDC may delay delivery of the final product(s), including, but not limited to, weather, client cooperation, the academic calendar, and the LUSDC workload with other clients.

23. Client understands that it may be helpful to the LUSDC and its student clinicians to make videotape or voice recordings ("Recordings") of some or all of Client's interviews to permit discussion of this Matter to the entire LUSDC staff. Client understands that any recordings of interviews will be used for educational purposes and Representation and Services only and that the recordings will not be made available to persons other than student clinicians and faculty in the LUSDC. Client does _____/does not _____ consent to recordings. (Place initials of the executing representative in appropriate space.

24. Client authorizes the student clinicians and faculty of the LUSDC to investigate all facts relating to this Matter. Client specifically consents to the release by any person or agency of information or records relating to it or its history.

OTHER PROVISIONS

25. The LUSDC shall represent Client diligently, faithfully, and competently.

26. To minimize out-of-pocket costs, it may be necessary for Client to assist the LUSDC in gathering and sorting information for use in the LUSDC's Representation and Services for Client. In each instance, Client agrees to provide such assistance, on such schedule, as may be necessary.

27. This Agreement constitutes the entire agreement between the parties for legal Representation and Services relating to the above-described Matter, and it supersedes any and all prior or contemporaneous understandings or agreements.

28. This Agreement may be supplemented, modified, or amended only by mutual agreement of the parties. No supplement, modification, and/or amendment of this Agreement shall be binding unless it is in writing and signed by all parties.

29. If any provision of this Agreement is held invalid or unenforceable, its invalidity or unenforceability will not affect any other provisions of this Agreement, and this Agreement will be construed and enforced as if such provision had not been included.

30. This Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same agreement.

CITY OF ELKINS,
WEST VIRGINIA

____
Designated Representative

____
Date

WEST VIRGINIA UNIVERSITY
COLLEGE OF LAW, LAND USE AND
SUSTAINABLE DEVELOPMENT CLINIC

____
Katherine Garvey
Director

____
Date

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	May 18, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1657: Classifying the HR Generalist position as exempt and assigning a salary
Recommended By:	City Clerk
Summary:	The city's compensation and classification schedule lists the HR Generalist position in Grade 13 (pay range $18.61-$23.63/hour, or $38,714.66-$49,157.35). This position should be considered exempt ("salaried"), due to its passing the following two conditions (among others stipulated for exempt positions by the federal Fair Labor Standards Act: • It is paid more than $23,600/year. • It involves duties that are non-manual and crucial to the overall organization, such as formulating or interpreting company policies through the exercise of discretion and judgement and independent decision-making.
Fiscal Impact:	At an annaul salary of $52,500, the total value of this employee's compensation package is approximately $76,000 (depending on which fringe benefits are selected).
Recommendation:	Adopt the resolution classifying the position as exempt and establishing an annual salary of $52,500.
Attachments:	1. R-1657 reclassifying HR Generalist position and establishing compensation

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1657)
May 18, 2023

Authorizing the Classification of the HR Generalist Position as Exempt and Establishing an Annual Salary

---

WHEREAS, the Elkins Common Council adopted a Compensation and Classification Plan via Resolution #1145 effective July 1, 2018; and,

WHEREAS, that plan includes a Human Resources Generalist position, within the City Clerk Department and currently assigned to Grade 13; and,

WHEREAS, the Personnel Committee has reviewed and recommended approval of a proposal to reclassify the position as exempt ("salaried"), at an annual salary of $52,500; 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 ordinance; 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 or will be made available; and,

WHEREAS, Council finds that is in the best interests of the City of Elkins to adopt and implement this change; **now, therefore, be it**

RESOLVED, that the Elkins Common Council hereby authorizes the reclassification of the Human Resources Generalist position as exempt ("salaried") and establishes an annual salary of $52,500.

____
Jerry A. Marco, Mayor

Attest:

____
Sutton Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	May 18, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1658: Amending the city's personnel policy concerning probationary employees
Recommended By:	Personnel Committee
Summary:	This resolution would eliminate the category of "Probationary Employee"; end council approval of the conclusion of probationary periods; and order changes as needed throughout the city's Personnel Manual to reflect the following two rules: 1. "Full-time regular employees are prohibited from using medical leave, annual leave, or personal days until completion of all assigned workdays during the first 90 calendar days of employment." 2. "All administrative officers, and full-time and part-time regular employees, including civil service employees, are eligible to receive annual longevity pay based on years of service, providing they have completed all assigned workdays during the first 90 calendar days of employment by August 1 of the given year. This 90-day requirement does not apply to employees who have been transferred, promoted, or demoted within the city organization after already successfully completing all assigned workdays during an earlier initial 90 calendar days of employment." See attached memo for more information.
Fiscal Impact:	No direct cost or costsavings. Relieves staff of unnecessary paperwork.
Recommendation:	Adopt the resolution amending the city's personnel policy concerning probationary employees.
Attachments:	1. memo - probationary employees - 2023_05_09 2. R-1658 - amending personnel policy to eliminate probationary employees

Memo

To: Elkins Common Council Personnel Committee

From: Sutton Stokes, City Clerk

Date: May 9, 2023

Re: Elimination of “probationary employee” category and related language from Personnel Policy

---

Currently, the city’s Personnel Policy defines a category of employee called “Probationary Employee.” This category refers to employees who will eventually be considered “Full Time Regular Employees” during their first 90 days of employment. There is currently a practice of submitting such employees for council approval after completion of these first 90 days. With this memo, I seek the committee’s support in recommending that council eliminate the category of “probationary employee” and, with it, any requirement for council approval.

Formerly, probationary employees received lower pay than would be received after council approval, but this practice was eliminated some years ago. Under the current policy, the only distinction between probationary and regular employees is that probationary employees are not allowed to use medical or annual leave (or personal days) until after the first 90 calendar days of employment. It seems unlikely that council would ever fail to approve the end of the probationary period. Meanwhile, full-time regular employees are at-will both during and after the probationary period and may be terminated at any time, with or without cause. So, why ask council to consider the matter at all?

I recommend that the policy be altered to eliminate “Probationary Employee” as a separate category of employee. Instead, the policy should be updated to simply state a rule to the following effect and with changed language throughout as implied by this rule:

> “Full-time regular employees are prohibited from using medical leave, annual leave, or personal days until completion of all assigned workdays during the first 90 calendar days of employment.”

Another benefit of this change would be to eliminate possible confusion between regular employees in this “probationary” status and probationary civil-service employees, where a genuine distinction exists concerning employment status, termination process, etc.

##

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1658)
May 18, 2023

Amending the City of Elkins Personnel Policy to Eliminate the category of Non-Civil-Service Probationary Employee

---

WHEREAS, the Common Council of the City of Elkins ("Council") has previously adopted a Personnel Manual, on October 21, 2010, and which it has amended from time to time; and,

WHEREAS, Council's Personnel Committee has recommended that the category of employee described in Personnel Manual Section 4.E, "Probationary Employees," be eliminated while retaining (1) that category's restriction concerning absences from work during the first 90 days of employment for Full Time Regular Employees and (2) related eligibility requirements for longevity pay; and,

WHEREAS, Council finds that it is in the best interests of the City of Elkins to adopt and implement this change; ***now, therefore, be it***

RESOLVED, that the Elkins Common Council hereby orders the deletion of Section 4.E, "Probationary Employees," with immediate effect; **and be it**

FURTHER RESOLVED, that the Elkins Common Council hereby orders the City Clerk to make changes as needed throughout the Personnel Manual to reflect Council's intention that Full Time Regular Employees no longer complete a probationary period but remain bound by the following restrictions:

1. "Full-time regular employees are prohibited from using medical leave, annual leave, or personal days until completion of all assigned workdays during the first 90 calendar days of employment."

2. "All administrative officers, and full-time and part-time regular employees, including civil service employees, are eligible to receive annual longevity pay based on years of service, providing they have completed all assigned workdays during the first 90 calendar days of employment by August 1 of the given year. This 90-day requirement does not apply to employees who have been transferred, promoted, or demoted within the city organization after already successfully completing all assigned workdays during an earlier initial 90 calendar days of employment."

The actions ordered by this resolution do not affect the probationary period applicable to civil-service employees.

Jerry A. Marco, Mayor

Attest:

Sutton Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	May 18, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1659: Accepting conditions and authorizing execution of agreement with W. Va. DOH for the replacement or rehabilitation of the Davis Avenue Bridge
Recommended By:	City Attorney
Summary:	See attached memo from the City Attorney.
Fiscal Impact:	Through this agreement, and pending ongoing availabilty of funding, City of Elkins avoids most costs related to the rehabilitation or repair of the Davis Avenue Bridge.
Recommendation:	Adopt the resolution authorizing entering into the agreement with W. Va. DOH to rehabilitate or repair the Davis Avenue Bridge.
Attachments:	1. Memo for DOH-Davis Ave Bridge 2. R-1659 - DOT Davis Ave Bridge Improvement Agreement 3. Division of Highways Transportation Davis Bridge agreement - 2023_05_18

MEMO

TO: **Mayor Marco and Council**

FROM: **Geraldine S. Roberts**

RE: **Resolution 1659-Agreement with DOH-Davis Ave. Bridge**

DATE: **May 17, 2023**

The City has received a proposed Agreement from the DOH for the replacement of the Davis Avenue Bridge. As you know, it is apparent that the bridge needs to be replaced according to the last inspections. The DOH will be administering the federal funds from the Infrastructure and Investment Jobs Act (IIJA) passed by Congress. Part of these funds were designated to be used specifically for rehabilitation or replacement of bridges that are not in the DOH system of roadways. The City will have no match requirement for this Project.

These are some of the items the in the accompanying letter and in the Agreement that are particularly significant in your consideration of this proposed Agreement:

1. The IIJA funds are limited and if those funds are exhausted before the work on the Davis Avenue bridge is completed, the DOH may not be able to fulfill this Agreement.
2. There is a Single Audit requirement which I have discussed with Tracy and which there may be some need for clarification.
3. The DOH will be responsible for all design and construction plans in accordance with their own criteria including securing any necessary approvals/permits.
4. If requested by the DOH, the City shall schedule an informational public meeting on the Project.
5. Both parties will work together concerning any property rights that may be needed for the Project including utility easements
6. DOH will be in charge of the Project from contract bids to the administration of the construction contract including inspections once it is verified that there are sufficient funds available.
7. The City agrees that no B&O tax will be levied against any DOH contractor on this Project.

8. Upon completion of the Project, maintenance, upkeep repair etc. will be the City's responsibility.
9. There is some additional language concerning indemnification, governing law and termination of the Agreement which is typical language for agreements or contracts.

Despite the possibility of the exhaustion of the IIJA funds, the recommendation is to approve this Agreement with an accompanying letter to the DOH stressing the urgency and critical nature of the Project and asking for clarification on the Single Audit which Tracy has requested.

If you have any questions, please let me know.

cc: Sutton Stokes
Mike Kesicker
Tracy Judy

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1659)
May 18, 2023

Authorizing an Agreement with the W. VA. Department of Transportation for the Replacement or Rehabilitation of the Davis Avenue Bridge

---

WHEREAS, the City of Elkins, West Virginia ("City") owns and maintains the Davis Avenue Bridge; and,

WHEREAS, the Davis Avenue Bridge is inspected annually by the W. Va. Department of Transportation, and the 2021 inspection report rated the bridge as poor; and,

WHEREAS, the City has in hand an agreement (attached and made part of this record) offered by the W. Va. Department of Transportation, Division of Highways (DOH) under which DOH would rehabilitate or replace the Davis Avenue Bridge using funds received via the federal Infrastructure Investment and Jobs Act ("IIJA"); and,

WHEREAS, it appears that entering into this agreement is in the best interests of the citizens of the City of Elkins;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby approves entering into the agreement offered by DOH to rehabilitate or repair the Davis Avenue Bridge and authorizes the Mayor to execute the agreement.

____
Jerry A. Marco, Mayor

Attest:

____
Jessica R. Sutton, City Clerk

WEST VIRGINIA DEPARTMENT OF TRANSPORTATION

Division of Highways

1900 Kanawha Boulevard East • Building Five • Room 110
Charleston, West Virginia 25305-0430 • (304) 558-3505

Gregory L. Bailey, P.E.
Interim
State Highway Engineer

Jimmy Wriston, P. E.
Secretary of Transportation
Commissioner of Highways

April 25, 2023

The Honorable Jerry Marco
City of Elkins
401 Davis Avenue
Elkins, West Virginia 26241

Dear Mayor Marco:

Enclosed are two (2) originals of an agreement regarding either the rehabilitation or replacement of Davis Avenue Bridge in Randolph County. As part of Governor Jim Justice's use of the Infrastructure and Investment Jobs Act (IIJA) and as directed by the Secretary of Transportation, Jimmy Wriston, P.E., the City of Elkins will have no match requirement for the rehabilitation or replacement of the Davis Avenue Bridge. Please review the agreement carefully and if acceptable, have each original signed by the appropriate representative of the City of Elkins and then return each signed original, with an appropriate cover letter, to:

Mr. Perry J. Keller
West Virginia Department of Transportation
Commissioner's Office of Economic Development
1900 Kanawha Boulevard, East
Building 5, Room 110
Charleston, West Virginia 25305

The documents then will be fully executed by the West Virginia Department of Transportation, Division of Highways (WVDOH). The date on page one of the documents will be entered by the WVDOH; please do not enter a date on page one of these documents.

The work by the WVDOH and its partners is an enormous task in performing these much needed projects within our communities and as such this work will begin as soon as practical. A Design Study will be performed to determine the most cost effective solution(s) for the Bridge, resulting in an appropriate remedy. Please note that funding is limited to IIJA funding and if those funds become exhausted prior to the work on Davis Avenue Bridge, the WVDOH may not be able to fulfill this agreement. If the City of Elkins has any special considerations or concerns with the Davis Avenue Bridge improvement, please include those in the cover letter when returning your signed agreement.

Thank you for your assistance with this matter. If you require additional information, please contact Mr. Keller at (304) 414-6925 or Perry.J.Keller@wv.gov.

Sincerely,

Jimmy Wriston, P.E.

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

JW:Ks

Enclosure

E.E.O./AFFIRMATIVE ACTION EMPLOYER

WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
AGREEMENT
DAVIS AVENUE BRIDGE IMPROVEMENT
CITY OF ELKINS
RANDOLPH COUNTY

THIS AGREEMENT, executed in duplicate, made and entered into this ________ day of ________________, 20___, by and between the West Virginia Department of Transportation, Division of Highways, hereinafter called "Division", and the City of Elkins, a West Virginia municipality, Randolph County, West Virginia, hereinafter called "Municipality,"

WITNESSETH that,

WHEREAS, Municipality desires Division's participation in the funding of the replacement or rehabilitation, hereinafter called "Improvement", of Municipality's existing Davis Avenue Bridge, hereinafter called "Bridge," that carries Davis Avenue over Tygart Valley River in the Municipality of Elkins, Randolph County, as the estimated cost of such work is beyond the Municipality's current funding capability and would present a financial burden to Municipality; and

WHEREAS, Division's funding to be utilized for the Improvement of Davis Avenue Bridge is to be exclusively derived from federal funds made available to Division through the Infrastructure Investment and Jobs Act (hereinafter "IIJA"), enacted as Public Law (P.L.) 117–58; as long as funds remain available; and

WHEREAS, Division considers it to be in the public interest to participate in this project, which provides a safer and more efficient transportation system for the citizens of West Virginia;

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. The Municipality will obtain a Single Audit in accordance with 2 CFR Part 200 Subpart F ("Uniform Guidance") as required for any fiscal year expenditures exceeding seven hundred fifty thousand dollars ($750,000.00) from all federal funding sources including the federal highway funds to be utilized, under the terms of this Agreement, for the Improvement of the Davis Avenue Bridge. If the Municipality requires a Single Audit in accordance with the Uniform Guidance, the Municipality then shall provide to the Division, within six (6) months after the required Uniform Guidance due date, a copy of the audit report.

II. Division shall design, or shall have designed, and prepare appropriate construction plans and related documents, which collectively are referred to as the "Plans," for the Improvement of the Davis Avenue Bridge (BARS Number 42A901) and any necessary work along the Bridge approaches on each end, in Elkins, Randolph County. The work to be performed under this Agreement is hereinafter called "Project." The design of Project shall be in accordance with Division's directives, guidelines, and criteria. Division shall secure the approvals and/or permits, if any, required by other governmental agencies for Project.

III. Division shall comply with all applicable Federal, State, and local environmental regulations. Upon request of Division and as determined by Division to be appropriate, Municipality shall schedule at a public facility an informational public meeting regarding Project, at a mutually agreeable date and time.

IV. Prior to construction of Project, Division shall be responsible for the acquisition, in accordance with the Plans, of any additional property interest, right-of-way or other easements necessary for the Project, subject to the conditions that follow.

A. Any such acquisition by Division shall conform with the applicable provisions of the Relocation Assistance and Real Property Acquisition Policies Act of 1970 and shall be accomplished utilizing Division's acquisition processes and procedures.

B. Division shall obtain in Division's name any additional right-of-way or easement along Davis Avenue.

C. Division shall obtain in Municipality's name any property, real estate, right-of-way, or easement along any existing Municipality street or along any proposed realignment of any Municipality street associated with the Project with the following exceptions:

1. Division shall not utilize Division's authority to acquire, in Municipality's name, through an eminent domain proceeding any property, real estate, right-of-way or easement; and

2. Municipality may utilize its authority to acquire, in Municipality's name, through an eminent domain proceeding any property, real estate, right-of-way or easement, at their own expense and liability.

D. Municipality shall work with the Division to obtain any additional easement for relocation, adjustment or installation of Municipality's utility that is necessary along any existing Municipality street or any proposed realignment of any Municipality street that is necessary for implementation of the Project.

E. Division shall coordinate with any railroad affected by Project regarding easements necessary. Any cost associated with railroad flagging or other railroad-related costs shall be included in the total cost of the Project.

F. Division shall be responsible for all costs of review, appraisal or other valuation, negotiation, purchase, relocation, or other activities associated with the acquisition by Division, in the Municipality's name, of property, real estate, right-of-way or easement, with Division's financial participation in such activities being limited solely to the federal highway funding made available for the Project.

V. Prior to Division's construction of Project, Division shall be responsible for ensuring that any necessary relocation or adjustment of any utilities associated with Project is completed, subject to the conditions that follow.

A. All utility work 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," current edition.

B. Municipality shall provide to Division all permits, easements and records of any utilities located within Municipality's rights of way within Project limits.

C. As part of Project development and utility coordination process, Division will provide to each affected utility owner or provider and the same to Municipality, plans for relocation or adjustment of utilities necessary for Project.

VI. Division personnel may perform work on Project or when determined by Division to be appropriate, Division shall advertise a construction contract, accept bids, award the construction contract, construct, and inspect Project as shown on the approved Plans. Project and all related work shall be constructed and performed in accordance with the Plans prepared by Division and in accordance with Division specifications.

VII. After opening and reviewing bids for the construction contract and verifying that Division has available sufficient funds for such, Division then may award and administer the construction contract for Project. Division shall provide construction inspection, materials acceptance, and traffic control for the Project.

VIII. Division's authorization to proceed is contingent upon receipt of any Federal Highway Administration's (FHWA) approval and authorization that may be required and upon Municipality's compliance with the other stipulations and requirements set forth herein. Division shall ensure compliance with FHWA Form 1273, with the requirements of the Buy America Act, as well as any other required contract provisions pertaining to federal-aid construction contracts.

IX. Division shall be responsible for payment, utilizing federal funds made available to Division for Project, to Division personnel, and to consultants and contractors procured by Division, for the cost of Project.

X. Municipality agrees that no Business and Occupation tax will be levied by Municipality against any Division contractor regarding construction of the Project.

XI. Division shall accept no financial obligation for nor responsibility for performance of maintenance, repair or upkeep of Bridge or of any Municipality street as a result of participation in Project and no municipal street is to be accepted as part of the State Highway System as a result of Division's participation in this Agreement or as a result of implementation of any portion of the Project. Upon completion of the Project, Municipality shall be responsible for maintenance, repair and upkeep of Davis Avenue and the improved Bridge, and for inspection of the Bridge at whatever interval is required by the National Bridge Inspection Standards.

XII. After completion of construction of the Project, and for as long as these items are located within Division's right-of-way, Municipality shall be responsible for the maintenance, upkeep, repair and replacement of any sidewalk constructed or any lighting installed along Bridge within the municipal boundary of Municipality.

XIII. 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.

XIV. Division may terminate this Agreement upon thirty (30) days' written notice to Municipality. 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.

XV. To the fullest extent permitted and authorized by law, Municipality 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 Municipality, Contractor or Subcontractor) resulting directly, indirectly or otherwise by (a) the actions or omissions of Municipality, any Contractor or any Subcontractor, or their respective agents and employees, (b) by any condition of the property, (c) by any failure of Municipality, 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 Municipality's, any Contractor's or any Subcontractor's performance of work hereunder, including maintenance of utilities or failure to maintain utilities associated with Project. Municipality at all times hereby fully assumes, to the full extent permitted and authorized by West Virginia law, the risk of and shall defend, indemnify and hold harmless the Division, its officers, employees and agents (the Division and such persons collectively "Division's Indemnified Persons"), and shall reimburse Division's Indemnified Persons for, from and against each and every demand, claim, suit, loss (which shall include any diminution in value), liability, damage, cost and expense (including, without limitation, interest, fines, penalties, and investigation, and any and all reasonable fees, disbursements and expenses of attorneys, accountants and other professional advisors) (collectively, "Losses") imposed on, incurred by or asserted against the Division's Indemnified Persons, (individually or jointly) directly or indirectly, relating to, resulting from, or arising out of Municipality's work, services, or other activities performed under this Agreement, including failure to maintain, provide upkeep, repairs or replace any defective or missing parts of any utility or failure to comply with any other obligation imposed under this Agreement. These covenants of indemnity shall survive cancellation, termination, or expiration of this Agreement. Municipality 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 Municipality for performance of this Agreement.

Upon written request by any Division's Indemnified Persons, Municipality shall, to the full extent permitted and authorized by West Virginia law, defend the same (if requested by any Division's Indemnified Persons, in the name of the Division's Indemnified Persons) by attorneys and other professionals approved by the Division's Indemnified Persons, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, any Division's Indemnified Person may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Division's Indemnified Persons, their attorneys shall control the resolution of any claim or proceeding, provided that no compromise or settlement shall be entered without Municipality's consent, which consent shall not be unreasonably withheld. Upon written demand, to the extent permitted and authorized by West Virginia law, Municipality shall pay or, in the sole and absolute discretion of the Division's Indemnified Persons, reimburse, the Division's Indemnified Persons for the payment of reasonable fees and disbursements of attorneys, accountants and other professional advisors in connection therewith.

XVI. This Agreement may not be assigned without the prior written consent of Division. Once assigned, the Agreement shall be binding upon the successors and assigns of each party thereto.

XVII. 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.

XVIII. This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia, without regard to its choice of law principles.

XIX. Any resolution of the Municipality's Council necessary to authorize Municipality's 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 Municipality enters this Agreement warrants that no such resolution is necessary.

XX. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and agreed to and signed by both parties. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

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

____
(signature)
By: Jimmy Wriston, P. E.
Secretary of Transportation/
Commissioner of Highways

APPROVED AS TO FORM THIS
2 DAY OF May, 2023,
ATTORNEY LEGAL DIVISION
WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION
DIVISION OF HIGHWAYS
David A Ford
Legal Division Tracking No. 2304116

CITY OF ELKINS,
a municipal corporation

____
(signature)
By: ______________________
(printed name)
Its: ______________________
(printed title)

(To be executed in duplicate)

Distribution: Master File
Municipality

WEST VIRGINIA
DEPARTMENT OF TRANSPORTATION
DIVISION OF HIGHWAYS
AGREEMENT
DAVIS AVENUE BRIDGE IMPROVEMENT
CITY OF ELKINS
RANDOLPH COUNTY

THIS AGREEMENT, executed in duplicate, made and entered into this ________ day of ________________, 20___, by and between the West Virginia Department of Transportation, Division of Highways, hereinafter called "Division", and the City of Elkins, a West Virginia municipality, Randolph County, West Virginia, hereinafter called "Municipality,"

WITNESSETH that,

WHEREAS, Municipality desires Division's participation in the funding of the replacement or rehabilitation, hereinafter called "Improvement", of Municipality's existing Davis Avenue Bridge, hereinafter called "Bridge," that carries Davis Avenue over Tygart Valley River in the Municipality of Elkins, Randolph County, as the estimated cost of such work is beyond the Municipality's current funding capability and would present a financial burden to Municipality; and

WHEREAS, Division's funding to be utilized for the Improvement of Davis Avenue Bridge is to be exclusively derived from federal funds made available to Division through the Infrastructure Investment and Jobs Act (hereinafter "IIJA"), enacted as Public Law (P.L.) 117–58; as long as funds remain available; and

WHEREAS, Division considers it to be in the public interest to participate in this project, which provides a safer and more efficient transportation system for the citizens of West Virginia;

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. The Municipality will obtain a Single Audit in accordance with 2 CFR Part 200 Subpart F ("Uniform Guidance") as required for any fiscal year expenditures exceeding seven hundred fifty thousand dollars ($750,000.00) from all federal funding sources including the federal highway funds to be utilized, under the terms of this Agreement, for the Improvement of the Davis Avenue Bridge. If the Municipality requires a Single Audit in accordance with the Uniform Guidance, the Municipality then shall provide to the Division, within six (6) months after the required Uniform Guidance due date, a copy of the audit report.

II. Division shall design, or shall have designed, and prepare appropriate construction plans and related documents, which collectively are referred to as the "Plans," for the Improvement of the Davis Avenue Bridge (BARS Number 42A901) and any necessary work along the Bridge approaches on each end, in Elkins, Randolph County. The work to be performed under this Agreement is hereinafter called "Project." The design of Project shall be in accordance with Division's directives, guidelines, and criteria. Division shall secure the approvals and/or permits, if any, required by other governmental agencies for Project.

III. Division shall comply with all applicable Federal, State, and local environmental regulations. Upon request of Division and as determined by Division to be appropriate, Municipality shall schedule at a public facility an informational public meeting regarding Project, at a mutually agreeable date and time.

IV. Prior to construction of Project, Division shall be responsible for the acquisition, in accordance with the Plans, of any additional property interest, right-of-way or other easements necessary for the Project, subject to the conditions that follow.

A. Any such acquisition by Division shall conform with the applicable provisions of the Relocation Assistance and Real Property Acquisition Policies Act of 1970 and shall be accomplished utilizing Division's acquisition processes and procedures.

B. Division shall obtain in Division's name any additional right-of-way or easement along Davis Avenue.

C. Division shall obtain in Municipality's name any property, real estate, right-of-way, or easement along any existing Municipality street or along any proposed realignment of any Municipality street associated with the Project with the following exceptions:

1. Division shall not utilize Division's authority to acquire, in Municipality's name, through an eminent domain proceeding any property, real estate, right-of-way or easement; and

2. Municipality may utilize its authority to acquire, in Municipality's name, through an eminent domain proceeding any property, real estate, right-of-way or easement, at their own expense and liability.

D. Municipality shall work with the Division to obtain any additional easement for relocation, adjustment or installation of Municipality's utility that is necessary along any existing Municipality street or any proposed realignment of any Municipality street that is necessary for implementation of the Project.

E. Division shall coordinate with any railroad affected by Project regarding easements necessary. Any cost associated with railroad flagging or other railroad-related costs shall be included in the total cost of the Project.

F. Division shall be responsible for all costs of review, appraisal or other valuation, negotiation, purchase, relocation, or other activities associated with the acquisition by Division, in the Municipality's name, of property, real estate, right-of-way or easement, with Division's financial participation in such activities being limited solely to the federal highway funding made available for the Project.

V. Prior to Division's construction of Project, Division shall be responsible for ensuring that any necessary relocation or adjustment of any utilities associated with Project is completed, subject to the conditions that follow.

A. All utility work 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," current edition.

B. Municipality shall provide to Division all permits, easements and records of any utilities located within Municipality's rights of way within Project limits.

C. As part of Project development and utility coordination process, Division will provide to each affected utility owner or provider and the same to Municipality, plans for relocation or adjustment of utilities necessary for Project.

VI. Division personnel may perform work on Project or when determined by Division to be appropriate, Division shall advertise a construction contract, accept bids, award the construction contract, construct, and inspect Project as shown on the approved Plans. Project and all related work shall be constructed and performed in accordance with the Plans prepared by Division and in accordance with Division specifications.

VII. After opening and reviewing bids for the construction contract and verifying that Division has available sufficient funds for such, Division then may award and administer the construction contract for Project. Division shall provide construction inspection, materials acceptance, and traffic control for the Project.

VIII. Division's authorization to proceed is contingent upon receipt of any Federal Highway Administration's (FHWA) approval and authorization that may be required and upon Municipality's compliance with the other stipulations and requirements set forth herein. Division shall ensure compliance with FHWA Form 1273, with the requirements of the Buy America Act, as well as any other required contract provisions pertaining to federal-aid construction contracts.

IX. Division shall be responsible for payment, utilizing federal funds made available to Division for Project, to Division personnel, and to consultants and contractors procured by Division, for the cost of Project.

X. Municipality agrees that no Business and Occupation tax will be levied by Municipality against any Division contractor regarding construction of the Project.

XI. Division shall accept no financial obligation for nor responsibility for performance of maintenance, repair or upkeep of Bridge or of any Municipality street as a result of participation in Project and no municipal street is to be accepted as part of the State Highway System as a result of Division's participation in this Agreement or as a result of implementation of any portion of the Project. Upon completion of the Project, Municipality shall be responsible for maintenance, repair and upkeep of Davis Avenue and the improved Bridge, and for inspection of the Bridge at whatever interval is required by the National Bridge Inspection Standards.

XII. After completion of construction of the Project, and for as long as these items are located within Division's right-of-way, Municipality shall be responsible for the maintenance, upkeep, repair and replacement of any sidewalk constructed or any lighting installed along Bridge within the municipal boundary of Municipality.

XIII. 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.

XIV. Division may terminate this Agreement upon thirty (30) days' written notice to Municipality. 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.

XV. To the fullest extent permitted and authorized by law, Municipality 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 Municipality, Contractor or Subcontractor) resulting directly, indirectly or otherwise by (a) the actions or omissions of Municipality, any Contractor or any Subcontractor, or their respective agents and employees, (b) by any condition of the property, (c) by any failure of Municipality, 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 Municipality's, any Contractor's or any Subcontractor's performance of work hereunder, including maintenance of utilities or failure to maintain utilities associated with Project. Municipality at all times hereby fully assumes, to the full extent permitted and authorized by West Virginia law, the risk of and shall defend, indemnify and hold harmless the Division, its officers, employees and agents (the Division and such persons collectively "Division's Indemnified Persons"), and shall reimburse Division's Indemnified Persons for, from and against each and every demand, claim, suit, loss (which shall include any diminution in value), liability, damage, cost and expense (including, without limitation, interest, fines, penalties, and investigation, and any and all reasonable fees, disbursements and expenses of attorneys, accountants and other professional advisors) (collectively, "Losses") imposed on, incurred by or asserted against the Division's Indemnified Persons, (individually or jointly) directly or indirectly, relating to, resulting from, or arising out of Municipality's work, services, or other activities performed under this Agreement, including failure to maintain, provide upkeep, repairs or replace any defective or missing parts of any utility or failure to comply with any other obligation imposed under this Agreement. These covenants of indemnity shall survive cancellation, termination, or expiration of this Agreement. Municipality 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 Municipality for performance of this Agreement.

Upon written request by any Division's Indemnified Persons, Municipality shall, to the full extent permitted and authorized by West Virginia law, defend the same (if requested by any Division's Indemnified Persons, in the name of the Division's Indemnified Persons) by attorneys and other professionals approved by the Division's Indemnified Persons, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, any Division's Indemnified Person may, in their sole and absolute discretion, engage their own attorneys and other professionals to defend or assist them, and, at the option of Division's Indemnified Persons, their attorneys shall control the resolution of any claim or proceeding, provided that no compromise or settlement shall be entered without Municipality's consent, which consent shall not be unreasonably withheld. Upon written demand, to the extent permitted and authorized by West Virginia law, Municipality shall pay or, in the sole and absolute discretion of the Division's Indemnified Persons, reimburse, the Division's Indemnified Persons for the payment of reasonable fees and disbursements of attorneys, accountants and other professional advisors in connection therewith.

XVI. This Agreement may not be assigned without the prior written consent of Division. Once assigned, the Agreement shall be binding upon the successors and assigns of each party thereto.

XVII. 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.

XVIII. This Agreement shall be governed by and construed in accordance with the laws of the State of West Virginia, without regard to its choice of law principles.

XIX. Any resolution of the Municipality's Council necessary to authorize Municipality's 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 Municipality enters this Agreement warrants that no such resolution is necessary.

XX. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and agreed to and signed by both parties. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

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

____
(signature)
By: Jimmy Wriston, P. E.
Secretary of Transportation/
Commissioner of Highways

APPROVED AS TO FORM THIS
2 DAY OF May, 2023,
ATTORNEY LEGAL DIVISION
WEST VIRGINIA DEPARTMENT
OF TRANSPORTATION
DIVISION OF HIGHWAYS
Daniel A Forb
Legal Division Tracking No. 2304116

CITY OF ELKINS,
a municipal corporation

____
(signature)
By: ____________________
(printed name)
Its: ____________________
(printed title)

(To be executed in duplicate)

Distribution: Master File
Municipality

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	May 18, 2023
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1660: Accepting conditions and authorizing execution of an election and release agreement concerning opioid-related settlement with the Kroger Company
Recommended By:	City Attorney.
Summary:	This agreement dismisses any past and future opiod-related claims by City of Elkins against the Kroger Company. As with similar agreements Council has authorized in the past, accepting this one is a condition of participating in the West Virginia First Memorandum of Understanding establishing how settlement and judgment dollars from opioid supply chain participants will be allocated. Kroger has settled with the State of West Virginia for $68 million dollars. See attached letter from the W. Va. Attorney General.
Fiscal Impact:	No direct cost to city; required for access to opioid settlement and judgement dollars received by the state.
Recommendation:	Adopt the resolution accepting conditions and authorizing execution of the Kroger election and release agreement.
Attachments:	1. Kroger settlement letter from WVAG 2. Resolution #1660 (Kroger) 3. Kroger Election and Release Form

PATRICK MORRISEY
ATTORNEY GENERAL

PHYSICAL ADDRESS:
1900 Kanawha Blvd., East
State Capitol Complex
Building 6, Suite 401
Charleston, WV 25305

MAILING ADDRESS:
P.O. Box 1789
Charleston, WV 25326-1789

E-Mail: consumer@wvago.gov
http://www.wvago.gov

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL

Consumer Protection
and Antitrust Division
(304) 558-8986

Consumer Hotline
1-800-368-8808

Preneed Funeral Services
(304) 558-8986

Senior Protection Hotline
(304) 558-1155

Facsimile (304) 558-0184

RE: Kroger Settlement

Dear Mayor/County Commissioner:

Your community elected to participate in the West Virginia First Memorandum of Understanding ("MOU"), announced in 2022, which sets out how settlement and judgment dollars from opioid supply chain participants will be allocated among the State and its communities. With your help, West Virginia is now poised to make a meaningful impact on abating the opioid epidemic through a combination of direct payments to local communities, the State, and a non-profit, non-stock foundation created to fund statewide opioid abatement under the MOU. I am grateful for your community's decision to support the MOU. Your community also elected to participate in six opioid manufacturer and retail pharmacy settlements reached over the past two years. We appreciate your decision and your prompt return of the participation documents for those settlements. We are asking for your help again.

Earlier this month, my office announced a statewide settlement with retail pharmacy Kroger ("Kroger") Settlement"). Under the terms of the settlement, Kroger will pay the State 68 million dollars. The Kroger Settlement will provide additional much-needed abatement dollars to communities throughout the state. We now ask for your assistance in finalizing this settlement through execution of an election and release form.

Under the settlement, participating local governments who execute an election and release form are eligible for direct payments from the amount set aside for remediation. As with the other settlements, 72.5% goes to the West Virginia First Abatement Fund and a minimum of 24.5% goes to local governments.

Attached is a copy of the executed Kroger Settlement with a list of exhibits and a Settlement Participation Form. Copies of the exhibits to the Kroger Settlement are not enclosed, but may be downloaded at the following sharefile link: https://wvago.sharefile.com/d-s72f8aa6c92214838bc6e0ecd49a06e42. Should you have difficulty accessing the documents via the link, please contact our office and we will forward copies by regular mail.

In order to ensure that your community receives the maximum benefit under the Kroger Settlement, **please have your council/commission vote on the Kroger settlement terms and, if your community supports this agreement, return the executed West Virginia Local Government Election and Release Form to my office no later than August 1, 2023** using the following address:

Via mail or email to:

Attn: Paula Price
Office of the West Virginia Attorney General
P.O. Box 1789
Charleston, WV 25326
Paula.J.Price@wvago.gov

If you have questions, please contact Ann Haight or Vaughn Sizemore at our Consumer Protection Division, 304-558-8986.

Sincerely,

Patrick Morrisey
Attorney General

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1660)
May 18, 2023

Accepting Conditions and Terms of the Kroger/West Virginia Statewide Settlement Agreement and Authorizing the Execution of the Settlement Participation Form Provided by the West Virginia Attorney General

---

WHEREAS, the State of West Virginia and its many communities have unfortunately become the epicenter of a national opioid crisis for over the last two decades or more; and

WHEREAS, numerous lawsuits have been filed by local governments and the State against many companies in the opioid supply chain; and

WHEREAS, the City of Elkins, West Virginia has received a request from the Office of the West Virginia Attorney General to consider accepting the conditions and terms of Kroger/West Virginia Statewide Settlement Agreement ("Kroger Settlement") from an opioid supply chain participant which will be allocated between the State and its local governments; and

WHEREAS, as a result of one of the lawsuits filed by the State, the State has reached a $68 million statewide settlement with the retail pharmacy; and

WHEREAS, under the terms of the Kroger Settlement 24.5% will go to local governments for assistance in combatting the opioid crisis in their community; and

WHEREAS, under the terms of the Kroger Settlement. the local governments that want to be considered for the distribution of the settlement proceeds are required to approve the terms of the Kroger Settlement and the West Virginia Local Government Settlement Participation Form; and

WHEREAS, approving the terms of the Kroger Settlement and the West Virginia Local Government Settlement Participation Form would be in the best interests of the citizens of the City of Elkins.

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Common Council approves the terms of the Kroger Settlement and the West

Virginia Local Government Settlement Participation Form, as set forth in the attached document, authorizes Mayor Marco to execute the West Virginia Local Government Settlement Participation Form on behalf of the City and directs the City Clerk to submit the signed documents along with a copy of this Resolution to the Office of the West Virginia Attorney General.

Jerry A. Marco, Mayor

Attest:

Sutton R. Stokes, City Clerk

PATRICK MORRISEY
ATTORNEY GENERAL

PHYSICAL ADDRESS:
1900 Kanawha Blvd., East
State Capitol Complex
Building 6, Suite 401
Charleston, WV 25305

MAILING ADDRESS:
P.O. Box 1789
Charleston, WV 25326-1789

E-Mail: consumer@wvago.gov
http://www.wvago.gov

STATE OF WEST VIRGINIA
OFFICE OF THE ATTORNEY GENERAL

Consumer Protection
and Antitrust Division
(304) 558-8986

Consumer Hotline
1-800-368-8808

Preneed Funeral Services
(304) 558-8986

Senior Protection Hotline
(304) 558-1155

Facsimile (304) 558-0184

RE: Kroger Settlement

Dear Mayor/County Commissioner:

Your community elected to participate in the West Virginia First Memorandum of Understanding ("MOU"), announced in 2022, which sets out how settlement and judgment dollars from opioid supply chain participants will be allocated among the State and its communities. With your help, West Virginia is now poised to make a meaningful impact on abating the opioid epidemic through a combination of direct payments to local communities, the State, and a non-profit, non-stock foundation created to fund statewide opioid abatement under the MOU. I am grateful for your community's decision to support the MOU. Your community also elected to participate in six opioid manufacturer and retail pharmacy settlements reached over the past two years. We appreciate your decision and your prompt return of the participation documents for those settlements. We are asking for your help again.

Earlier this month, my office announced a statewide settlement with retail pharmacy Kroger ("Kroger") Settlement"). Under the terms of the settlement, Kroger will pay the State 68 million dollars. The Kroger Settlement will provide additional much-needed abatement dollars to communities throughout the state. We now ask for your assistance in finalizing this settlement through execution of an election and release form.

Under the settlement, participating local governments who execute an election and release form are eligible for direct payments from the amount set aside for remediation. As with the other settlements, 72.5% goes to the West Virginia First Abatement Fund and a minimum of 24.5% goes to local governments.

Attached is a copy of the executed Kroger Settlement with a list of exhibits and a Settlement Participation Form. Copies of the exhibits to the Kroger Settlement are not enclosed, but may be downloaded at the following sharefile link: https://wvago.sharefile.com/d-s72f8aa6c92214838bc6e0ecd49a06e42. Should you have difficulty accessing the documents via the link, please contact our office and we will forward copies by regular mail.

In order to ensure that your community receives the maximum benefit under the Kroger Settlement, **please have your council/commission vote on the Kroger settlement terms and, if your community supports this agreement, return the executed West Virginia Local Government Election and Release Form to my office no later than August 1, 2023** using the following address:

Via mail or email to:

Attn: Paula Price
Office of the West Virginia Attorney General
P.O. Box 1789
Charleston, WV 25326
Paula.J.Price@wvago.gov

If you have questions, please contact Ann Haight or Vaughn Sizemore at our Consumer Protection Division, 304-558-8986.

Sincerely,

Patrick Morrisey
Attorney General

INSTRUCTIONS

Please be sure to complete each blank on the attached form as follows:

Dated: (The date the document is signed.)

(Your town/city's name) ____________
LOCAL GOVERNMENT

BY: (Signature of mayor or other authorized person)
PRINTED NAME: (Printed name of person signing document
TITLE: (The title of the person signing document)
ADDRESS: (Your town/city's mailing address)
____
TELEPHONE: (Your town/city hall's telephone number)
EMAIL ADDRESS: (Email for your town/city)*

If you do not have the ability to scan a document as a PDF or fax, please return your signed release in the enclosed return envelope. Photos of the documents are not converting well and are sometimes illegible after conversion.

*If your city/town does not have an email address, please provide the email address where the mayor, a council member, or staff can best be contacted.

(Kroger)

WEST VIRGINIA LOCAL GOVERNMENT
ELECTION AND RELEASE FORM

This Election and Release Form for West Virginia Participating Local Governments resolves opioid-related Claims against Kroger under the terms and conditions set forth in the Kroger West Virginia State-Wide Opioid Settlement Agreement executed on May 2, 2023 (the "Agreement"), the provisions of which are here incorporated by reference in their entirety. Upon executing this Election and Release Form, a Participating Local Government agrees that, in exchange for the consideration described in the Agreement, the Participating Local Government is bound by all the terms and conditions of the Agreement. By executing this Election and Release Form, the Participating Local Government submits to the jurisdiction of the panel overseeing the mass litigation proceeding captioned *In re: Opioid Litigation,* Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County) (the "Court"). To the extent the Participating Local Government has asserted Claims against Kroger in Actions that are pending before the Court, the Participating Local Government hereby grants all necessary right and authority to the West Virginia Attorney General to seek dismissal of the Participating Local Government's Action through the submission of the Consent Judgment as contemplated in the Agreement. If a Participating Local Government's Action is pending in another court as of the Effective Date, the Participating Local Government hereby agrees to dismiss (or if necessary move to dismiss) that Action as to Kroger and any other Released Entities within seven (7) business days of the Effective Date.

Dated: ____________________

____
LOCAL GOVERNMENT

BY: __________________________
(Signature)
PRINTED NAME: ______________
TITLE: _______________________
ADDRESS: ___________________
TELEPHONE: _________________
EMAIL ADDRESS: ______________

Kroger West Virginia State-Wide Opioid Settlement Agreement

I. **Overview**

This Settlement Agreement dated as of May 2, 2023 sets forth the terms and conditions of a settlement between and among the State of West Virginia (defined herein) and Kroger (defined herein) (collectively, "the Parties") to resolve opioid-related Claims (defined herein) against Kroger.

Kroger has agreed to the below terms for the sole purpose of settlement, and nothing herein may be taken as or construed to be an admission or concession of any violation of law, rule, or regulation, or of any other matter of fact or law, or of any liability or wrongdoing, all of which Kroger expressly denies. No part of this Agreement, including its statements and commitments, shall constitute evidence of any liability, fault, or wrongdoing by Kroger. Unless the contrary is expressly stated, this Agreement is not intended for use by any third party for any purpose, including submission to any court for any purpose.

This Agreement resolves as to Kroger, among other things, the lawsuit captioned *State of West Virginia ex rel. Patrick Morrisey, Attorney General v. The Kroger Co., et al.*, Civil Action No. 22-C-111 PNM (W. Va. Cir. Ct. Putnam County) (the "West Virginia AG Action"), pending within *In re: Opioid Litigation*, Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County), and Actions brought and/or Claims possessed by Participating Local Governments.

II. **Definitions**

A. "Action" means the West Virginia AG Action and any lawsuit by a Local Government asserting any Released Claim against one or more Released Entities.

B. "Agreement" and "Settlement Agreement" refer to this settlement agreement together with the Exhibits thereto.

C. "Alleged Harms" means the alleged past, present, and future financial, societal, and related expenditures arising out of the alleged misuse and abuse of a Product, including those State and Local Government expenditures that have allegedly arisen as a result of the physical and bodily injuries sustained by individuals suffering from opioid-related addiction, abuse, death, and other related diseases and disorders, and that have allegedly been caused by Kroger. Non-exclusive examples of the Alleged Harms are described in the documents listed on Exhibit A.

D. "Bar" means (1) a ruling by the highest court of the State setting forth the general principle that no Local Governments in the State may maintain Released Claims against Released Entities, whether on the ground of the Agreement (or the release in it) or otherwise; (2) a law barring Local Governments in the State from maintaining or asserting Released Claims against Released Entities (either through a direct bar or through a grant of authority to release claims and that authority is exercised in full); or (3) a Settlement Class Resolution in the State with full force and effect. For the avoidance of doubt, a law or ruling that is conditioned or predicated upon payment by a Released Entity (apart from payment of the Settlement Sum) shall not constitute a Bar.

E. "<u>Case-Specific Resolution</u>" means either (1) a law barring specified Local Governments from maintaining Released Claims against Released Entities (either through a direct bar or through a grant of authority to release claims and that authority is exercised in full); or (2) a ruling by a court of competent jurisdiction over a particular Local Government that has the legal effect of barring the Local Government from maintaining any Released Claims at issue against Released Entities, whether on the ground of the Agreement (or the release in it) or otherwise; or (3) a release consistent with Section VII below. For the avoidance of doubt, a law, ruling, or release that is considered or predicated upon a post-Effective Date payment by a Released Entity (apart from payment of the Settlement Sum) shall not constitute a Case-Specific Resolution.

F. "<u>Claim</u>" means any past, present or future cause of action, claim for relief, cross-claim or counterclaim, theory of liability, demand, derivative claim, request, assessment, charge, covenant, damage, debt, lien, loss, penalty, judgment, right, obligation, dispute, suit, contract, controversy, agreement, *parens patriae* claim, promise, performance, warranty, omission, or grievance of any nature whatsoever, whether legal, equitable, statutory, regulatory or administrative, whether arising under federal, state, or local common law, statute, regulation, guidance, ordinance, or principles of equity, whether filed or unfiled, whether asserted or unasserted, whether known or unknown, whether accrued or unaccrued, whether foreseen, unforeseen, or unforeseeable, whether discovered or undiscovered, whether suspected or unsuspected, whether fixed or contingent, and whether existing or hereafter arising, in all such cases, including, but not limited to, any request for declaratory, injunctive, or equitable relief, compensatory, punitive, or statutory damages, absolute liability, strict liability, restitution, abatement, subrogation, contribution, indemnity, apportionment, disgorgement, reimbursement, attorney fees, expert fees, consultant fees, fines, penalties, expenses, costs, or any other legal, equitable, civil, administrative, or regulatory remedy whatsoever.

G. "<u>Claim-Over</u>" means a Claim asserted by any entity that is not a Releasor against a Released Entity on the basis of contribution, indemnity, or other claim-over on any theory relating to Claims arising out of or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by the Released Entities) asserted by the Releasor.

H. "<u>Class I Local Government</u>" means a Local Government that is a Class I city as that term is defined in W. Va. Code § 8-1-3(1).

I. "<u>Class II Local Government</u>" means a Local Government that is a Class II city as that term is defined in W. Va. Code § 8-1-3(2).

J. "<u>Class III Local Government</u>" means a Local Government that is a Class III city as that term is defined in W. Va. Code § 8-1-3(3).

K. "<u>Class IV Local Government</u>" means a Local Government that is a Class IV town or village as that term is defined in W. Va. Code § 8-1-3(4).

L. "Common Benefit Fund Commissioner" means the Honorable Christopher C. Wilkes, acting with the authority granted to him pursuant to the Court's Order Authorizing Common Benefit Fund and Appointing Common Benefit Fund Commissioner, dated October 4, 2021 (Transaction ID 66985632), and the Court's Order Establishing Common Benefit Fund, dated November 4, 2021 (Transaction ID 67071292).

M. "Consent Judgment" means a consent decree, order, judgment, or similar action; in connection with this Agreement, the Parties have agreed to the entry of the Consent Judgement attached hereto as Exhibit F, which provides for, among other things, the dismissal with prejudice of any Released Claims that the State has brought against Released Entities, and the dismissal with prejudice of all other Actions pending before the Court, on the terms and conditions specified herein.

N. "Counsel" means a solo practitioner, multi-attorney law firm, or other legal representative of the State or a Local Government.

O. "Court" means the panel overseeing the mass litigation proceeding captioned *In re Opioid Litigation*, Civil Action No. 21-C-9000 (W. Va. Cir. Ct. Kanawha County).

P. "Covered Conduct" means any actual or alleged act, failure to act, negligence, statement, error, omission, breach of any duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity of any kind whatsoever from the beginning of time through the Effective Date (and any past, present, or future consequence of any such act, failure to act, negligence, statement, error, omission, breach of duty, conduct, event, transaction, agreement, misstatement, misleading statement or other activity) in any line of business arising from or related in any way to a Product, including without limitation (1) the distribution, dispensing, delivery, monitoring, reporting, supply, sale, prescribing, physical security, warehousing, health insurance or prescription-drug coverage, purchases, reimbursement, discovery, development, manufacture, packaging, repackaging, marketing, promotion, advertising, labeling, recall, withdrawal, or use or abuse of a Product; orders, prescriptions, formularies, guidelines, payments or rebates for a Product; policies, practices and/or operating procedures, statements, contracts, health or prescription drug insurance, health or prescription-drug claim administration, health or prescription-drug benefit administration, health or prescription-drug adjudication, health or prescription-drug plan design, data and sales thereof, and any other act or failure to act relating to a Product; and any system, plan, policy or advocacy relating to any Product; (2) the characteristics, properties, risks or benefits of any Product; (3) the reporting, disclosure, non-reporting or non-disclosure to federal, state or other regulators of orders, prescriptions related to a Product; (4) the purchasing, selling , acquiring, disposing of, importing, exporting, handling, processing, packaging, supplying, distributing, converting, or otherwise engaging in any activity relating to a Product; and (5) controls against diversion, corresponding responsibility, and suspicious order monitoring related to any Product. For avoidance of doubt, products other than Products are not included in Covered Conduct. This definition shall not preclude the Attorney General from bringing antitrust, overpricing, or kickback claims of general applicability, the allegations of which (i) include prescription pharmaceutical products generally and are not specific or limited to Products and (ii) do not in any way concern, relate to, or arise from the nature and characteristics of Products; the use, misuse, abuse or diversion of, or addiction to, Products and/or the potential thereof; any alleged oversupply of Products; the legality, legitimacy and/or appropriateness of any prescriptions for Products and/or the legality, legitimacy and/or appropriateness of any dispensing of Products; asserted violations of state or federal controlled substances laws; or any alleged direct or indirect effects or harms resulting from any of the above.

Q. "Execution Date" means the date on which this Agreement is executed by the last Party to do so.

R. "Effective Date" means the date on which Kroger makes the Initial Payment as described in Section III.B.

S. "Finality" means:

1. The Agreement and the Consent Judgment have been approved and entered by the Court as to Kroger, including the release of all Released Claims against Released Entities as provided in this Agreement; and

2. (a) the time for appeal or to seek review of or permission to appeal from such approval and entry has expired; or (b) in the event of an appeal, the appeal has been dismissed or denied, or the approval and entry described above have been affirmed in all material respects (to the extent challenged in the appeal) by the court of last resort to which such appeal has been taken and such dismissal or affirmance has become no longer subject to further appeal (including, without limitation, review by the United States Supreme Court).

T. "Global Settlement" means any agreement resolving substantially all litigation and claims brought or threatened to be brought against Kroger by other states and Local Governments in the United States, including without limitation claims against Kroger in the multi-district litigation *In re: Nationwide Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio) and related state court prescription opiate litigation.

U. "Kroger" means The Kroger Co., and each of its past and present direct and indirect parents and subsidiaries, including without limitation Kroger Co., Kroger Limited Partnership I d/b/a Peyton's Southern, and Kroger Limited Partnership II d/b/a Peyton's Northern. For the avoidance of doubt, this definition shall not in any way limit the definition of Released Entities in Section II.II.

V. "Later Litigating Local Government" means a Local Government (or Local Government official asserting the right of or for the Local Government to recover for Alleged Harms to the Local Government and/or the people thereof) that is not a Litigating Local Government as of the Execution Date and that files a lawsuit bringing a Released Claim against a Released Entity, or that adds such a claim to a pre-existing lawsuit, after the Execution Date. It may also include a Litigating Local Government whose Claims were resolved by a judicial Bar or Case-Specific Resolution which is later revoked following the Execution Date, when such Litigating Local Government takes any affirmative step in its lawsuit other than seeking a stay or removal.

W. "Litigating Local Government" means a Local Government (or Local Government Official asserting the right of or for the Local Government to recover for Alleged Harms to the Local Government and/or the people thereof) that brought any Released Claims against one or more Released Entities on or before the Execution Date that were not separately resolved prior to that date. Exhibit B includes Litigating Local Governments identified by the Parties as of the Execution Date but is subject to amendment in the event it proves to be incomplete and other entities that satisfy the definition for "Litigating Local Governments" are subsequently identified.

X. "Litigation Cost Amount" has the meaning specified in Section III.A below.

Y. "Local Government" means a formal and legally recognized sub-entity of the State that provides general governance for a defined area, including a county, city, town, village, or similar entity, as further described in W. Va. Code §§ 7-1-1 *et seq.*, and §§ 8-1-1 *et seq.* A list of Counties, and lists of Class I, II, III and IV Local Governments, are attached as Exhibit C. Historic, non-functioning sub-entities of the State are not Local Governments, unless the entity has filed a lawsuit that includes a Released Claim against a Released Entity in a direct, *parens patriae*, or any other capacity. For the avoidance of doubt, "Local Government" does not include special districts or school boards.

Z. "Non-Litigating Local Government" means a Local Government that is neither a Litigating Local Government nor a Later Litigating Local Government.

AA. "Non-Participating Local Government" means a Local Government that is not a Participating Local Government.

BB. "Participation Date" means one hundred twenty (120) days after the Execution Date.

CC. "Participating Local Government" means a Local Government that signs the Election and Release Form annexed as Exhibit D and meets the requirements for becoming a Participating Local Government under Section VIII.A or VIIII.C.

DD. "Plaintiff" means the State of West Virginia, acting by and through its Attorney General.

EE. "Product" means any chemical substance, whether used for medicinal or non-medicinal purposes, and whether natural, synthetic, or semi-synthetic, or any finished pharmaceutical products made from or with such substance, that is an opioid or opiate, as well as any product containing any such substance. "Product" also includes: (1) the following when used in combination with opioids or opiates: Benzodiazepine, carisoprodol, zolpidem, or gabapentin; and (2) a combination or "cocktail" of any stimulant or other prescription drug or chemical substance, including without limitation muscle relaxers, prescribed, sold, bought, or dispensed to be used together that includes opioids or opiates. For the avoidance of doubt, "Product" does not include benzodiazepine, carisoprodol, zolpidem, or gabapentin when not used in combination with opioids or opiates, "Product" shall include, but is not limited to, any substance consisting of or containing buprenorphine, codeine, fentanyl, hydrocodone, hydromorphone, meperidine, methadone, morphine, oxycodone, oxymorphone, tapentadol, tramadol, opium, heroin, carfentanil, or any variant of these substances or any similar substance.

FF. "Qualified Settlement Fund" means the West Virginia Qualified Settlement Fund contemplated by this Agreement, into which the Settlement Sum shall be paid and which shall be established under the authority and jurisdiction of the Court in accordance with the requirements of 26 C.F.R. § 1.468B-1.

GG. "Qualified Settlement Fund Administrator" means and refers to John Jenkins of Smith Cochran Hicks PLLC, who is the Administrator appointed by the Court to administer the Qualified Settlement Fund under the authority and jurisdiction of the Court. (Transaction ID 68524883) The duties of the Qualified Settlement Fund Administrator shall be governed by this Agreement, the West Virginia First Memorandum of Understanding, and orders of the Court, as applicable. .

HH. "Released Claims" means any and all Claims that directly or indirectly are based on, arise out of, or in any way relate to or concern the Covered Conduct and/or Alleged Harms occurring prior to the Effective Date. Without limiting the foregoing, "Released Claims" include any claims that have been asserted against the Released Entities by the State or any of its Litigating Local governments in any federal, state or local action or proceeding (whether judicial, arbitral, or administrative) based on, arising out of or relating to, in whole or in part, the Covered Conduct and/or Alleged Harms, or any such Claims that could be or could have been asserted now or in the future in those actions or in any comparable action or proceeding brought by West Virginia or any of its Local Governments, or any Releasors (whether or not West Virginia or such Local Government or Releasor has brought such action or proceeding). Released Claims also include all Claims asserted in any proceeding to be dismissed pursuant to the Agreement, whether or not such claims relate to Covered Conduct. The Parties intend that "Released Claims" be interpreted broadly. This Agreement does not release Claims by private individuals. Released Claims is also used herein to describe Claims brought by a Later Litigating Local Government or other non-party Local Governments that would have been Released Claims if they had been brought by a Releasor against a Released Entity prior to the Execution Date.

II. "Released Entities" means (1) The Kroger Co.; (2) Kroger Limited Partnership I d/b/a Peyton's Southern; (3) Kroger Limited Partnership II d/b/a Peyton's Northern; (4) all of the foregoing entities' respective past and present, direct or indirect: parents subsidiaries, divisions, affiliates, joint ventures, predecessors, successors, assigns and insurers (in their capacity as such) and all of their respective past and present, direct or indirect, parents, subsidiaries divisions, affiliates, joint ventures predecessors, successors, assigns and insurers (solely in their capacity as such with respect to Released Claims and Covered Conduct); and (5) the past and present officers, directors, members, shareholders (solely in their capacity as shareholders of the foregoing entities), partners, trustees, employees, agents, attorneys and insurers (solely in their capacity as such with respect to Released Claims and Covered Conduct) of each of the foregoing entities and persons referenced in clauses (1) through (4) above for actions or omissions that occurred during and related to their work for, or employment with, any of the foregoing entities with respect to the Released Claims. Any person or entity described in subsections (4)-(5) shall be a Released Entity solely in the capacity described in such clause with respect to Released Claims and Covered Conduct and shall not be a Released Entity with respect to its conduct in any other capacity.

JJ. "Releasors" mean (1) the State; (2) each Participating Local Government; and (3) without limitation and to the maximum extent of the power of the State's Attorney General and/or each Participating Local Government to release Claims, (a) the State's and each Participating Local Government's departments, agencies, divisions, boards, commissions, instrumentalities of any kind and attorneys, including its Attorney General, and any person in their official capacity whether elected or appointed to serve any of the foregoing and any agency, person, or other entity claiming by or through any of the foregoing, (b) any public entities, public instrumentalities, public educational institutions, public service districts, unincorporated districts, water districts, law enforcement districts, emergency services districts, highway authorities, conservation districts, development authorities, reclamation districts, recreation districts, economic development authorities, housing authorities, sanitary districts, solid waste authorities, urban mass transportation authorities, and any other person or entity that performs services at the direction of the State and/or one or more Participating Local Governments, and (c) any person or entity acting in a *parens patriae*, sovereign, quasisovereign, private attorney general, qui tam, taxpayer, or other capacity seeking relief on behalf of or generally applicable to the general public with respect to the State or Local Governments in the State, whether or not any of them participate in the Agreement. The inclusion of a specific reference to a type of entity in this definition shall not be construed as meaning that the entity is not a Local Government. In addition to being a Releasor as provided herein, a Participating Local Government shall also provide an Election and Release Form (in the form attached as Exhibit D to this Agreement) providing for a release to the fullest extent of the Participating Local Government's authority. The State's Attorney General represents that he or she has or has obtained the authority set forth in Section VII.I.

KK. "Remediation Amount" has the meaning set forth in Section III.A below.

LL. "Resolution Panel" or "Resolution Judges" refers to the mediators in the West Virginia AG Action—specifically, the Honorable Joanna I. Tabit, the Honorable Jay M. Hoke, and the Honorable Gregory L. Howard.

MM. "Settlement Class Resolution" means a class action resolution in a court of competent jurisdiction in the State with respect to a class of Local Governments in the State that (1) conforms with the State's statutes, case law, and/or rules of procedure regarding class actions; (2) is approved and entered as an order of a court of competent jurisdiction in the State and has achieved Finality; (3) is binding on all Non-Participating Local Governments in the State (other than opt outs as permitted under the next sentence); (4) provides that all such Non-Participating Local Governments may not bring Released Claims against Released Entities, whether on the ground of the Agreement (or the releases herein) or otherwise; and (5) does not impose any costs or obligations on Kroger other than those provided for in the Agreement, or contain any provision inconsistent with any provision of the Agreement. If applicable State law requires that opt-out rights be afforded to members of the class, a class action resolution otherwise meeting the foregoing requirements shall qualify as a Settlement Class Resolution unless Local Governments collectively representing 1% or more of the State's population opt out. In seeking certification of any Settlement Class, the State and applicable Local Governments shall make clear that certification is sought solely for settlement purposes and shall have no applicability beyond approval of the settlement for which certification is sought. Nothing in this Agreement constitutes an admission by any Party that class certification would be appropriate for litigation purposes in any case.

NN. "Settlement Sum" means the aggregate total sum to be paid pursuant to this Agreement by or on behalf of Kroger and all Released Entities as specified in Section III.A below. Neither Kroger nor any Released Entities shall be called upon to make any payments pursuant to this Agreement in addition to the amount set forth in Section III.A below, except pursuant to Addendum 1.

OO. "State" means the State of West Virginia, including all of its executive departments, agencies, divisions, boards, commissions, instrumentalities and officers, including the Attorney General.

III. Consideration To Be Provided by Kroger

A. Settlement Sum. The Settlement Sum is $68,000,000, reflecting a substantial premium for the State given the unique facts and circumstances associated with the Actions, including without limitation the imminent trial date and the impact of opioid abuse and misuse in the State. The Settlement Sum shall be inclusive of (1) the Litigation Cost Amount attributable to reimbursement of the State's and Participating Local Governments' reasonable attorney fees, costs, and expenses incurred through the Execution Date in connection with their Claims against Kroger and the Released Entities in the Actions, and to be disbursed as provided in Section IX below; and (2) the Remediation Amount attributable to the Alleged Harms, which shall be used to fund opioid abatement and treatment activities throughout the State and disbursed as provided in Section IV below. Kroger does not concede that these activities constitute cognizable abatement. For the avoidance of doubt, the Remediation Amount equals the aggregate amount paid or incurred by Kroger hereunder other than amounts that constitute the Litigation Cost Amount. The Qualified Settlement Fund Administrator shall place the Litigation Cost Amount and the Remediation Amount into separate sub-funds within the Qualified Settlement Fund pending their disbursement as provided in this Settlement Agreement. On or before the Participation Date, the State shall provide to Kroger Election and Release Forms (in the form annexed as Exhibit D) demonstrating that (1) at least 96% of the population of Litigating Local Governments, (2) at least 96% of Counties, and (3) at least 96% of the population of Non-Litigating Local Governments as of the Participation Date that are Class I or Class II Local Governments have become Participating Local Governments (collectively, the "Participation Threshold"). For the avoidance of doubt, the requirement that Kroger pay the Settlement Sum pursuant to this Agreement shall become binding only upon the State's provision to Kroger of Election and Release Forms demonstrating that it has met the Participation Threshold.

B. Timeline for Settlement Sum Allocation and Payments. Provided that the State has met the Participation Threshold, within three (3) business days of the earliest of either Kroger's receipt of Election and Release Forms demonstrating that the Participation Threshold has been met or the Participation Date, the Parties shall jointly file with the Court a request that the Court determine what portion of the Settlement Sum constitutes the Litigation Cost Amount. The State agrees that it will not seek a Litigation Cost Amount percentage greater than that sought from any other settling party, and it is the Parties' expectation and intent that the Litigation Cost Amount percentage shall be no greater than for any other settling party. If the Court has not issued an order regarding the portion of the Settlement Sum that constitutes the Litigation Cost Amount by October 2, 2023, the Parties will meet and confer and will agree by October 9, 2023 on an allocation as between the Remediation Amount and the Litigation Cost Amount, subject to revision by the Court. If the Parties agree on an allocation as between the Remediation Amount and the Litigation Cost Amount and the Court later orders a different allocation as between the Remediation Amount and the Litigating Cost Amount, the State agrees to cooperate with Kroger in preparing any tax forms reasonably requested by Kroger, including but not limited to those set out in Section XI.D. Kroger shall pay the Settlement Sum pursuant to the following schedule:

1. Within fifteen (15) days after Kroger's receipt of Election and Release Forms demonstrating that the Participation Threshold has been met, Kroger shall make a $34,000,000 upfront payment (the "Initial Payment") into the West Virginia Qualified Settlement Fund;

2. A $12,000,000 payment into the Qualified Settlement Fund on June 30, 2024;

3. A $12,000,000 payment into the Qualified Settlement Fund on June 30, 2025;

4. Four (4) annual payments of $1,000,000 on the same payment date (June 30) from 2026 to 2029 (for the avoidance of doubt, the annual payments will be made respectively on (1) June 30, 2026; (2) June 30, 2027; (3) June 30, 2028; (4) June 30, 2029); and

5. Three (3) additional annual payments of $2,000,000 on the same payment date (June 30) from 2030 to 2032 (for the avoidance of doubt, the annual payments will be made respectively on (1) June 30, 2030; (2) June 30, 2031; (3) June 30, 2032) (together with the payments identified above in subsections III.B.2, 3, and 4, the "Subsequent Payments").

C. Most Favored Nation. If there is a Global Settlement, then Kroger shall make an additional Most Favored Nation ("MFN") payment into the Qualified Settlement Fund of 2.94% of the net present value ("NPV") (calculated with a discount rate to be agreed to by the Parties in the event of a Global Settlement, subject to resolution by the Resolution Panel in the event the Parties cannot agree) of the payment to be received by states and political subdivisions for remediation and restitution at full participation levels and attorney fees for litigating Attorneys General and subdivisions but excluding payments to tribes and attorney fees for tribes and non-litigating Attorneys General. In determining the MFN payment under this Section III.C, Kroger shall receive a full credit or offset for the Initial Payment and the Subsequent Payments. If 2.94% of the NPV of the Global Settlement would yield an amount lower than or equal to the Settlement Sum, subject to NPV analysis, then Kroger shall owe no further payment. Any additional payment under this Section III.C shall be subject to the schedule set forth in any Global Settlement.

D. No Other Payments. Other than the Initial Payment and the Subsequent Payments described in Section III.B and any MFN payment described in Section III.C, none of the Released

Entities shall have any obligation to make any further or additional payments in connection with Claims for Covered Conduct or this Settlement Agreement, except pursuant to Addendum 1.

E. Consent Judgment. Within fifteen (15) days of the Effective Date, Plaintiff shall file in the Court a proposed Consent Judgment substantially in the form of Exhibit F. The Consent Judgment shall provide for the dismissal with prejudice, as to all Released Entities, of the West Virginia AG Action and the Actions of the Participating Local Governments pending before the Court. The Consent Judgment shall further provide that, notwithstanding the dismissal, the Court shall retain jurisdiction to (1) determine the allocation of the Litigation Cost Amount as provided in Section IX, and (2) enter an Amended Consent Judgment imposing injunctive terms that match but do not exceed the injunctive terms imposed in any executed Global Settlement, as set out in Section V.A. The Parties shall confer and agree as to the final form of the Consent Judgment prior to its filing with the Court.

IV. Intra-State Allocation and Disbursement of Remediation Amount

A. When the appropriate Orders are issued, the Qualified Settlement Fund Administrator shall allocate and distribute the Remediation Amount to the State and Participating Local Governments as provided in the Order of the Panel and the West Virginia First Memorandum of Understanding, attached as Exhibit E. For the avoidance of doubt, the Qualified Settlement Fund Administrator shall not allocate or distribute any of the Remediation Amount to any Non-Participating Local Government.

B. Kroger shall have no duty, liability, or influence of any kind with respect to the apportionment and use of the Remediation Amount. Plaintiff specifically represents, however, that any such apportionment and use shall be made in accordance with this Agreement and all applicable laws, unless otherwise ordered by the court.

V. Injunctive Relief

A. The Parties agree that the Consent Judgment to be filed by the Parties shall provide that the Court shall retain jurisdiction to (1) enter an amended Consent Judgment imposing injunctive terms that match but do not exceed the injunctive terms imposed in any executed Global Settlement; and (2) determine the allocation of the Litigation Cost Amount. If there is no Global Settlement, within 18 months of the Effective Date, Kroger will agree to injunctive terms substantially similar to the injunctive terms in the State's settlement agreements with CVS, Walmart, and Walgreens, as appropriate for a grocery store. The Parties agree to engage a mutually agreeable mediator to facilitate the finalization of the injunctive relief that will apply to Kroger specifically.

VI. Cessation of Litigation Activities

A. It is the Parties' intent that any and all litigation activities in the Actions relating to Claims against the Released Entities shall immediately cease as of the Execution Date, and that Claims against the Released Entities shall not be included in the trial of any action against any other defendant. The State shall use best efforts to cause Litigating Local Governments to cease all activities in accordance with the foregoing understanding.

B. The Parties will file a joint motion to stay and suspend all deadlines in the WV AG Action (including all depositions) through the Participation Date. The Parties will also provide notice to the Honorable Dan Aaron Polster in the multi-district litigation *In re: Nationwide Prescription Opiate Litigation*, MDL No. 2804 (N.D. Ohio).

VII. Settlement of Claims, General Release, and Covenant Not to Sue

A. Scope. As of the Effective Date, (1) the Released Entities shall be, and hereby are, released and forever discharged from all of the Releasors' Released Claims, and (2) the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) shall be deemed to have absolutely, unconditionally, and irrevocably released, discharged, waived, and covenanted not to bring, file, or claim, or to cause, assist in bringing, or permit to be brought, filed, or claimed, or to otherwise seek to establish liability for, any Released Claims against any Released Entity in any forum whatsoever. The releases provided for in the Agreement are intended by the Parties to be broad and shall be interpreted so as to given the Released Entities the broadest possible bar against any and all liability and expense arising from or relating in any way to the Released Claims and extend to the full extent of the power of the State, its Attorney General, and each Releasor to release claims. The Release shall be, and is, a complete bar to any Released Claim.

B. Statement of Intent. It is the intent of the Parties that:

1. Released Entities shall not seek contribution or indemnification (other than pursuant to an insurance contract) from other parties for their payment obligations under this Agreement;

2. The Initial Payment and the Subsequent Payments shall be the sole payments made by the Released Entities to the Releasors involving, arising out of, or related to Covered Conduct (or conduct that would be Covered Conduct if engaged in by a Released Entity), and each Releasor expressly waive its right to seek reallocation to Kroger pursuant to W. Va. Code § 55-7-13C(d) of any amount that the Releasor is unable to collect from any other party held to be liable to the Releasor;

3. Claims by the Releasor against non-Parties should not result in additional payments by the Released Entities for the Released Claims, whether through contribution, indemnification, or any other means; and

4. It is expressly understood and agreed that the Parties have entered into this Agreement in good faith. In accordance with the Supreme Court of Appeals of West Virginia's decisions in *Board of Education of McDowell County v. Zando, Martin & Milstead, Inc.*, 182 W. Va. 597, 390 S.E.2d 796 (1990), and *Smith v. Monongahela Power Co.*, 189 W. Va. 237, 429 S.E.2d 643 (1993), it is the intent of the Releasors and the Released Entities that by making this good faith settlement of a disputed matter, the Released Entities are hereby relieved from any liability for Covered Conduct of a non-Party

under any theory, including on the basis of contribution, indemnity or other Claim-Over.

5. The provisions of this Section VII.B are intended to be implemented consistent with these principles. This Agreement and the releases and dismissal provided for herein are made in good faith.

C. Contribution/Indemnity Prohibited. No Released Entity shall seek to recover for amounts paid under this Agreement based on indemnification, contribution, or any other theory from manufacturer, pharmacy, hospital, pharmacy benefit manager, health insurer, third-party vendor, trade association, distributor, or health care practitioner, provided that a Released Entity shall be relieved of this prohibition with respect to any entity that asserts a Claim-Over against it. For the avoidance of doubt, nothing herein shall prohibit a Released Entity from recovering amounts owed pursuant to insurance contracts.

D. Non-Party Settlement. To the extent that any Releasor enters into a Non-Party Settlement involving or relating to Covered Conduct, including in any bankruptcy case or through any plan of reorganization (whether individually or as a class of creditors), the Releasor will include (or in the case of a Non-Party Settlement made in connection with a bankruptcy case, will cause the debtor to include) in the Non-Party Settlement, unless prohibited from doing so under applicable law, a prohibition on contribution or indemnity of any kind substantially equivalent to that required from Kroger in Section VII.C, or a release from such Non-Released Entity in favor of the Released Entities (in a form equivalent to the releases contained in this Agreement) of any Claim-Over. The obligation to obtain the prohibition and/or release required by this subsection is a material term of this Agreement.

E. Claim-Over. In the event that the Releasor obtains a judgment with respect to a Non-Party Covered Conduct Claim against a Non-Released Entity that does not contain a prohibition like that in Section VII.C, or any Releasor files a Non-Party Covered Conduct Claim against a Non-Released Entity in bankruptcy or a Releasor is prevented for any reason from obtaining a prohibition/release in a Non-Party Settlement as provided in Section VII.D, and such Non-Released Entity asserts a Claim-Over against a Released Entity, Kroger and that Releasor shall meet and confer concerning any additional appropriate means by which to ensure that the Released Entities are not required to make any payment with respect to Covered Conduct (beyond the amounts that will already have been paid by Kroger under this Settlement Agreement).

F. General Release. In connection with the releases provided for in the Agreement, the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) expressly waive, release, and forever discharge any and all provisions, rights, and benefits conferred by any law of the State or principle of common law which would exclude from the scope of the Released Claims any Claims that a Releasor does not know or suspect to exist in the Releasor's favor as of the Effective Date that, if known by the Releasor, would have materially affected the State's or any Participating Local Government's decision to provide the general release contemplated by this Section VII.F. A Releasor may thereafter discover facts other than or different from those which it knows, believes, or assumes to be true with respect to the Released Claims, but the State (for itself and its Releasors) and each Participating Local Government (for itself and its Releasors) expressly waive and fully, finally, and forever settle, release and discharge, upon the Effective Date, any and all Released Claims that may exist as of such date but which Releasors do not know or suspect to exist, whether through ignorance, oversight, error, negligence or through no fault whatsoever, and which, if known, would materially affect the State's decision to enter into the Agreement or the Participating Local Governments' decision to participate in the Agreement.

G. Cooperation. Releasors (a) will not encourage any person or entity to bring or maintain any Released Claim against any Released Entity and (b) will cooperate with and not oppose any effort by a Released Entity to secure the prompt dismissal of any and all Released Claims.

H. Res Judicata. Nothing in this Agreement shall be deemed to reduce the scope of the *res judicata* or claim preclusive effect that the settlement memorialized in the Agreement, and/or any consent judgment or other judgment entered on the Agreement, gives rise to under applicable law.

I. Representation and Warranty. The State's Attorney General expressly represents and warrants that it will, on or before the Participation Date, have (or have obtained) the authority to settle and release Claims of (1) the State, (2) all past and present executive departments, agencies, divisions, boards, commissions and instrumentalities of the State with the regulatory authority to enforce state and/or federal controlled substances acts, and (3) any of the State's past and present executive departments, agencies, divisions, boards, commissions and instrumentalities that have the authority to bring Claims related to Covered Conduct seeking money (including abatement and/or remediation) or suspension or revocation of a license to distribute or dispense controlled substances or to operate as a wholesale distributor or pharmacy. For the purposes of clause (3) above, executive departments, agencies, divisions, boards, commissions, and instrumentalities are those that are under the executive authority or direct control of the State's Governor (including without limitation the West Virginia Board of Pharmacy, the West Virginia Board of Medicine, the West Virginia Department of Health and Human Resources, the West Virginia Office of Health Facility Licensure and Certification, the West Virginia Office of the Insurance Commissioner, and the West Virginia Public Employees Insurance Agency). Also, for the purposes of clause (3), a release from the State's Governor is sufficient to demonstrate that the appropriate releases have been obtained.

J. Effectiveness. The releases set forth in the Agreement shall not be impacted in any way by any dispute that exists, has existed, or may later exist between or among the State, any Local Government, or any other Releasors. Nor shall such releases be impacted in any way by any current or future law, regulation, ordinance, or court or agency order limiting, seizing, or controlling the distribution or use of the Settlement Sum or any portion thereof, or by the enactment of future laws, or by any seizure of the Settlement Sum or any portion thereof.

K. Non-Released Claims. Notwithstanding the foregoing or anything in the definition of Released Claims, the Agreement does not waive, release or limit any criminal liability, Claims not related to Covered Conduct that are not asserted in any proceeding to be dismissed pursuant to the Agreement, Claims for any outstanding liability under any tax or securities law, Claims against parties who are not Released Entities, Claims by individuals for damages for any alleged personal injuries arising out of their own use of a Product, and any Claims arising under the Agreement for enforcement of the Agreement. While the State takes no position on the availability of such defenses, in any action arising from or relating to the Covered Conduct of the Alleged Harms, nothing in this Agreement either approves, disapproves, or disallows the Released Entities from asserting as a defense or otherwise arguing that the Remediation Payments required herein serve as partial or full relief for personal injuries or for other legal or equitable claims or demands asserted by private individuals or others.

L. Dismissal of Actions. The State and Participating Local Governments with Actions pending before the Court as of the Effective Date shall have their Claims against Kroger and any other Released Entities dismissed through the entry of the Consent Judgment set forth in III.E. Participating Local Governments with Actions pending in other courts as of the Effective Date shall dismiss (or if necessary move to dismiss) their Actions as to Kroger and any other Released Entities no later than fifteen (15) days after the Effective Date. All dismissals required by this Agreement shall be with prejudice and with each Party to bear its own costs.

VIII. Participation by Local Governments

A. Requirements for Becoming a Participating Local Government: Litigating or Later Litigating Local Governments. A Litigating Local Government or Later Litigating Local Government may become a Participating Local Government prior to the Participation Date either by (1) executing an Election and Release Form (Exhibit D); or (2) having its claims extinguished by operation of law or released by the State's Office of the Attorney General.

B. Notice. As soon as practicable after the announcement of the Agreement, Plaintiff shall send notice to all Local Governments in the State eligible to participate in the settlement and the requirements for participation. Such notice may include publication, email, and other standard forms of notification.

C. Requirements for Becoming a Participating Local Government: Non-Litigating Local Governments. A Non-Litigating Local Government may become a Participating Local Government prior to the Participation Date either (1) by executing an Election and Release Form (Exhibit D) specifying (a) that the Local Government agrees to the terms of this Agreement pertaining to Participating Local Governments, (b) that the Local Government releases all Released Claims against all Released Entities, and (c) that the Local Government submits to the jurisdiction of the Court for purposes limited to the Court's role under the Agreement, or (2) by having their claims extinguished by operation of law or released by the State's Office of the Attorney General.

D. Representation With Respect to Local Government Participation. The State represents and warrants that it has a good faith belief that (a) all Litigating Local Governments, (b) all Counties, and (c) all Non-Litigating Local Governments that are Class I or II Local Governments, will become Participating Local Governments. The State acknowledges the materiality of the foregoing representation and warranty. Further, the State will use its best efforts to secure participation by all Local Governments within the State, including all Litigating Local Governments and all Non-Litigating Local Governments. To the extent any Local Governments do not become Participating Local Governments, the West Virginia Attorney General shall take all appropriate steps to resolve any remaining Claims by such Local Governments against Kroger, which may include seeking the enactment of a legislative Bar or pursuit of a Settlement Class Resolution.

E. Representation With Respect to State Abatement Claims. The State represents and warrants that the Remediation Amount being paid in this Agreement for Alleged Harms shall be used to fund opioid abatement and treatment activities throughout the State, and that the Settlement is intended to release any and all Claims for abatement within the State. The State acknowledges the materiality of the foregoing representation and warranty.

F. Representation With Respect to Claims by Later Litigating Local Governments. The State represents and warrants that, if any Later Litigating Local Government brings any Released Claim(s) against any Released Entity after the Execution Date, the State will take appropriate steps to cease the litigation as soon as reasonably possible. Depending on facts and circumstances, such steps may include intervening in the Action to move to dismiss or otherwise terminate the Later Litigating Local Government's Claims as to the Released Entities in the Action, commencing a declaratory judgment or other action that establishes a Bar to the Later Litigating Local Government's Claims as to the Released Entities, or other means.

G. Non-Participating Local Governments shall be ineligible to receive any portion of the Settlement Sum.

H. Concurrently with Plaintiff's submission of the Consent Judgment per Section III.E above, the Parties will jointly ask the Court to enter the Case Management Order annexed hereto as Exhibit G, which is applicable only to Non-Participating Local Governments and Later Litigating Local Governments.

IX. Attorney Fees, Costs and Expenses; Disbursement of Litigation Cost Amount

A. Counsel for any Participating Local Government may submit applications to the Common Benefit Fund Commissioner seeking an allocation from the Litigation Cost Amount for reasonable attorney fees, costs and/or expenses, if any, including MDL Participation Fees, incurred by it prior to the Execution Date in connection with the Actions against Kroger. The State may submit applications to the Common Benefit Fund Commission or may otherwise petition the Court for an award of reasonable attorney fees, costs and/or expenses to be paid from the Litigation Cost Amount.

B. The Parties recognize that the goal of this Agreement is one hundred percent (100%) participation by Local Governments. In determining the allocation among Counsel of the Common Benefit Fund, the Common Benefit Fund Commissioner shall consider such factors as whether the Counsel and his or her clients have contributed to increasing (or reducing) the payments awarded to the State through participation and whether the Counsel represents any Non-Participating Local Governments and/or any Later Litigating Local Governments. It is the Parties' expectation and intent that no portion of the Litigation Cost Amount will be distributed to Counsel for attorney fees, costs and/or expenses incurred in connection with the representation of any Non-Participating Local Government and/or any Later Litigating Local Governments, and the State agrees that it will not take any positions to the contrary before the Court, except to the extent it is part of the consideration of Common Benefit fees or cost.

C. The Common Benefit Fund Commissioner shall recommend, subject to the Court's review upon request, an allocation of the Litigation Cost Amount among the various Counsel who submitted applications in accordance with Section IX.A. Such allocations shall be subject to the limitations and conditions set forth in this Agreement, the provisions of the West Virginia First Memorandum of Understanding, West Virginia law, and the Orders of the Court. Any objections to the Common Benefit Fund Commissioner's recommended allocation shall be resolved by the Court.

D. Notwithstanding provisions herein, an attorney may include any work done or time spent on the implementation of, or in furtherance of completion of, this Settlement Agreement prior to or after the Effective Date in a fee request or application. In the event the total amount of fees, costs, and expenses awarded pursuant to this Section IX is less than the Litigation Cost Amount, the remainder shall be added to the Remediation Amount and distributed as provided in this Agreement and the West Virginia First Memorandum of Understanding.

E. For the avoidance of doubt, nothing in this Section IX shall require any payment by Kroger beyond the Settlement Sum, nor shall Kroger have any responsibility or authority regarding the allocation of the Litigation Cost Amount, except that the Common Benefit Fund Commissioner and/or the Court may receive information from Kroger as to (1) the identity of Participating, Non-Participating, Litigating, Later Litigating, and Non-Litigating Local Governments, and (2) such other information as Kroger may voluntarily elect to provide.

F. The Litigation Cost Amount is intended to compensate Counsel for the State and Participating Local Governments for reasonable attorney fees, costs and/or expenses, if any, including MDL Participation Fee paid on behalf of Participating Local Governments, incurred by them prior to the Execution Date in connection with the Actions against Kroger, whether those Actions were filed in state or federal court.

G. No portion of the Litigation Cost Amount may be allocated on the basis of attorney fees, costs, or expenses incurred (1) after the Execution Date, (2) in connection with the representation of Non-Participating Local Governments, or non-governmental persons or entities, or (3) in connection with Claims against persons or entities other than the Released Entities.

H. To be eligible for any award from the Litigation Cost Amount, Counsel must certify each of the following in an application submitted pursuant to this Section IX:

> 1. The fees, costs, and/or expenses sought are for work performed or costs or expenses incurred by such Counsel before the Execution Date in connection with representing the State and/or one or more Participating Local Government(s) in connection with Claims against Kroger concerning the Covered Conduct.
>
> 2. No portion of the fees, costs, or expenses sought is for work performed or costs or expenses incurred in connection with representing a Non-Participating Local Government.

3. Counsel will accept the allocation awarded by the Court and will not seek the payment of fees, costs, or expenses from any Participating Local Government in connection with this Settlement or the Released Claims.

4. Counsel will not assert, and instead expressly waives, any right to collect a contingency fee from any Participating Local Government related to the payments made by Kroger.

5. Counsel has notified each West Virginia Local Government represented by such Counsel of the amount(s) sought in the application.

6. Counsel has no present intent to represent or participate in the representation of any Later Litigating Local Government or any Releasor with respect to Released Claims against Released Entities.

7. Counsel will not charge or accept any referral fees for any Released Claims brought against Released Entities.

8. Counsel will not engage in any advertising or solicitation related to Released Claims against Released Entities.

9. Counsel does not have a Claim for fees, costs or expenses related to a Later Litigating Local Government, except any Common Benefit Fee as allowed by Court Order.

10. Counsel believes the Settlement Agreement to be fair and has made and will make best efforts to recommend that each of his or her Local Government clients become Participating Local Governments.

11. Counsel submits to the jurisdiction of the Court for purposes of the application, knowingly and expressly agrees to be bound by the determination of the Court with respect to allocation of the Litigation Cost Amount, and waives the ability to appeal that determination.

I. If it is later determined that any certification made in support of an application pursuant to this Section IX is false, Counsel that submitted the application shall promptly repay to the Qualified Settlement Fund all amounts previously paid to that Counsel from the Litigation Cost Amount. Any such forfeited amount shall be added to the Remediation Amount and distributed as provided in this Agreement and the West Virginia First Memorandum of Understanding.

X. <u>Enforcement and Dispute Resolution</u>

A. This Agreement shall only be enforceable by Kroger and the State.

B. If either the State or Kroger believes the other is not in compliance with any term of this Agreement (with the exception of Section XI below), then that Party shall (1) provide written notice to the other Party specifying the reason(s) why it believes the other is not in compliance with the Agreement; and (2) allow the other Party at least thirty (30) days to attempt to cure such alleged non-compliance (the "Cure Period"). In the event the alleged non-compliance is cured within the Cure Period, the other Party shall not have any liability for such alleged non-compliance. In the event of a dispute regarding whether a Party has cured its non-compliance within the Cure Period, Kroger and the State shall meet and confer within thirty (30) days after the conclusion of the Cure Period to attempt to resolve the dispute. If the dispute is not resolved, the Parties may bring an action to enforce the terms of the Agreement before the Resolution Panel in West Virginia. The Parties consent to the exclusive jurisdiction of the Resolution Panel for the limited purpose of resolution of disputes identified in this Section X.

XI. Miscellaneous Provisions

A. No Admission of Liability. The Releasor acknowledges and agrees that this Settlement is a compromise of matters involving disputed issues of law and fact. The Released Entities are entering into this Settlement solely for the purposes of settlement, to resolve the Released Claims, and thereby avoid significant expense, inconvenience, and uncertainty. Nothing contained herein may be taken as or deemed to be an admission or concession by the Released Entities of (i) any violation of law, regulation, or ordinance in connection with the Covered Conduct or Local Government Claims; (ii) any fault, liability, or wrongdoing by Kroger in relation to the Covered Conduct or Local Government Claims; (iii) the strength or weakness of any claim or defense or allegation made in any other past, present, or future proceeding relating to any Covered Conduct or any Opioid or Local Government Claim; or (iv) any other matter of fact or law. Nothing in this Settlement Agreement shall be construed or used to prohibit any Released Entity from engaging in the conduct of its business relating to any Product in accordance with applicable laws and regulations.

B. Use of Agreement as Evidence. Neither this Agreement, nor any act performed or document executed pursuant to or in furtherance of this Agreement (i) is or may be deemed to be or may be used as an admission of, or evidence of, any Covered Conduct, or of any wrongdoing or liability of the Released Entities; or (ii) is or may be deemed to be or may be used as an admission of, or evidence of, any liability, fault, or omission of the Released Entities in any civil, criminal, or administrative proceeding in any court, administrative agency, or other tribunal. Neither this Agreement nor any act performed or document executed pursuant to or in furtherance of this Agreement shall be admissible as evidence or otherwise used in any way in any proceeding for any purpose, except to enforce the terms of the Settlement, and except that the Released Entities may use this Agreement in any action for any purpose, including, but not limited to, in order to support a claim for contribution and/or indemnification or to support a defense or counterclaim based on principles of res judicata, collateral estoppel, release, good faith settlement, judgment bar or reduction, or any other theory of claim preclusion or similar defense or counterclaim, including but not limited to against Released Claims asserted against the Released Entities by West Virginia Local Governments, whether currently pending or in the future.

C. Voluntary Settlement. This Settlement Agreement is a product of arm's length settlement negotiations between the duly-authorized representatives of the Parties. The Parties represent and warrant that they have been advised by their respective counsel of their rights and obligations under this Settlement Agreement and the accompanying Releases, and enter into this Settlement Agreement and the accompanying Releases freely, voluntarily, and without duress.

D. Taxes. Each of the Parties acknowledges, agrees, and understands that it is its intention that, for purposes of Section 162(f) of the Internal Revenue Code, the Remediation Amount paid by Kroger constitutes restitution for damage or harm allegedly caused by the potential violation of a law. The Parties acknowledge, agree and understand that only the Litigation Cost Amount represents reimbursement to the State, any Participating Local Government or other person or entity for the costs of any investigation or litigation; that no portion of the Remediation Amount represents reimbursement to the State, any Participating Local Government or any other person or entity for the costs of any investigation or litigation; and that no portion of the Remediation Amount or the Litigation Cost Amount represents or should properly be characterized as the payment of fines, penalties, or other punitive assessments. The State and Participating Local Governments acknowledge, agree and understand that Kroger intends to allocate the cost of the Remediation Amount among the Released Entities using a reasonable basis. The State shall complete and file, on behalf of the State and every Participating Local Government, a Form 1098-F with the Internal Revenue Service on or before February 28 (March 31 if filed electronically) of each year following a calendar year in which Kroger makes an Initial Payment or a Subsequent Payment. On the Form 1098-F, the State shall identify the Remediation Amount, as agreed to by the Parties or as determined by the Court, as restitution/remediation amounts and shall furnish Copy B of such Form 1098-F to Kroger by January 31 of each year following a calendar year in which Kroger makes an Initial Payment or a Subsequent Payment. Alternatively, if reasonably requested by Kroger for any year in which the Initial Payment or a Subsequent Payment is made, the State and every Participating Local Government shall complete and file Form 1098-F with the Internal Revenue Service, identifying the Remediation Amount as remediation/restitution amounts, and shall furnish Copy B of such Form 1098-F to Kroger. Kroger makes no warranty or representation to the State or any Participating Local Government as to the tax consequences of the Remediation Amount or the Litigation Cost Amount or any portion thereof.

E. No Third-Party Beneficiaries. Except as to Released Entities, nothing in this Settlement Agreement is intended to or shall confer upon any third party any legal or equitable right, benefit or remedy of any nature whatsoever.

F. Binding Agreement. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of the Parties hereto and to the Released Entities.

G. Choice of Law. Any dispute arising from or in connection with this Settlement Agreement shall be governed by West Virginia law without regard to its choice-of-law provisions.

H. Notices. To be effective, all notices under this Agreement shall be in writing and delivered to the persons specified below ("Notice Designees") (i) by e-mail and (ii) by either hand delivery or registered or certified mail, return receipt required, postage pre-paid. Any Party may change its Notice Designee(s) by giving written notice to all other Parties as provided in this paragraph.

1. Notices to the State shall be delivered to:

   Ann Haight
   Deputy Attorney General
   Office of the West Virginia Attorney General

Consumer Protection & Antitrust Division
1900 Kanawha Blvd East
State Capitol Complex, Bldg 6, Suite 401
Charleston, WV 25305
Or mailing address of:
P.O. Box 1789
Charleston, WV 25326
Email: Ann.L.Haight@wvago.gov

AND

Abby G. Cunningham
Assistant Attorney General
Office of the West Virginia Attorney General
Consumer Protection & Antitrust Division
1900 Kanawha Blvd East
State Capitol Complex, Bldg 6, Suite 401
Charleston, WV 25305
Or mailing address of:
P.O. Box 1789
Charleston, WV 25326
Email: abby.g.cunningham@wvago.gov

2. Notices to Kroger shall be delivered to:

Toney Matthews
Senior Litigation Counsel
1014 Vine St, Cincinnati, Ohio, 45202
Telephone: (513) 762-4623
Email: toney.matthews@kroger.com

AND

Chantale Fiebig
Weil Gotshal & Manges LLP
2001 M Street, NW
Washington, D.C. 20036
Telephone: (202) 682-7200
Email: chantale.fiebig@weil.com

I. **Severability; Reinstatement.** In the event any one or more immaterial provisions of this Settlement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Settlement; Material provisions are those in Sections III, V, VII, and VIII of this Agreement.

J. Headings; No Conflict Intended. The headings used in this Agreement are intended for the convenience of the reader only and shall not affect the meaning or interpretation of this Agreement. The definitions contained in this Agreement or any Exhibit hereto are applicable to the singular as well as the plural forms of such terms.

K. No Party Deemed to Be the Drafter. None of the Parties hereto shall be deemed to be the drafter of this Agreement or any provision hereof for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter.

L. Modification. This Agreement may only be modified by a written agreement of the Parties or, in the case of the Consent Judgment, by court proceedings resulting in a modified judgment of the Court. For purposes of modifying this Agreement or the Consent Judgment, Kroger may contact the West Virginia Attorney General for purposes of coordinating this process. Modifications must be in writing to be enforceable.

M. Waiver. Any failure by any Party to this Agreement to insist upon the strict performance by any other Party of any of the provisions of this Agreement shall not be deemed a waiver of any of the provisions of this Agreement, and such Party, notwithstanding such failure, shall have the right thereafter to insist upon the specific performance of any and all of the provisions of this Agreement.

N. Execution in Counterparts. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them shall be deemed to be one and the same instrument. An executed signature page of this Settlement delivered in PDF format via email shall be as effective as an original executed signature page.

O. Integrated Agreement. This Agreement constitutes the entire agreement between the Parties and no representations, warranties, or inducements have been made to any Party concerning this Agreement other than the representations, warranties, and covenants contained and memorialized herein. As such, the Parties represent and warrant that they are not relying on any promises, inducements, or representations other than those provided herein.

P. Confidentiality and Public Statements. Consistent with mediation confidentiality, neither party shall disclose or discuss the negotiating positions the parties advanced during discussions in connection with this Settlement Agreement. In addition, and for the avoidance of doubt, neither party shall discuss the negotiation of specific terms and conditions of this Settlement Agreement. For the avoidance of doubt, nothing herein prevents either Party from discussing the terms of any publicly-disclosed Settlement Agreement.

IN WITNESS WHEREOF, the Parties hereto, through their fully authorized representatives, have executed this Agreement as of the dates set forth below.

Date: 5/2/23

THE KROGER CO.

By: Chantale Fiebig

WEIL GOTSHAL & MANGES LLP
Chantale Fiebig
2001 M Street, NW
Washington, D.C. 20036
Telephone: (202) 682-7200
Email: chantale.fiebig@weil.com

Date: 5/2/23

THE STATE OF WEST VIRGINIA

By:

Chief Deputy
WV Bar # 8157

Name: Patrick Morrisey
Title: Attorney General

ADDENDUM TO
May 2, 2023 Kroger West Virginia State-Wide Opioid Settlement Agreement

Addendum 1

Kroger commits that it will not close any of its pharmacies in West Virginia for at least three years following execution of the Settlement Agreement, except under the circumstances listed below.

Kroger may close a pharmacy in the event of (1) force majeure as defined by Restatement Second of Contracts § 261, or (2) a notice, order, or substantial change in legal or regulatory obligations that precludes Kroger from operating the pharmacy under applicable law or regulations. For the avoidance of doubt, nothing in this provision is intended to preclude Kroger from complying with its legal, ethical, or fiduciary obligations. In addition, nothing in this provision shall permit Kroger to close a pharmacy due to the pharmacy's profitability.

Kroger may meet and confer with the State regarding potential closures, but shall provide at least 30 days' notice where possible to permit the State to object to the closure before the Resolution Panel. The parties agree that the Resolution Panel shall have sole and exclusive jurisdiction to resolve any objection by the State to Kroger's closure of a pharmacy pursuant to this provision, and to determine whether Kroger is in breach of this provision.

Upon a finding that Kroger is in breach of this addendum, the Resolution Panel shall impose a per pharmacy penalty of up to (1) $1,250,000 for any pharmacy closed within the first year; (2) $750,000 for any pharmacy closed in the second year; or (3) $500,000 for any pharmacy closed in the third year. This penalty shall be the State's sole and exclusive remedy for any violation of this section of the agreement.

Date: 5/2/23

THE KROGER CO.

By: Chantale Feibig

WEIL GOTSHAL & MANGES LLP
Chantale Feibig
2001 M. Street, NW
Washington, D.C. 20036
Telephone: (2020) 682-7200
Email: Chantale.fiebig@weil.com

Date: 5/2/23

THE STATE OF WEST VIRGINIA

By: [signature]

PATRICK MORRISEY
ATTORNEY GENERAL
Office of the West Virginia Attorney General