City of Elkins

Regular Council Meeting

February 15, 2024
7:00 PM
401 Davis Avenue
Council Chamber, 2nd Floor

AGENDA

1. **Invocation and Pledge of Allegiance**
2. **Call to order and roll call**
3. **Public comment**
4. **Minutes**
   a. Proposed minutes for strategic planning work session of January 30, 2024
   b. Proposed minutes for the meeting of February 1, 2024
5. **Correspondence, Notifications, and Recognitions**
   a. Building permits issued February 6-19, 2024
6. **Presentation**
   a. Appalachian Forest National Heritage Area
   b. Randolph County Community Arts Center
7. **Councilor Reports**
8. **Staff reports**
   a. Treasurer's report
9. **Approval of vendor invoice payments**
   a. Vendor invoices presented for approval: January 29-February 9, 2024

   (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.)
10. **New business**
   a. Ordinance 320: Consideration on second reading of an ordinance authorizing the issuance by the City of Elkins of sewer revenue bonds in an amount not to exceed $250,000 to finance the cost of design, acquisition, construction and equipping of additions, betterments and extensions to the City's sanitary sewer system (second of three readings)
   b. Ordinance 321: To consider for adoption on first reading an Ordinance of the City which authorizes (i) the design, acquisition, construction and equipping of a Sanitation Department Garage (the "Project"), (ii) the leasing of certain real property situate in Elkins Corporation District, Randolph County, on the east side

of Baxter Street between Eleventh Street and Chestnut Street in the City of Elkins and all project improvements and appurtenances thereto by the City from the Elkins Municipal Building Commission, and (iii) the issuance by the Elkins Municipal Building Commission of its Lease Revenue Bonds in an amount not to exceed $2,000,000 for the purpose of financing the Project and matters relating thereto (first of two readings)

c. Ordinance 322: An Ordinance Of The Common Council Of Elkins, West Virginia Amending Sections Of City Code, Chapter 152, Zoning Regarding Sign Regulations (first of two readings)

d. Ordinance 323: An Ordinance Of The Common Council Of Elkins, West Virginia Eliminating Sections Of City Code, Chapter 112, Solicitors and Canvassers (first of two readings)

e. Resolution 1716: Delegation of ABCA endorsement authority from council to mayor

f. Resolution 1717: Reappointing S. Bennett to the Water Board

g. Resolution 1718: Revision of the policy for government closure during weather and similar emergencies

h. Resolution 1719: Selecting Aflac/Health Equity as the administrator for PEIA Plan C Health Savings Accounts

i. Resolution 1720: Corrective resolution clarifying termination of stipend for declining health insurance coverage

j. Resolution 1721: Appointment of R. Day as Judge of the Elkins Municipal Court

k. Resolution 1722: Rosie the Riveter Memorial - Permission to apply to DOH for right-of-way access

l. Resolution 1723: Appointing C. Talbott to the Elkins Tree Board

m. Resolution 1724: Request from the Tygart Hotel for reserved loading/unloading in front of building

n. Resolution 1725: Establishing compensation for Members, Treasurer, and Secretaries of the Elkins Water and Sanitary Boards

o. Resolution 1726: FY24 intradepartmental budget revisions (Fire Department Fund #2, General Fund #1-7, Sanitation #2)

p. Resolution 1727: FY24 state budget revision #4

q. Resolution 1728: Approving the Transfer by Deed From the City of An Abandoned and Vacated Portion of Tannery Drive to the Randolph County Development Authority

r. Emergency agenda item: Execution of agreement with Tyler Technologies

Justification: Urgent circumstances related to the protection of city data require that the attached agreement be executed without any further delay. The action cannot safely be postponed without unreasonably endangering city data.

11. Mayor’s comments

12. Adjournment

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	Minutes
Category:	Action Item
Agenda Item Name:	Proposed minutes for strategic planning work session of January 30, 2024
Recommended By:	City Clerk
Summary:	Minutes proposed for council's January 30 strategic planning work session
Fiscal Impact:	n/a
Recommendation:	Consider for approval
Attachments:	1. city council - 2024_01_30 - strategic plan work session minutes

ELKINS COMMON COUNCIL
STRATEGIC PLAN WORK SESSION
MINUTES

Phil Gainer Community Center
January 30, 2024
9:00 a.m.

Elkins Common Council met in special session at the Phil Gainer Community Center. Present were Mayor Jerry A. Marco; Councilpersons N.E. Bross-Fregonara, A.C. Carroll, R.C. Chenoweth, G.M. Hinchman, B.C. Kerns, C.C. Lowther, D.C. Parker, E. L. Plishka, L.S. Severino, and C.H. Thompson; City Treasurer T. Judy; Fire Chief S.D. Himes; Police Chief T. Bennett; Operations Manager M. Kesecker; City Attorney G. S. Roberts; Whitney Hymes (Wastewater System Chief Operator); Wes Lamber (Water System Chief Operator); Human Resources Generalist M. Washington; Communications Specialist J. Deighan; and City Clerk S.R. Stokes (recording secretary).

MINUTES

Council and staff discussed a proposed draft of the 2024-2029 Strategic Plan. No action was taken. Staff will continue to work on the draft and bring an updated version to a future council meeting for approval.

The meeting was adjourned at 3 p.m.

Approved by council at the meeting of MONTH DAY, YEAR

____
Jerry A. Marco, Mayor

Attest:

____
Sutton Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	Minutes
Category:	Action Item
Agenda Item Name:	Proposed minutes for the meeting of February 1, 2024
Recommended By:	City Clerk
Summary:	Minutes proposed for council's Feb. 1 meeting
Fiscal Impact:	n/a
Recommendation:	Consider for approval
Attachments:	1. city council - 2024_02_01 - minutes_proposed

ELKINS COMMON COUNCIL
REGULAR COUNCIL MEETING
MINUTES

401 Davis Avenue
Council Chamber, 2nd Floor
February 1, 2024
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, A.C. Carroll, R.C. Chenoweth, G.M. Hinchman, B.C. Kerns, C.C. Lowther, D.C. Parker, E. L. Plishka, L.S. Severino, and C.H. Thompson; 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 (recording secretary).

Operations Manager M. Kesecker was absent.

PUBLIC COMMENT

Pat Varchetto, Sylvester Drive, spoke in opposition to giving parking spaces to the Tygart Hotel.

MINUTES

Chenoweth **MOVED APPROVAL OF THE MINUTES OF THE MEETING OF JANUARY 18, 2024.** The motion carried.

PRESENTATION

a. Elkins Tree Board

   Marilynn Cuonzo, Aira Burkhart, and Councilor N. Bross-Fregonara, members of the Elkins Tree Board, presented the board's *Urban Forest Management Plan*.

b. Randolph-Tucker Children's Advocacy Center

   Margot Evick, executive director of the RTCAC, presented information about the organization.

APPROVAL OF VENDOR INVOICE PAYMENTS

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 Jan. 15-26, 2024.

NEW BUSINESS

Ordinance 320 was postponed to the next meeting because of a typo in the agenda item.

Lowther **MOVED APPROVAL OF A FAIRS/FESTIVALS ABC LICENSE REQUEST FROM DAVIS & ELKINS COLLEGE.** The motion carried.

Carroll **MOVED APPROVAL OF RESOLUTION 1715, AFFIRMING ACCEPTANCE AND APPROVAL OF THE ELKINS TREE BOARD'S URBAN TREE MANAGEMENT PLAN AS THE OFFICIAL COMPREHENSIVE CITY TREE PLAN STIPULATED IN ELKINS CITY CODE § 93.096.** The motion carried.

The meeting was adjourned at 8:08 p.m.

Approved by council at the meeting of February 1, 2024

____
Jerry A. Marco, Mayor

Attest:

____
Sutton Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	Correspondence, Notifications, and Recognitions
Category:	Presentation
Agenda Item Name:	Building permits issued February 6-19, 2024
Recommended By:	Building Inspector
Summary:	Building permits issued during the given period
Fiscal Impact:	Total valuation of $12,711, with permit income to the city of $159.
Recommendation:	Review
Attachments:	1. Building Permits - 2024_02_15

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PROJECTS:            THRU ZZZZZZZZZZ                                                                  REPORT SEQUENCE: Project
PROJECT TYPE: Exclude: BPZONING                                                CONTRACTOR CLASS: All       - All Contractor Classes
CONTRACTORS:  All
APPLIED DATES:  2/06/2024 THRU  2/19/2024                                                        EXPIRE DATES:  0/00/0000 THRU 99/99/9999
STATUS INCLUDED: All                                                                             ISSUED DATES:  0/00/0000 THRU 99/99/9999
==================================================================================================================================

PROJECT: 240022     - COMMERCIAL FENCE                                        TYPE: FENCE-COM  COMMERCIAL FENCE
       PROPERTY:       600 S RANDOLPH  #6
   APPLIED DATE:  2/09/2024       ISSUED DATE:   2/09/2024    EXPIRATION DATE:  8/11/2024    COMPLETION DATE:  0/00/0000
     CONTRACTOR: CLIFFORDRB CLIFFORD R BILLER GEN CONT                ISSUED TO: MOORE, SUSAN
                 336 BLAINE AVE                                                  12 LAVENDER LN
                 ELKINS, WV  26241                                               ELKINS, WV  26241
    SQUARE FEET:         1
  DWELLING TYPE: PUBLIC           UNITS:    1
         STATUS: OPEN           BALANCE:         50.00

PROJECT: 240023     - RESIDENTIAL ROOFING                                     TYPE: ROOF-RES   RESIDENTIAL ROOFING
       PROPERTY:       139 GUY ST
   APPLIED DATE:  2/09/2024       ISSUED DATE:   2/09/2024    EXPIRATION DATE:  8/11/2024    COMPLETION DATE:  0/00/0000
     CONTRACTOR: DESIGN     DESIGN ROOFING & SHEET METAL              ISSUED TO: DENNEY, CAROL R
                 900 INDUSTRIAL PARK ROAD                                        1970 SAN PABLO AVE #4
                 ELKINS, WV  26241                                               BERKELEY, CA  94702
    SQUARE FEET:     2,800
  DWELLING TYPE: PRIVATE          UNITS:    1
         STATUS: OPEN           BALANCE:        109.00


                                                     *** MONTHLY RECAP BASED ON ISSUED DATE ***

ISSUED YEAR:   2024
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MONTH	PROJECTS	VALUATION	BALANCE
FEBRUARY	2	12,711.00	159.00

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	Staff reports
Category:	Presentation
Agenda Item Name:	Treasurer's report
Recommended By:	City Treasurer
Summary:	The attached report from the City Treasurer includes: • General Fund Revenue Detail report showing: most recent month's revenues, YTD revenues, and YTD actual revenues as percentage of budgeted revenues • Bank account balances • Budget control summary • ARPA Information
Fiscal Impact:	See attached report
Recommendation:	Review and discuss
Attachments:	1. Treasurer's Report - 2024_02_15

General Fund Revenue Detail

	January Revenues	YTD Revenues	Percent of Revenues Collected Per Budget	Percent of Yr. Completed 58.33
Unassigned Fund Balance				384,359.00
County Tax	$17,024.03	$802,804.29	67.56%	1,188,238.00
B & O Tax	$330,815.50	$1,133,216.26	80.37%	1,410,000.00
Hotel/Motel Tax	$14,753.86	$161,956.37	83.05%	195,000.00
Gas & Oil Severance Tax	$0.00	$70,881.19	283.52%	25,000.00
2% City Utility Tax	$6,970.19	$48,755.29	69.65%	70,000.00
Utility Excise Tax	$33,049.49	$174,889.86	58.30%	300,000.00
Liquor Tax	$21,573.64	$64,934.40	70.58%	92,000.00
Police	$451.29	$4,601.30	19.17%	24,000.00
Municipal Court	$1,786.71	$15,386.23	24.82%	62,000.00
Code Enforcement	$1,142.45	$16,208.38	63.07%	25,700.00
Business License	$1,410.00	$10,115.00	34.88%	29,000.00
Intergovernmental	$69,279.30	$384,493.55	210.71%	182,471.00
Franchise/IRP Fees	$4,104.68	$69,492.22	49.64%	140,000.00
Phil Gainer Community Center	$1,010.00	$28,363.00	72.73%	39,000.00
Misc. Revenue	$11,701.34	$92,952.20	88.31%	105,260.00
Municipal Sales Tax	$378,133.30	$1,098,562.50	78.47%	1,400,000.00
TOTAL	**$893,205.78**	**$4,177,612.04**	**73.65%**	5,672,028.00

Bank Account Name	Balance as of 1/31/2024
ARPA	$742,475.61
Elkins Building Comm. Sinking Fund	$0.00
Elkins Municipal Building Comm.	$0.00
Financial Stabilization	$939,770.97
Fire Pension Fund	$2,662,786.29
Firemen's Pension & Relief Fund	$0.00
Landfill Access Escrow	$1,847,682.56
Landfill Post Closure	$48,716.25
Opioid	$21,824.03
Payroll	$551.89
Police Forfeitures	$1,850.78
Police Pension Fund	$4,491,852.20
Police Seizures	$26,651.77
Policemen's Pension & Relief Fund	$0.00
Pooled Cash-Coal Severance Fund	$177,152.70
Pooled Cash-Fire Fund	$346,571.51
Pooled Cash-General Fund	$2,070,760.90
Pooled Cash-Landfill Fund	$126,416.42
Pooled Cash-Parks Fund	$906,153.56
Pooled Cash-Sanitation Fund	$923,886.63
Pooled Cash-Sewer Fund	$26,105.13
Pooled Cash-Water Fund	$392,524.23
Sewer Depreciation	$207,113.37
Sewer O&M	$419,523.26
Sewer Project	$49.84
Water Depreciation	$170,856.54
Water O&M	$408,204.78

FY2024 Budget Control Summary

General Fund	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Revenues Over Expenses	YTD TOTALS
Revenues	$854,865.33	$331,004.66	$543,271.68	$1,092,594.27	$306,583.17	$156,087.15	$893,205.78	$0.00	$0.00	$0.00	$0.00	$0.00	$1,022,287.55	$4,177,612.04
Expenses	$443,738.72	$412,660.63	$403,761.70	$535,055.34	$475,531.75	$508,768.26	$375,808.09	$0.00	$0.00	$0.00	$0.00	$0.00	#	$3,155,324.49

Sanitation Fund	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Revenues Over Expenses	YTD TOTALS
Revenues	$122,635.34	$129,954.36	$113,859.96	$126,649.07	$130,951.32	$125,579.73	$126,746.32	$0.00	$0.00	$0.00	$0.00	$0.00	-$363,212.03	$876,376.10
Expenses	$375,747.22	$112,032.55	$128,365.08	$150,347.04	$120,339.07	$142,634.08	$210,123.09	$0.00	$0.00	$0.00	$0.00	$0.00		$1,239,588.13

Sewer Fund	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Revenues Over Expenses	YTD TOTALS
Revenues	$216,491.85	$207,080.31	$217,303.75	$243,124.25	$248,104.41	$215,658.94	$206,239.21	$0.00	$0.00	$0.00	$0.00	$0.00	-$124,609.54	$1,554,002.72
Expenses	$234,852.96	$222,640.35	$241,235.73	$232,602.45	$267,072.94	$252,912.52	$227,295.31	$0.00	$0.00	$0.00	$0.00	$0.00		$1,678,612.26

Water Fund	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Revenues Over Expenses	YTD TOTALS
Revenues	$364,356.67	$405,886.10	$373,182.41	$458,593.81	$458,864.24	$412,646.68	$351,247.82	$0.00	$0.00	$0.00	$0.00	$0.00	$225,392.18	$2,824,777.73
Expenses	$339,127.28	$355,984.86	$430,307.69	$399,733.39	$329,500.72	$392,742.77	$351,988.84	$0.00	$0.00	$0.00	$0.00	$0.00		$2,599,385.55

Fire Fund	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Revenues Over Expenses	YTD TOTALS
Revenues	$38,221.11	$80,333.83	$155,574.44	$50,400.39	$79,747.35	$77,057.58	$43,994.35	$0.00	$0.00	$0.00	$0.00	$0.00	-$114,437.26	$525,329.05
Expenses	$90,744.77	$70,132.37	$84,702.51	$125,866.17	$87,272.30	$98,575.93	$82,472.26	$0.00	$0.00	$0.00	$0.00	$0.00		$639,766.31

Landfill Fund	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Revenues Over Expenses	YTD TOTALS
Revenues	$5,921.54	$6,126.90	$6,122.09	$5,838.48	$7,482.12	$8,425.33	$8,754.02	$0.00	$0.00	$0.00	$0.00	$0.00	$47,269.74	$48,670.48
Expenses	$1,019.07	$6.95	$168.69	$6.97	$11.14	$170.50	$17.42	$0.00	$0.00	$0.00	$0.00	$0.00		$1,400.74

ARPA Information

Awarded	Balance Available	
Elkins Parks	$5,683.00	
Water Distribution	$6,198.22	
Water Treatment	$155,009.84	
Sewer Collection	$721.26	
Sewer Plant	$118,956.63	
City Hall	$410,101.00	
Clerk	$6,409.76	
Addiction & Homelessness	$5,000.00	
Community Requests	$430.00	Randolph Co. Humane Society
Fire	$19.76	
N. Randolph	$15,100.00	
Total	$723,629.47	

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	Approval of vendor invoice payments
Category:	Action Item
Agenda Item Name:	Vendor invoices presented for approval: January 29-February 9, 2024 *(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.)*
Recommended By:	
Summary:	Accounts payable transactions in all funds January 29-February 9, 2024
Fiscal Impact:	Report details $489,144.01 in transactions from all funds
Recommendation:	Consider for approval
Attachments:	1. AP Check Report - 2024_02_15

VENDOR SET: 01 Elkins

BANK: * ALL BANKS

DATE RANGE: 1/29/2024 THRU 2/09/2024

VENDOR I.D.	NAME	STATUS		CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
02275	Douglas Shoulders								
C-CHECK	Douglas Shoulders	VOIDED	V	2/01/2024			014845		859.50CR
02505	Joshua Smith								
C-CHECK	Joshua Smith	VOIDED	V	2/01/2024			014849		859.50CR

* * T O T A L S * *	NO			INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	0			0.00	0.00	0.00
HAND CHECKS:	0			0.00	0.00	0.00
DRAFTS:	0			0.00	0.00	0.00
EFT:	0			0.00	0.00	0.00
NON CHECKS:	0			0.00	0.00	0.00
VOID CHECKS:	2	VOID DEBITS	0.00			
		VOID CREDITS	1,719.00CR	1,719.00CR	0.00	

TOTAL ERRORS: 0

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
VENDOR SET: 01 BANK: TOTALS:	2	1,719.00CR	0.00	0.00
BANK: TOTALS:	2	1,719.00CR	0.00	0.00

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 1/29/2024 THRU 2/09/2024

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00792	WV Consolidated Retirement Boa							
I-RTD202401091609	Retirement	D	1/29/2024	7,266.46		005561		
I-RTD202401231610	Retirement	D	1/29/2024	7,776.96		005561		15,043.42
00952	WV Consolidated Retirement Boa							
I-RTF202401091609	Retirement	D	1/29/2024	3,388.56		005562		
I-RTF202401231610	Retirement	D	1/29/2024	2,891.20		005562		
I-RTN202401091609	Retirement	D	1/29/2024	3,973.40		005562		
I-RTN202401231610	Retirement	D	1/29/2024	3,675.14		005562		13,928.30
00993	WV Consolidated Retirement Boa							
I-RT6202401091609	Retirement 6%	D	1/29/2024	9,634.82		005563		
I-RT6202401231610	Retirement 6%	D	1/29/2024	10,308.86		005563		
I-RT6202401231611	Retirement 6%	D	1/29/2024	158.51		005563		20,102.19
00741	Great-West Trust Company LLC							
I-VF 202402061624	Voya	D	2/06/2024	595.00		005564		
I-VF2202402061624	Voya AT	D	2/06/2024	100.00		005564		695.00
00006	AFLAC							
I-AF 202401091609	Aflac-After Tax Ins	R	1/29/2024	67.78		014819		
I-AF 202401231610	Aflac-After Tax Ins	R	1/29/2024	67.78		014819		
I-AFL202401091609	Aflac Insurance	R	1/29/2024	68.68		014819		
I-AFL202401231610	Aflac Insurance	R	1/29/2024	68.68		014819		272.92
00242	Elkins Professional Firefighte							
I-EPF202401091609	Elkins Professional FF	R	1/29/2024	135.00		014820		
I-EPF202401231610	Elkins Professional FF	R	1/29/2024	135.00		014820		270.00
00591	Retiree Health Benefit Trust F							
I-RHBT 01/2024	Retirees 01/2024	R	1/29/2024	1,639.16		014821		1,639.16
00805	FBMC							
I-MFB202401091609	Mt. Flex Benefit	R	1/29/2024	1,927.78		014822		
I-MFB202401231610	Mt. Flex Benefit	R	1/29/2024	1,920.16		014822		
I-RChen 01/2024	RChenoweth 01/2024	R	1/29/2024	49.90		014822		3,897.84
00810	WV Public Employee Insurance A							
I-BL 202401231610	Basic Life Benefit	R	1/29/2024	184.14		014823		
I-BL1202401231610	Basic Life Benefit +	R	1/29/2024	1.98		014823		
I-DL 202401091609	Dependent Life	R	1/29/2024	89.61		014823		
I-DL 202401231610	Dependent Life	R	1/29/2024	89.61		014823		
I-HPA202401091609	Ins-Health Plan A	R	1/29/2024	949.00		014823		
I-HPA202401231610	Ins-Health Plan A	R	1/29/2024	949.00		014823		
I-HPB202401091609	Ins-Health Plan B	R	1/29/2024	627.50		014823		
I-HPB202401231610	Ins-Health Plan B	R	1/29/2024	627.50		014823		
I-ICA202401091609	Ins - Emp/Child-Plan A	R	1/29/2024	1,699.50		014823		
I-ICA202401231610	Ins - Emp/Child-Plan A	R	1/29/2024	1,699.50		014823		

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 1/29/2024 THRU 2/09/2024

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
	I-ICB202401091609	Ins- Emp/child - Plan B	R	1/29/2024	494.50		014823		
	I-ICB202401231610	Ins- Emp/child - Plan B	R	1/29/2024	494.50		014823		
	I-IFA202401091609	Ins - Family - Plan A	R	1/29/2024	18,009.00		014823		
	I-IFA202401231610	Ins - Family - Plan A	R	1/29/2024	18,009.00		014823		
	I-IFB202401091609	Ins - Family - Plan B	R	1/29/2024	5,825.00		014823		
	I-IFB202401231610	Ins - Family - Plan B	R	1/29/2024	5,825.00		014823		
	I-IFD202401091609	Ins-Fam-Plan B - Post Tax	R	1/29/2024	582.50		014823		
	I-IFD202401231610	Ins-Fam-Plan B - Post Tax	R	1/29/2024	582.50		014823		
	I-ISA202401091609	Ins - Single - Plan A	R	1/29/2024	4,375.00		014823		
	I-ISA202401231610	Ins - Single - Plan A	R	1/29/2024	4,375.00		014823		
	I-ISB202401091609	Ins-Single - Plan B	R	1/29/2024	4,215.00		014823		
	I-ISB202401231610	Ins-Single - Plan B	R	1/29/2024	4,215.00		014823		
	I-KShelton 1/2024	Admin Fee 01/2024 K Shelton	R	1/29/2024	50.00		014823		
	I-OL 202401091609	Optional Life	R	1/29/2024	340.32		014823		
	I-OL 202401231610	Optional Life	R	1/29/2024	354.48		014823		
	I-RChen 01/2024	RChenoweth Health/Life 01/24	R	1/29/2024	1,335.98		014823		
	I-TOF202401091609	Tobacco Surcharge Family	R	1/29/2024	350.00		014823		
	I-TOF202401231610	Tobacco Surcharge Family	R	1/29/2024	350.00		014823		
	I-TOS202401091609	Tobacco Surcharge Single	R	1/29/2024	150.00		014823		
	I-TOS202401231610	Tobacco Surcharge Single	R	1/29/2024	150.00		014823		77,000.12
01745		Cummins Sales and Service							
	I-R3-38929	Generator Service CameraVan	R	1/29/2024	367.50		014824		367.50
1		MCSPADDEN, RICHARD&B							
	I-000202401311612	US REFUND	R	2/01/2024	85.25		014825		85.25
1		ESTATE OF SCHONNA WH							
	I-000202401311613	US REFUND	R	2/01/2024	8.33		014826		8.33
1		HOME BASE INC							
	I-000202401311614	US REFUND	R	2/01/2024	457.09		014827		457.09
1		MERRITT & SONS LLC							
	I-000202401311615	US REFUND	R	2/01/2024	112.39		014828		112.39
1		HBC RENTALS							
	I-000202401311616	US REFUND	R	2/01/2024	115.99		014829		115.99
1		COTGREAVE, SCOTT T							
	I-000202401311617	US REFUND	R	2/01/2024	193.37		014830		193.37
1		CONRAD, VILSIA L							
	I-000202401311618	US REFUND	R	2/01/2024	30.76		014831		30.76

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 1/29/2024 THRU 2/09/2024

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00032	Absolute Assurance Drug Test L							
I-3128	Testing T White 010824	R	2/01/2024	41.00		014832		
I-3129	Testing - T Harris 01/14/24	R	2/01/2024	42.00		014832		83.00
00116	Child Support Enforcement							
I-CDS202401231610	Child Support	R	2/01/2024	600.33		014833		600.33
00119	First-Citizens Bank & Trust Co							
I-44007746	Kyocera 020624	R	2/01/2024	52.50		014834		
I-44013930	KM 020824	R	2/01/2024	55.00		014834		107.50
00132	Clarksburg Water Board							
I-M91265	Compliance Samples	R	2/01/2024	46.00		014835		46.00
00243	Elkins Randolph County Chamber							
I-827	2023 Live Christmas Tree	R	2/01/2024	150.00		014836		150.00
00471	Mon Power							
I-Barron 011924	Barron Ave 121523-011524	R	2/01/2024	12,384.02		014837		
I-RRAve 011724	RRAve 121323-011224	R	2/01/2024	139.26		014837		12,523.28
00712	Tyler Technologies, Inc.							
I-025-448574	Annual Maintenance	R	2/01/2024	46,363.77		014838		46,363.77
00738	Vertical Transport Consulting,							
I-19641	Annual Elevator Inspection	R	2/01/2024	330.39		014839		330.39
01125	Ferguson Ent dba Pollardwater							
I-0252764	Mill Discs	R	2/01/2024	803.23		014840		803.23
01554	Combustion Equipment Co., Inc							
I-3419	Work on Boiler	R	2/01/2024	1,250.00		014841		1,250.00
01790	Crim Law Office PLLC							
I-402	Municipal Ct Matters 12/2023	R	2/01/2024	3,420.00		014842		3,420.00
01814	Investigative Specialty Servic							
I-ELKINS011624	Pre-Emp Polygraph CJElmore	R	2/01/2024	300.00		014843		300.00
02157	Jerry A Marco							
I-Exp 012524	Meeting - Morgantown 012524	R	2/01/2024	126.76		014844		126.76
02275	Douglas Shoulders							
I-Travel CL1 Water	Travel-Class 1 Water	V	2/01/2024	859.50		014845		859.50

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 1/29/2024 THRU 2/09/2024

VENDOR	I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
02275		Douglas Shoulders							
	M-CHECK	Douglas Shoulders	VOIDED V	2/01/2024			014845		859.50CR
02282		Donald Singleton							
	I-Exp-CL1 Water	Travel Exp -CL1 Water	R	2/01/2024	859.50		014846		859.50
02347		LEAF							
	I-15917422 008	Tosh 5525AC	R	2/01/2024	277.13		014847		
	I-15932352 001	Toshiba E4515AC 021124	R	2/01/2024	230.62		014847		
	I-15938437	Tosh ES4515AC 021324	R	2/01/2024	128.53		014847		
	I-15966532	Tosh E478S 021824	R	2/01/2024	96.74		014847		
	I-15966533	Tosh E478S 021824	R	2/01/2024	96.74		014847		829.76
02503		Tristan Winans							
	I-Travel CL1Water	Travel-Class 1 Water	R	2/01/2024	859.50		014848		859.50
02505		Joshua Smith							
	I-Exp CL1Water	Travel Exp CL1Water	V	2/01/2024	859.50		014849		859.50
02505		Joshua Smith							
	M-CHECK	Joshua Smith	VOIDED V	2/01/2024			014849		859.50CR
02589		FedEx Freight							
	I-6609204674	Freight charges-Bray	R	2/01/2024	184.00		014850		184.00
02590		Ronald D Walters							
	I-Travel CL1Water	Travel-Class1 Water	R	2/01/2024	859.50		014851		859.50
02591		WVU Fire Service Extension							
	I-17711	Confined Space Course	R	2/01/2024	1,500.00		014852		1,500.00
02592		Steven Kramer							
	I-Refund	Refund for permit parking	R	2/01/2024	15.00		014853		15.00
02593		Audrie Dyer							
	I-REFUND	Refund for permit parking	R	2/01/2024	15.00		014854		15.00
02594		Alyssa Howell							
	I-REFUND	Refund for permit parking	R	2/01/2024	15.00		014855		15.00
02595		Tiffany Witek							
	I-REFUND	Refund for permit parking	R	2/01/2024	60.00		014856		60.00

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

DATE RANGE: 1/29/2024 THRU 2/09/2024

VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
02596	Melinda Poyner							
I-REFUND	Refund for permit parking	R	2/01/2024	15.00		014857		15.00
02597	Asasha Heater							
I-REFUND	Refund for permit parking	R	2/01/2024	15.00		014858		15.00
02598	Cori Coontz							
I-REFUND	Refund for permit parking	R	2/01/2024	45.00		014859		45.00
02599	Bridget Swisher							
I-REFUND	Refund for permit parking	R	2/01/2024	15.00		014860		15.00
02600	Anthony Daft							
I-REFUND	Refund for permit parking	R	2/01/2024	180.00		014861		180.00
02601	Scott Simmons							
I-REFUND	Refund for permit parking	R	2/01/2024	45.00		014862		45.00
02602	Emily Standridge							
I-REFUND	Refund for permit parking	R	2/01/2024	30.00		014863		30.00
02603	Carla Taylor							
I-REFUND	Refund for permit parking	R	2/01/2024	90.00		014864		90.00
02604	Amber Vanscoy							
I-REFUND	Refund for permit parking	R	2/01/2024	75.00		014865		75.00
00632	Shiflett, Kevin							
I-Travel 021324	Travel- Training Wheeling	R	2/05/2024	527.50		014866		527.50
01392	William Butcher							
I-Travel 020624	Travel for training Beckley	R	2/05/2024	195.50		014867		195.50
00116	Child Support Enforcement							
I-CDS202402061624	Child Support	R	2/06/2024	600.33		014868		600.33
00121	Citizens Bank of WVFP							
I-FP 202402061624	Fire Pension	R	2/06/2024	461.04		014869		461.04
00122	Citizens Bank of WVPP							
I-PP 202402061624	Police Pension	R	2/06/2024	148.50		014870		
I-PPN202402061624	Police Pension-2010 Forward	R	2/06/2024	490.46		014870		638.96

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

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VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00147	COE Misc							
I-MIS202402061624	Misc Reimbursements	R	2/06/2024	540.05		014871		540.05
00150	COE Payroll							
I-T1 202402061624	Federal Withholding	R	2/06/2024	11,967.34		014872		11,967.34
00151	COE Payroll							
I-T3 202402061624	FICA	R	2/06/2024	18,611.16		014873		
I-T4 202402061624	Medicare	R	2/06/2024	4,739.98		014873		23,351.14
00152	COE Payroll							
I-T2 202402061624	State Withholding	R	2/06/2024	5,374.00		014874		5,374.00
00203	Davis Trust Company							
I-CC 202402061624	Employee Christmas Club	R	2/06/2024	2,760.00		014875		2,760.00
00747	Washington National Insurance							
I-WN 202402061624	Washington National Insurance	R	2/06/2024	641.85		014876		641.85
00837	COE Payroll Reimbursement							
I-001202402061624	Payroll Reimbursement	R	2/06/2024	51,134.72		014877		
I-006202402061624	Payroll Reimbursement	R	2/06/2024	5,165.30		014877		
I-036202402061624	Payroll Reimbursement	R	2/06/2024	13,497.38		014877		
I-400202402061624	Payroll Reimbursement	R	2/06/2024	22,362.62		014877		
I-401202402061624	Payroll Reimbursement	R	2/06/2024	13,684.92		014877		
I-404202402061624	Payroll Reimbursement	R	2/06/2024	12,288.35		014877		118,133.29
01885	Colonial Life							
I-CL 202402061624	Colionial Life-AT	R	2/06/2024	112.10		014878		
I-CLP202402061624	Colonial Life-PT	R	2/06/2024	52.52		014878		164.62
00121	Citizens Bank of WVFP							
I-FP 202402061625	Fire Pension	R	2/06/2024	148.06		014879		148.06
00150	COE Payroll							
I-T1 202402061625	Federal Withholding	R	2/06/2024	348.43		014880		348.43
00151	COE Payroll							
I-T3 202402061625	FICA	R	2/06/2024	391.36		014881		
I-T4 202402061625	Medicare	R	2/06/2024	152.86		014881		544.22
00152	COE Payroll							
I-T2 202402061625	State Withholding	R	2/06/2024	201.00		014882		201.00

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

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VENDOR I.D.		NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00837		COE Payroll Reimbursement							
	I-036202402061625	Payroll Reimbursement	R	2/06/2024	1,569.03		014883		
	I-400202402061625	Payroll Reimbursement	R	2/06/2024	2,543.34		014883		4,112.37
1		STALNAKER, ELEANOR							
	I-000202402021619	US REFUND	R	2/06/2024	124.35		014884		124.35
1		SMITH DIAMOND PROP &							
	I-000202402021620	US REFUND	R	2/06/2024	82.89		014885		82.89
1		SANDS, DIANE M							
	I-000202402021621	US REFUND	R	2/06/2024	82.89		014886		82.89
1		DECEMBER, KATRINA A							
	I-000202402021622	US REFUND	R	2/06/2024	5.79		014887		5.79
1		BALL, JUSTIN M							
	I-000202402021623	US REFUND	R	2/06/2024	33.19		014888		33.19
00149		COE Parks and Recreation							
	I-Parks 02/2024	Monthly Support 02/2024	R	2/08/2024	25,483.00		014889		25,483.00
00158		COE Water Depreciation Account							
	I-01/2024 DEPR	Water Depreciation 01/2024	R	2/08/2024	8,487.97		014890		8,487.97
00211		Elkins Depot Welcome Center							
	I-H/M 12/2023	Hotel/Motel Coll 12/2023	R	2/08/2024	7,376.93		014891		7,376.93
00235		Elkins Building Comm.							
	I-02/2024	Monthly Pmt 02/	R	2/08/2024	3,483.79		014892		3,483.79
00280		Tracy R Judy							
	I-Travel-020224	Travel Exp Audit Trng 020224	R	2/08/2024	76.25		014893		76.25
00283		Frontier							
	I-012024	landline 122023-011924	R	2/08/2024	1,279.33		014894		
	I-WHITMER 012824	Whitmer Landline 012824	R	2/08/2024	200.11		014894		1,479.44
00287		Garrett Equipment Rentals, LLC							
	I-69124	Ram Assy kits	R	2/08/2024	773.32		014895		773.32
00381		Grover C Jackson Jr							
	I-RENT 02/2024	Rent 02/2024	R	2/08/2024	1,800.00		014896		1,800.00

VENDOR SET: 01 Elkins
BANK: Pool Pooled Cash
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VENDOR I.D.		NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00479		Amtower Auto Supply, Inc.							
	I-204368	Oil/Filters/Spark Plugs	R	2/08/2024	67.73		014897		67.73
00484		Mountaineer Gas Company							
	I-153BH 011724	Nat'l Gas 121523-011724	R	2/08/2024	35.10		014898		
	I-1Baxter 011024	1 Baxter 120723-011024	R	2/08/2024	947.13		014898		
	I-1Baxter WD 011024	1 Baxter 120623-011024	R	2/08/2024	686.22		014898		
	I-216 4th 010924	216 4th St 120723-010924	R	2/08/2024	2,031.33		014898		
	I-216 4thB 010924	216 4th B 120723-010924	R	2/08/2024	45.56		014898		
	I-401Davis 011124	401 Davis 120823-011124	R	2/08/2024	4,460.37		014898		
	I-421Davis 010924	421 Davis 120723-010924	R	2/08/2024	533.47		014898		
	I-917 SRR 011024	917 S RR 120623-011024	R	2/08/2024	1,326.77		014898		
	I-Barron 010924	Barron Ave 120623-010924	R	2/08/2024	197.39		014898		
	I-Baxter 010924	Baxter 120723-010924	R	2/08/2024	1,304.29		014898		
	I-Center 010924	Center St 120623-010924	R	2/08/2024	251.64		014898		
	I-Flood Ctrl 010924	Flood Control 120823-010924	R	2/08/2024	1,467.61		014898		
	I-Glendale 010924	Glendale 120723-010924	R	2/08/2024	338.56		014898		
	I-Inds Park 010924	Industrial Pk 120823-010924	R	2/08/2024	251.88		014898		
	I-RELEE 010924	RELEE 120823-010924	R	2/08/2024	1,380.77		014898		
	I-SCOTTFD 011724	Nat'l Gas 121523-011724	R	2/08/2024	36.96		014898		
	I-Stewart 010924	Stewart 120723-010924	R	2/08/2024	44.13		014898		15,339.18
00500		Newlons International Sales, L							
	I-01P15067	Thermostat/coolant	R	2/08/2024	262.11		014899		262.11
00694		Brandon Tice							
	I-CKREQ 020624	Witness fee from state 2/12/15	R	2/08/2024	15.00		014900		15.00
00698		Tire & Rubber Inc.							
	I-146163	Department Tires 2.42 Ton	R	2/08/2024	242.00		014901		
	I-146231	Department Tires 1.11 ton	R	2/08/2024	111.00		014901		353.00
00701		Toshiba Financial Services							
	I-520514654	Lex/Tosh 011224-021224	R	2/08/2024	221.37		014902		221.37
00714		WORKFORCE West Virginia							
	I-Qtr End 12/31/23	Qtr End 12/31/23 Harsh T	R	2/08/2024	619.01		014903		619.01
00779		Woodford Oil Company							
	I-4555868	CHEV 15W40	R	2/08/2024	5,042.75		014904		5,042.75
00812		WV Regional Jail and Correctio							
	I-1124B49F	1 inmate day TVRJ 01/2024	R	2/08/2024	54.48		014905		54.48

VENDOR SET: 01 Elkins

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VENDOR I.D.		NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
00855		LMC & Associates							
	I-3479	12/23 Qtrly Backup/Wordpress	R	2/08/2024	125.00		014906		125.00
00884		Colonial Court Service Station							
	I-585134	Mount Tires	R	2/08/2024	156.00		014907		
	I-585309	Tires	R	2/08/2024	1,100.00		014907		
	I-585700	Tire	R	2/08/2024	267.00		014907		
	I-585740	Wheels/Tire Sensor	R	2/08/2024	1,135.96		014907		2,658.96
00970		TLC Stump Grinding & Tree							
	I-2469	Stump cutting/grinding CityPk	R	2/08/2024	3,400.00		014908		3,400.00
01313		COE Water O & M Account							
	I-01/2024	01/2024 O&M Contribution	R	2/08/2024	12,902.14		014909		12,902.14
01416		Gerry Roberts							
	I-CKREQ 020624	Reimb-Shiflett vs City/Kesecke	R	2/08/2024	230.00		014910		230.00
01585		LabCorp							
	I-ElmoreC-012324	Pre-Emp Testing CElmore	R	2/08/2024	310.76		014911		310.76
02157		Jerry A Marco							
	I-Travel-020124	Travel Exp Audit Trng 020124	R	2/08/2024	76.25		014912		76.25
02159		PACE Enterprises of West Virgi							
	I-2330488814	Proj 30636080 Analytical Chgs	R	2/08/2024	1,710.00		014913		
	I-2330491754	Analytical charges	R	2/08/2024	250.00		014913		
	I-2330493063	Prj 30644653 Analytical Chgs	R	2/08/2024	124.00		014913		
	I-2330493291	Project 30644644 AnalyticalChg	R	2/08/2024	398.00		014913		
	I-2430499450	Prj 30651268 Analytical Chgs	R	2/08/2024	142.10		014913		
	I-2430500192	Prj 30651168 Analytical Chgs	R	2/08/2024	467.90		014913		3,092.00
02403		Diversified Air Systems Inc							
	I-INV-179334	Labor-Air Compressors	R	2/08/2024	918.77		014914		918.77
02451		DataMax Corporation							
	I-17685	Collections 01/2024	R	2/08/2024	63.42		014915		63.42
02491		120Water							
	I-4681	Annual Sub/consulting	R	2/08/2024	4,164.74		014916		4,164.74
02605		Commercial Builders Inc							
	I-12374	City Hall Masonry	R	2/08/2024	13,096.68		014917		13,096.68

VENDOR SET: 01 Elkins

BANK: Pool Pooled Cash

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VENDOR I.D.	NAME	STATUS	CHECK DATE	INVOICE AMOUNT	DISCOUNT	CHECK NO	CHECK STATUS	CHECK AMOUNT
02606	Elliott White							
I-CKREQ 013024	EPRC BB Referee Fees	R	2/08/2024	100.00		014918		100.00

* * T O T A L S * *	NO			INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
REGULAR CHECKS:	98			441,094.10	0.00	439,375.10
HAND CHECKS:	0			0.00	0.00	0.00
DRAFTS:	4			49,768.91	0.00	49,768.91
EFT:	0			0.00	0.00	0.00
NON CHECKS:	0			0.00	0.00	0.00
VOID CHECKS:	2	VOID DEBITS	0.00			
		VOID CREDITS	1,719.00CR	1,719.00CR	0.00	

TOTAL ERRORS: 0

	NO	INVOICE AMOUNT	DISCOUNTS	CHECK AMOUNT
VENDOR SET: 01 BANK: Pool TOTALS:	104	489,144.01	0.00	489,144.01
BANK: Pool TOTALS:	104	489,144.01	0.00	489,144.01
REPORT TOTALS:	104	489,144.01	0.00	489,144.01

SELECTION CRITERIA

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

CHECK SELECTION

CHECK RANGE: 000000 THRU 999999
DATE RANGE: 1/29/2024 THRU 2/09/2024
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:	February 15, 2024
Section:	New business
Category:	Ordinance
Agenda Item Name:	Ordinance 320: Consideration on second reading of an ordinance authorizing the issuance by the City of Elkins of sewer revenue bonds in an amount not to exceed $250,000 to finance the cost of design, acquisition, construction and equipping of additions, betterments and extensions to the City's sanitary sewer system (second of three readings)
Recommended By:	City Attorney, Bond Counsel
Summary:	Ordinance authorizing the issuance by the City of Elkins of sewer revenue bonds in an amount not to exceed $250,000 to finance the cost of design, acquisition, construction and equipping of additions, betterments and extensions to the City's sanitary sewer system. Purpose is to fund new garage building. By approving this ordinance on final reading tonight, council is authorizing the City Treasurer to work with John Stump, bond counsel, to commence the work necessary to issue these bonds, including identifying a financial institution to underwrite the bond. Actually issuing the bonds, in cooperation with this financial institution, will require additional council action at a later date. Mr. Stump will appear at that time to brief council and answer questions. Find more information about municipal bonds here: https://www.sec.gov/munied
Fiscal Impact:	TBD
Recommendation:	Consider for approval on second of three readings
Attachments:	1. BOND ORDINANCE SERIES 2024 (GARAGE PROJECT)(18705374.1 SJDOCS)

THE CITY OF ELKINS

ORDINANCE AUTHORIZING THE DESIGN, ACQUISITION, CONSTRUCTION AND EQUIPPING OF CERTAIN EXTENSIONS, ADDITIONS, BETTERMENTS AND IMPROVEMENTS TO THE EXISTING PUBLIC SEWERAGE SYSTEM OF THE CITY OF ELKINS AND THE FINANCING OF THE COST THEREOF, NOT OTHERWISE PROVIDED, THROUGH THE ISSUANCE BY THE CITY OF ELKINS OF NOT MORE THAN $250,000 IN ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF SEWER REVENUE BONDS, SERIES 2024 (BANK QUALIFIED); PROVIDING FOR THE RIGHTS AND REMEDIES OF AND SECURITY FOR THE REGISTERED OWNERS OF SUCH BONDS; AUTHORIZING EXECUTION AND DELIVERY OF ALL DOCUMENTS RELATING TO THE ISSUANCE OF SUCH BONDS; AUTHORIZING THE SALE AND PROVIDING FOR THE TERMS AND PROVISIONS OF SUCH BONDS AND ADOPTING OTHER PROVISIONS RELATING THERETO.

BE IT ORDAINED AND ENACTED BY THE COUNCIL OF THE CITY OF ELKINS:

ARTICLE I
STATUTORY AUTHORITY, FINDINGS AND DEFINITIONS

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

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

A. The City of Elkins (the "Issuer") is a municipal corporation and political subdivision of the State of West Virginia in Randolph County of said State.

B. The Issuer presently owns and operates a public sewerage system. However, it is deemed necessary and desirable for the health and welfare of the inhabitants of the Issuer that there be designed, acquired, constructed and equipped certain additions, betterments and improvements to the existing public sewerage system of the Issuer, consisting of a garage structure for storage of rolling stock, together with all appurtenant facilities (collectively, the "Project"), which constitute properties for the collection, transportation, treatment, purification, or disposal of liquid or solid wastes, residential sewage or industrial waste (the existing public sewerage system of the Issuer, the Project and any further additions, betterments and improvements thereto are herein called the "System"), in accordance with the plans and specifications prepared by the Consulting Engineers, which plans and specifications have heretofore been filed with the Issuer.

C. The Issuer intends to permanently finance a portion of the costs of design, acquisition, construction and equipping of the Project through the issuance of its revenue bonds to be purchased by a commercial financial institution (the "Purchaser").

D. It is deemed necessary for the Issuer to issue its Sewer Revenue Bonds, in the total aggregate principal amount of not more than $250,000 in one or more series, initially planned to be the Sewer Revenue Bonds, Series 2024 (Bank Qualified), in the aggregate principal amount of not more than $250,000 (the "Series 2024 Bonds" or the "Series 2024 Bonds"); to permanently finance a portion of the costs of design, acquisition, construction and equipping of the Project. Such costs shall be deemed to include the cost of all property rights, easements and franchises deemed necessary or convenient therefor and eligible under the Act; interest, if any, upon the Series 2024 Bonds prior to and during acquisition or construction and for a period not exceeding 6 months after completion of acquisition and construction of the Project; amounts which may be deposited in the Series 2024 Bonds Reserve Account (as hereinafter defined) for the Series 2024 Bonds; the costs of engineering and legal expenses; expenses for estimates of costs and revenues; expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise; administrative expense; commitment fees; discount; initial fees for the services of registrars, paying agents, depositories or trustees or other costs in connection with the sale of the Series 2024 Bonds and such other expenses as may be necessary or incidental to the financing herein authorized; the design, acquisition or construction of the Project and the placing of same in operation; and the performance of the things herein required or permitted, in connection with any thereof, provided, that reimbursement to the Issuer for any amounts expended by it for allowable costs prior to the issuance of the Series 2024 Bonds or the repayment of indebtedness incurred by the Issuer for such purposes shall be deemed Costs of the Project, as hereinafter defined.

E. The period of usefulness of the System after completion of the Project is not less than 22 years.

F. [RESERVED]

G. There are outstanding obligations of the Issuer which will rank on a parity with the Series 2024 Bonds as to liens, pledge, source of and security for payment, being the Issuer's:

(i) Subordinate Sewer Revenue Bonds, Series 1986 B (West Virginia Water Development Authority), dated April 28, 1986, issued in the original aggregate principal amount of $517,001 (the "Series 1986 B Bonds");

(ii) Sewer Revenue Bonds, Series 2006 A (Bank Qualified), dated December 12, 2006, issued in the original aggregate principal amount of $8,588,400 (the "Series 2006 A Bonds");

(iii) Sewer Revenue Bonds, Series 2009 A (Bank Qualified), dated June 18, 2009, issued in the original aggregate principal amount of $883,280 (the "Series 2009 A Bonds");

(iv) Sewer Revenue Bonds, Series 2015 A (West Virginia Infrastructure Fund), dated April 15, 2015, issued in the original aggregate principal amount of $2,793,855 (the “Series 2015 A Bonds”); and

(v) Sewer Revenue Bonds, Series 2020 A (West Virginia SRF Program), dated November 19, 2024, issued in the original aggregate principal amount of 4,699,365 (the “Series 2024 A Bonds,” collectively, the “Prior Bonds”).

The Series 2024 Bonds shall be issued on a parity with the Prior Bonds with respect to liens, pledge and source of and security for payment and in all respects. Prior to the issuance of the Series 2024 Bonds, the Issuer will obtain (i) a certificate of an Independent Certified Public Accountant stating that the coverage and parity tests of the Prior Bonds are met, (ii) the written consent of the Holders of the Prior Bonds to the issuance of the Series 2024 Bonds on a parity with the Prior Bonds. The Issuer is in compliance with the covenants of the Prior Bonds and the Prior Ordinances.

H. The estimated revenues to be derived in each year after completion of the Project from the operation of the System will be sufficient to pay all costs of operation and maintenance of the System, the principal of and interest on the Issuer’s Prior Bonds, and the Series 2024 Bonds and to make payments into all funds and accounts and other payments provided for herein.

I. The Issuer has complied with all requirements of West Virginia law and the Bond Documents (hereinafter defined) relating to authorization of the acquisition, construction and operation of the Project and the System and issuance of the Series 2024 Bonds, or will have so complied prior to issuance of any thereof.

J. Pursuant to the Act, the Issuer has heretofore established a Sanitary Board and the Sanitary Board has petitioned the Governing Body to issue the Series 2024 Bonds for the purposes set forth herein.

Section 1.03. Bond Legislation Constitutes Contract. In consideration of the acceptance of the Series 2024 Bonds by the Registered Owners of the same from time to time, this Bond Legislation shall be deemed to be and shall constitute a contract between the Issuer and such Bondholders, and the covenants and agreements herein set forth to be performed by the Issuer shall be for the equal benefit, protection and security of the Bondholders of any and all of such Series 2024 Bonds, all which shall be of equal rank and without preference, priority or distinction between any one Bond and any other Bonds and by reason of priority of issuance or otherwise, except as expressly provided therein and herein.

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

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

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

"Board" means the Sanitary Board of the Issuer.

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

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

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

"Bonds" means, collectively, the Series 2024 Bonds and the Prior Bonds and, where appropriate, any bonds on a parity therewith subsequently authorized to be issued hereunder or by another ordinance of the Issuer.

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

“Cash Working Capital Reserve” means the cash working capital reserve required by Chapter 24, Article 1, Section 1(k) of the West Virginia Code of 1931, as amended and in effect on the date of enactment hereof.

“Clerk" means the Clerk of the Issuer.

"Closing Date" means the date upon which there is an exchange of the Series 2024 Bonds for all or a portion of the proceeds of the Series 2024 Bonds from the Purchaser.

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

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

"Completion Date" means the date of substantial completion of the Project.

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

"Costs" or "Costs of the Project" means those costs described in Section 1.02D hereof to be a part of the costs of design, acquisition, construction and equipping of the Project as described in Section 1.02B hereof.

"Depository Bank" means the bank designated as such in the Supplemental Resolution, and its successors and assigns, which shall be a member of FDIC.

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

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

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

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

"Gross Revenues" means all rates, rents, fees, charges, or other income received by the Issuer, or accrued to the Issuer, or any department, board, agency or instrumentality thereof in control of the management and operation of the System including the Board, from the operation of the System and all parts thereof, all as calculated in accordance with sound accounting practices.

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

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

"Issuer" means The City of Elkins, a municipal corporation and political subdivision of the State of West Virginia, in Randolph County, West Virginia, and, unless the context clearly indicates otherwise, includes the Governing Body of the Issuer.

"Mayor" means the Mayor of the Issuer.

"Net Proceeds" means the face amount of the Series 2024 Bonds, plus accrued interest and premium, if any, less original issue discount, if any, and less proceeds, if any, deposited in the Series 2024 Bonds Reserve Account.

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

"Operating Expenses" means the current expenses, paid or accrued, of operation and maintenance of the System and its facilities, and includes, without limiting the generality of the foregoing, insurance premiums, salaries, wages and administrative expenses of the Issuer relating and chargeable solely to the System, the accumulation of appropriate reserves for charges not annually recurrent but which are such as may reasonably be expected to be incurred, and such other reasonable operating costs as are normally and regularly included under recognized accounting practices.

"Outstanding" when used with reference to Bonds or Prior Bonds and as of any particular date, describes all Bonds or Prior Bonds theretofore and thereupon being authenticated and delivered except (i) any Bond or Prior Bond cancelled by the Bond Registrar or Registrar for Prior Bonds, at or prior to said date; (ii) any Bond or Prior Bonds, for the payment of which monies, equal to its principal amount and redemption premium, if applicable, with interest to the date of maturity or redemption shall be in trust hereunder, and set aside for such payment (whether upon or prior to maturity); (iii) any Bond deemed to have been paid as provided in Article X hereof; (iv) any Prior Bond deemed to have been paid; and (v) for purposes of consents or other action by a specified percentage of Bondholders, or holders of Prior Bonds, any Bonds or Prior Bonds registered to the Issuer.

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

"Paying Agent" means the Commission or such other entity or authority as may be designated as a Paying Agent by the Issuer in the Supplemental Resolution.

“Prior Bonds” means the Series 1986 B Bonds, Series 2006 A Bonds, Series 2009 A Bonds, Series 2015 A Bonds and Series 2020 A Bonds.

"Prior Ordinances" means the ordinances of the Issuer authorizing the issuance of the Prior Bonds.

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

“Purchaser” means the initial purchaser of the Series 2024 Bonds as designated in the Supplemental Resolution.

"Qualified Investments" means and includes any investment permitted to be made by a municipality, public service district or public corporation of the State pursuant to State Law, specifically including but not limited to Chapter 8, Article 13, Section 22 of the Code of West Virginia and the West Virginia “consolidated fund” managed by the West Virginia Board of Treasury Investments pursuant to Chapter 12, Article 6C of the Code of West Virginia.

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

"Registrar" means the Bond Registrar.

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

"Renewal and Replacement Fund" means the Renewal and Replacement Fund established by Prior Ordinances and continued hereby.

"Reserve Accounts" means, collectively, the respective reserve accounts established for the Prior Bonds and the Series 2024 Bonds.

"Reserve Requirement" means, collectively, the respective amounts required to be on deposit in any Reserve Account.

"Revenue Fund" means the Revenue Fund established by the Prior Ordinances and continued hereby.

“Serie 1986 B Bonds” means the Issuer’s Subordinate Sewer Revenue Bonds, Series 1986 B (West Virginia Water Development Authority), dated April 28, 1986, issued in the original aggregate principal amount of $517,001.

“Series 2006 A Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2006 A (Bank Qualified), dated December 12, 2006, issued in the original aggregate principal amount of $8,588,400.

“Series 2009 A Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2009 A (Bank Qualified), dated June 18, 2009, issued in the original aggregate principal amount of $883,280.

“Series 2015 A Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2015 A (West Virginia Infrastructure Fund), dated April 15, 2015, issued in the original aggregate principal amount of $2,793,855.

“Series 2020 A Bonds” means the Issuer’s Sewer Revenue Bonds, Series 2020 A (West Virginia SRF Program), dated November 19, 2020, issued in the original aggregate principal amount of $4,699,365.

"Series 2024 Bonds Construction Trust Fund" means the Series 2024 Bonds Construction Trust Fund established by Section 5.01 hereof.

"Series 2024 Bonds" means the Sewer Revenue Bonds, Series 2024 (Bank Qualified), of the Issuer, authorized by this Ordinance.

"Series 2024 Bonds Reserve Account" means the Series 2024 Bonds Reserve Account established by Section 5.02 hereof.

"Series 2024 Bonds Reserve Requirement" means, as of any date of calculation, the maximum amount of principal and interest, if any, which will become due on the Series 2024 Bonds in the then current year.

"Series 2024 Bonds Sinking Fund" means the Series 2024 Bonds Sinking Fund established by Section 5.02 hereof.

"Sinking Funds" means, collectively, the respective sinking funds established for the Prior Bonds and the Series 2024 Bonds.

"State" means the State of West Virginia.

"Supplemental Resolution" means any resolution, ordinance or order of the Issuer supplementing or amending this Ordinance and, when preceded by the article "the," refers specifically to the supplemental resolution authorizing the sale of the Series 2024 Bonds; provided, that any matter intended by this Ordinance to be included in the Supplemental Resolution with respect to the Series 2024 Bonds, and not so included may be included in another Supplemental Resolution.

"Surplus Revenues" means the Gross Revenues not required by the Bond Legislation or the Prior Ordinances to be set aside and held for the payment of or security for the Bonds or any other obligations of the Issuer, including, without limitation, the Sinking Funds, the Reserve Accounts and the Renewal and Replacement Fund.

"System" means the complete existing public sewerage system of the Issuer, as presently existing in its entirety or any integral part thereof, and shall include the Project and any further extensions, additions, betterments, and improvements thereto hereafter acquired or constructed for the System from any sources whatsoever.

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

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

ARTICLE II
AUTHORIZATION OF DESIGN, ACQUISITION, CONSTRUCTION EQUIPPING OF THE PROJECT

Section 2.01. Authorization of Design, Acquisition, Construction and Equipping of the Project. There is hereby authorized and ordered the design, acquisition, construction and equipping of the Project, at an estimated cost not to exceed $250,000, in accordance with the plans and specifications which have been prepared by the Consulting Engineers, heretofore filed in the office of the Governing Body. The proceeds of the Series 2024 Bonds hereby authorized shall be applied as provided in Article

VI hereof. The Issuer has received bids or will receive and will enter into contracts for the acquisition and construction of the Project.

ARTICLE III
AUTHORIZATION, TERMS, EXECUTION, REGISTRATION AND SALE OF BONDS

Section 3.01. Authorization of Bonds. For the purposes of paying a portion of the Costs of the Project not otherwise provided for and paying certain costs of issuance of the Series 2024 Bonds and related costs, or any or all of such purposes, as determined by the Supplemental Resolution, there shall be and hereby are authorized to be issued the negotiable Series 2024 Bonds of the Issuer. The Series 2024 Bonds shall be issued in one or more series, each as a single bond, originally designated as "Sewer Revenue Bonds, Series 2024 (Bank Qualified)", in the principal amount of not more than $250,000, and all shall have such terms as set forth hereinafter and in the Supplemental Resolution. The proceeds of the Series 2024 Bonds remaining after funding of the Series 2024 Bonds Reserve Account (if funded from Bond proceeds) and capitalization of interest, if any, shall be deposited in or credited to the Series 2024 Bonds Construction Trust Funds established by Section 5.01 hereof.

Section 3.02. Terms of Bonds. The Series 2024 Bonds shall be issued in such principal amounts; shall bear interest, if any, at such rate or rates, not exceeding the then legal maximum, payable quarterly on such dates; shall mature on such dates and in such amounts; and shall be redeemable, in whole or in part, all as the Issuer shall prescribe in a Supplemental Resolution or as specifically provided in the Loan Agreement. The Series 2024 Bonds shall be payable as to principal at the office of the Paying Agent, in any coin or currency which, on the dates of payment of principal is legal tender for the payment of public or private debts under the laws of the United States of America. Interest, if any, on the Series 2024 Bonds shall be paid by check or draft of the Paying Agent or its agent, mailed to the Registered Owner thereof at the address as it appears on the books of the Bond Registrar.

Unless otherwise provided by the Supplemental Resolution, the Series 2024 Bonds shall initially be issued in the form of a single bond for each series, fully registered the Purchaser, with a record of advances and a debt service schedule attached, representing the aggregate principal amount of each series, and shall mature in principal installments, all as provided in the Supplemental Resolution. The Series 2024 Bonds shall be exchangeable at the option and expense of the Registered Owner for another fully registered Bond or Bonds of the same series in aggregate principal amount equal to the amount of said Bonds then Outstanding and being exchanged, with principal installments or maturities, as applicable, corresponding to the dates of payment of principal installments of said Bonds.

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

Section 3.03. Execution of Bonds. The Series 2024 Bonds shall be executed in the name of the Issuer by the Mayor, and the seal of the Issuer shall be affixed thereto or imprinted thereon and attested by the Clerk. In case any one or more of the officers who shall have signed or sealed the

Series 2024 Bonds shall cease to be such officer of the Issuer before the Series 2024 Bonds so signed and sealed have been actually sold and delivered, such Bonds may nevertheless be sold and delivered as herein provided and may be issued as if the person who signed or sealed such Bonds had not ceased to hold such office. Any Series 2024 Bonds may be signed and sealed on behalf of the Issuer by such person as at the actual time of the execution of such Bonds shall hold the proper office in the Issuer, although at the date of such Bonds such person may not have held such office or may not have been so authorized.

Section 3.04. Authentication and Registration. No Series 2024 Bonds shall be valid or obligatory for any purpose or entitled to any security or benefit under this Bond Legislation unless and until the Certificate of Authentication and Registration on such Bond, substantially in the form set forth in Section 3.10 hereof shall have been manually executed by the Bond Registrar. Any such executed Certificate of Authentication and Registration upon any such Bond shall be conclusive evidence that such Bond has been authenticated, registered, and delivered under this Bond Legislation. The Certificate of Authentication and Registration on any Series 2024 Bonds shall be deemed to have been executed by the Bond Registrar if manually signed by an authorized officer of the Bond Registrar, but it shall not be necessary that the same officer sign the Certificate of Authentication and Registration on all of the Bonds issued hereunder.

Section 3.05. Negotiability, Transfer and Registration. Subject to the provisions for transfer of registration set forth below, the Series 2024 Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder, in accepting the Series 2024 Bonds shall be conclusively deemed to have agreed that such Bonds shall be and have all of the qualities and incidents of negotiable instruments under the Uniform Commercial Code of the State of West Virginia, and each successive Holder shall further be conclusively deemed to have agreed that said Bonds shall be incontestable in the hands of a bona fide holder for value.

So long as the Series 2024 Bonds remain outstanding, the Issuer, through the Bond Registrar or its agent, shall keep and maintain books for the registration and transfer of such Bonds.

The registered Series 2024 Bonds shall be transferable only upon the books of the Bond Registrar, by the registered owner thereof in person or by his attorney duly authorized in writing, upon surrender thereto together with a written instrument of transfer satisfactory to the Bond Registrar duly executed by the registered owner or his duly authorized attorney.

In all cases in which the privilege of exchanging or transferring the registered Series 2024 Bonds are exercised, all Series 2024 Bonds shall be delivered in accordance with the provisions of this Bond Legislation. All Series 2024 Bonds surrendered in any such exchanges or transfers shall forthwith be cancelled by the Bond Registrar. For every such exchange or transfer of Series 2024 Bonds, the Bond Registrar may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and the cost of preparing each new Bond upon each exchange or transfer, and any other expenses of the Bond Registrar incurred in connection therewith, which sum or sums shall be paid by the Issuer. The Bond Registrar shall not be obliged to make any such exchange or transfer of any Series 2024 Bonds during the period commencing on the 15th day of the month next preceding an interest payment date on the Series 2024 Bonds or, in the case of any proposed redemption of such Bonds, next preceding the date of the selection of Bonds to be redeemed, and ending on such interest payment date or redemption date.

Section 3.06. Bonds Mutilated, Destroyed, Stolen or Lost. In case any Series 2024 Bonds shall become mutilated or be destroyed, stolen or lost, the Issuer may, in its discretion, issue, and the Bond Registrar shall, if so advised by the Issuer, authenticate and deliver, a new Bond of the same series and of like tenor as the Bonds so mutilated, destroyed, stolen or lost, in exchange and substitution for such mutilated Bond, upon surrender and cancellation of such mutilated Bond, or in lieu of and substitution for the Bond destroyed, stolen or lost, and upon the Holder's furnishing satisfactory indemnity and complying with such other reasonable regulations and conditions as the Issuer may prescribe and paying such expenses as the Issuer and the Bond Registrar may incur. All Bonds so surrendered shall be cancelled by the Bond Registrar and held for the account of the Issuer. If any such Bond shall have matured or be about to mature, instead of issuing a substitute Bond, the Issuer may pay the same, upon being indemnified as aforesaid, and if such Bond be lost, stolen or destroyed, without surrender thereof.

Section 3.07. Bonds not to be Indebtedness of the Issuer. The Series 2024 Bonds shall not, in any event, be or constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provision or limitation, but shall be payable solely from the Net Revenues derived from the operation of the System as herein provided. No holder or holders of the Series 2024 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2024 Bonds or the interest thereon.

Section 3.08. Series 2024 Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service on the Series 2024 Bonds shall be secured by a first lien on the Net Revenues derived from the System, on a parity with each other and with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest, if any, on and other payments for the Bonds, and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

Section 3.09. Delivery of Bonds. The Issuer shall execute and deliver the Series 2024 Bonds to the Bond Registrar, and the Bond Registrar shall authenticate, register, and deliver the Series 2024 Bonds to the original purchasers upon receipt of the documents set forth below:

A. A list of the names in which the Series 2024 Bonds are to be registered upon original issuance, together with such taxpayer identification and other information as the Bond Registrar may reasonably require;

B. A request and authorization to the Bond Registrar on behalf of the Issuer, signed by an Authorized Officer, to authenticate and deliver the Series 2024 Bonds to the original purchasers;

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

E. The unqualified approving opinion of bond counsel on the Series 2024 Bonds.

Section 3.10. Form of Bonds. The text of the Series 2024 Bonds shall be in substantially the following forms, with such omissions, insertions and variations as may be necessary and desirable and authorized or permitted hereby, or by any Supplemental Resolution adopted prior to the issuance thereof:

(FORM OF SERIES 2024 BOND)

UNITED STATES OF AMERICA
STATE OF WEST VIRGINIA
THE CITY OF ELKINS
SEWER REVENUE BONDS, SERIES 2024
(BANK QUALIFIED)

No. R-1 $__________

KNOW ALL PERSONS BY THESE PRESENTS: That on the ___ day of ________, 2024, THE CITY OF ELKINS, a municipal corporation and political subdivision of the State of West Virginia in Randolph County of said State (the "Issuer"), for value received, hereby promises to pay, solely from the special funds provided therefor, as hereinafter set forth, to the ______________________(the "Purchaser") or registered assigns the sum of ______________________________________ DOLLARS ($_______________), or such lesser amount as shall have been advanced to the Issuer hereunder and not previously repaid, as set forth in the "Record of Advances" attached as EXHIBIT A hereto and incorporated herein by reference, in monthly installments, commencing ____________ 1, 20_________, to and including ____________ 1, 20__ _______, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto and incorporated herein by reference with interest of ___________% payable in monthly installments commencing _______ 1, 20_________, to and including ____________ 1, 20_________, as set forth on the "Debt Service Schedule" attached as EXHIBIT B hereto.

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

This Bond may be redeemed prior to its stated date of maturity in whole or in part, at any time.

This Bond is issued (i) to pay a portion the costs of design, acquisition, construction and equipping of certain additions, betterments and improvements to the existing public sewerage system of the Issuer (the "Project"); [(iii) funding the Series 2024 Reserve Account]; and (ii) to pay certain costs of issuance of the Bonds of this Series (the “Bonds”) and related costs. The existing public sewerage system of the Issuer, the Project, and any further extensions, additions, betterments or improvements thereto are herein called the "System." This Bond is issued under the authority of and in full compliance with the Constitution and statutes of the State of West Virginia, including particularly Chapter 16, Article 13 of the West Virginia Code of 1931, as amended (collectively, the "Act"), a Bond Ordinance duly enacted by the Issuer on ___________, 2024, and a Supplemental Resolution duly adopted by the Issuer on _________, 2024 (collectively, the "Bond Legislation"), and is subject to all the terms and conditions thereof. The Bond Legislation provides for the issuance of additional bonds under certain conditions, and such bonds would be entitled to be paid and secured equally and ratably from and by the funds and revenues and other security provided for the Bonds under the Bond Legislation.

THIS BOND IS ISSUED ON A PARITY, WITH RESPECT TO LIENS, PLEDGE AND SOURCE OF AND SECURITY FOR PAYMENT, AND IN ALL RESPECTS, TO THE ISSUER'S:

(I) SUBORDINATE SEWER REVENUE BONDS, SERIES 1986 B (WEST VIRGINIA WATER DEVELOPMENT AUTHORITY), DATED APRIL 28, 1986, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $517,001 (THE “SERIES 1986 B BONDS”);

(II) SEWER REVENUE BONDS, SERIES 2006 A (BANK QUALIFIED), DATED DECEMBER 12, 2006, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $8,588,400 (THE “SERIES 2006 A BONDS”);

(III) SEWER REVENUE BONDS, SERIES 2009 A (BANK QUALIFIED), DATED JUNE 18, 2009, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $883,280 (THE "SERIES 2009 A BONDS");

(IV) SEWER REVENUE BONDS, SERIES 2015 A (WEST VIRGINIA INFRASTRUCTURE FUND), DATED APRIL 15, 2015, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $2,793,855 (THE “SERIES 2015 A BONDS”); AND

(V) SEWER REVENUE BONDS, SERIES 2020 A (WEST VIRGINIA SRF PROGRAM), DATED NOVEMBER 19, 2020, ISSUED IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT OF $4,699,365 (THE “SERIES 2020 A BONDS”) (COLLECTIVELY, THE “PRIOR BONDS”);

This Bond is payable only from and secured by a pledge of the Net Revenues (as defined in the Bond Legislation) to be derived from the operation of the System, on a parity with the pledge of Net Revenues in favor of the Holders of the Prior Bonds, and from monies in the Reserve Account created under the Bond Legislation for the Series 2024 Bonds (the "Series 2024 Bonds Reserve Account"), and unexpended proceeds of the Series 2024 Bonds. Such Net Revenues shall be sufficient to pay all operating expenses of the System and the principal of and interest on all bonds which may be issued pursuant to the Act and which shall be set aside as a special fund hereby pledged for such purpose. This Bond does not constitute an indebtedness of the Issuer within the meaning of any constitutional or statutory provisions or limitations, nor shall the Issuer be obligated to pay the same, except from said special fund provided from the Net Revenues, the monies in the Series 2024 Bonds Reserve Account and unexpended proceeds of the Series 2024 Bonds. Pursuant to the Bond Legislation, the Issuer has covenanted and agreed to establish and maintain just and equitable rates and charges for the use of the System and the services rendered thereby, which shall be sufficient, together with other revenues of the System, to provide for the reasonable expenses of operation, repair and maintenance of the System, and to leave a balance each year equal to at least 115% of the maximum amount payable in any year for principal of and interest on the Series 2024 Bonds and all other obligations secured by a lien on or payable from such revenues on a parity with the Series 2024 Bonds including the Prior Bonds; provided however, that, so long as there exists in the Series 2024 Bonds Reserve Account an amount at least equal to the maximum amount of principal and interest which will become due on the Series 2024 Bonds in the then current or any succeeding year, and in the respective reserve accounts established for any other obligations outstanding on a parity with or junior and subordinate to the Bonds, including the Prior Bonds, an amount at least equal to the requirement therefor, such percentage may be reduced to 110%. The Issuer has entered into certain further covenants with the registered owners of the Bonds for the terms of which reference is made to the Bond Legislation. Remedies provided the registered owners of the Bonds are exclusively as provided in the Bond Legislation, to which reference is here made for a detailed description thereof.

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

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

This Bond has been designated as “bank qualified” pursuant to _________.

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

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

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

IN WITNESS WHEREOF, THE CITY OF ELKINS has caused this Bond to be signed by its Mayor and its corporate seal to be hereunto affixed and attested by its Clerk, has caused this Bond to be dated the day and year first written above.

[SEAL]

____
Mayor

ATTEST:

____
Clerk

CERTIFICATE OF AUTHENTICATION AND REGISTRATION

This Bond is one of the Series 2024 Bonds described in the within-mentioned Bond Legislation and has been duly registered in the name of the registered owner set forth above, as of the date set forth below.

Date: ________, 2024.

UNITED BANK
as Registrar

____
Authorized Officer

EXHIBIT A

RECORD OF ADVANCES

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

TOTAL $________________________________

EXHIBIT B

DEBT SERVICE SCHEDULE

(Form of)

ASSIGNMENT

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

Dated: _______________, 20____.

____

In the presence of:

____

Section 3.11. Sale of Bonds. The Series 2024 Bonds shall be sold to the Purchaser designated in the Supplemental Resolution.

ARTICLE IV
[RESERVED]

ARTICLE V
FUNDS AND ACCOUNTS; SYSTEM REVENUES AND APPLICATION THEREOF

Section 5.01. Establishment of Funds and Accounts with Depository Bank. The following special funds or accounts are hereby created with (or continued if previously established by the Prior Ordinances) and shall be held by the Depository Bank, separate and apart from all other funds or accounts of the Depository Bank or the Issuer and from each other:

(1) Revenue Fund (established by Prior Ordinances);

(2) Renewal and Replacement Fund (established by Prior Ordinances);

(3) Cash Working Capital Reserve; and

(4) Series 2024 Bonds Construction Trust Fund.

Section 5.02. Establishment of Funds and Accounts with Commission. The following special funds or accounts are hereby created with (or continued if previously established by Prior Ordinances) and shall be held by the Commission, separate and apart from all other funds or accounts of the Commission or the Issuer and from each other:

(1) Series 1986 B Bonds Sinking Fund (established by Prior Ordinances);

(2) Series 1986 B Bonds Reserve Account (established by Prior Ordinances);

(3) Series 2006 A Bonds Sinking Fund (established by Prior Ordinances);

(4) Series 2006 A Bonds Reserve Account (established by Prior Ordinances);

(5) Series 2009 A Bonds Sinking Fund (established by Prior Ordinances);

(6) Series 2009 A Bonds Reserve Account (established by Prior Ordinances);

(7) Series 2015 A Bonds Sinking Fund (established by Prior Ordinances);

(8) Series 2015 A Bonds Reserve Account (established by Prior Ordinances);

(9) Series 2020 A Bonds Sinking Fund (established by Prior Ordinances);

(10) Series 2020 A Bonds Reserve Account (established by Prior Ordinance);

(11) Series 2024 Bonds Sinking Fund; and

(12) Series 2024 Bonds Reserve Account.

Section 5.03. System Revenues; Flow of Funds. A. The entire Gross Revenues derived from the operation of the System and all parts thereof shall be deposited upon receipt in the Revenue Fund. The Revenue Fund shall constitute a trust fund for the purposes provided in the Prior Ordinances and in this Bond Legislation and shall be kept separate and distinct from all other funds of the Issuer and the Depository Bank and used only for the purposes and in the manner provided in the Prior Ordinances and in this Bond Legislation. All monies in the Revenue Fund shall be disposed of only in the following manner and order of priority:

(1) The Issuer shall first, each month, pay from the Revenue Fund the current Operating Expenses of the System.

(2) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) the amount required by the Prior Ordinances for payment of interest on the Series 2006 A Bonds, the Series 2015 A Bonds and the Series 2020 A Bonds; and (ii) the amount required by this Bond Legislation to pay interest on the Series 2024 Bonds.

(3) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) the amount required by the Prior Ordinances for payment of principal of the Prior Bonds; and (ii) the amount required by this Bond Legislation to pay principal of the Series 2024 Bonds.

(4) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and simultaneously remit to the Commission (i) the amount required by the Prior Ordinances to be deposited in the reserve accounts for the Prior Bonds; and (ii) the amount required by this Bond Legislation for deposit into the Series 2024 Bonds Reserve Account.

(5) The Issuer shall next, on the first day of each month, transfer from the Revenue Fund and remit to the Depository Bank (as required in the Prior Ordinances and not in addition thereto), for deposit in the Renewal and Replacement Fund, a sum equal to 2.5% of the Gross Revenues each month, exclusive of any payments for account of any

Reserve Account. All funds in the Renewal and Replacement Fund shall be kept apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in accordance with Article VIII hereof. Withdrawals and disbursements may be made from the Renewal and Replacement Fund for replacements, repairs, improvements or extensions to the System; provided, that any deficiencies in any Reserve Account (except to the extent such deficiency exists because the required payments into such accounts have not, as of the date of determination of a deficiency, funded such accounts to the maximum extent required hereof) shall be promptly eliminated with monies from the Renewal and Replacement Fund.

(6) The Issuer shall next, each month, transfer from the monies remaining in the Revenue Fund the amount required to fund the Cash Working Capital Reserve. All funds in the Cash Working Capital Reserve shall be kept separate and apart from all other funds of the Issuer or of the Depository Bank and shall be invested and reinvested in Qualified Investments. Withdrawals and disbursements may be made from the Cash Working Capital Reserve for such purposes as permitted by the laws and regulations of the State in effect at such time. The Cash Working Capital Reserve is not pledged to the payment of the principal of, or interest on, the Bonds or any Prior Bonds of the Issuer.

(7) After all the foregoing provisions for use of monies in the Revenue Fund have been fully complied with, any monies remaining therein and not permitted to be retained therein may be used to prepay installments of the Bonds, pro rata, or for any lawful purpose of the System.

Monies in the Series 2024 Bonds Sinking Fund shall be used only for the purposes of paying principal of and interest, if any, on the Series 2024 Bonds as the same shall become due. Monies in the Series 2024 Bonds Reserve Account shall be used only for the purposes of paying principal of and interest on the Series 2024 Bonds, as the same shall come due, when other monies in the Series 2024 Bonds Sinking Fund are insufficient therefor, and for no other purpose.

All investment earnings on monies in the Series 2024 Bonds Sinking Fund and the Series 2024 Bonds Reserve Account shall be returned, not less than once each year, by the Commission to the Issuer, and such amounts shall, during construction of the Project, be deposited in the Series 2024 Bonds Construction Trust Fund, and following completion thereof, shall be deposited in the Revenue Fund and applied in full, first to the next ensuing interest payment due on the Series 2024 Bonds, if any, and then to the next ensuing principal payment due thereon, all on a pro rata basis.

Any withdrawals from the Series 2024 Bonds Reserve Account which result in a reduction in the balance of such accounts to below the Reserve Requirement thereof, shall be restored from the first Net Revenues available after all required payments have been made in full in the order set forth above.

As and when additional Bonds ranking on a parity with the Series 2024 Bonds are issued, provision shall be made for additional payments into the respective sinking fund sufficient to pay the interest on such additional parity Bonds and accomplish retirement thereof at maturity and to accumulate a balance in the respective reserve account in an amount equal to the requirement thereof.

The Issuer shall not be required to make any further payments into the Series 2024 Bonds Sinking Fund or the Series 2024 Bonds Reserve Account, when the aggregate amount of funds therein are at least equal to the aggregate principal amount of the Series 2024 Bonds issued pursuant to this Bond Legislation then Outstanding and all interest to accrue, if any, until the maturity thereof.

Principal, interest or reserve payments, whether made for a deficiency or otherwise, shall be made on a parity and pro rata, with respect to the Prior Bonds and the Series 2024 Bonds, in accordance with the respective principal amounts then Outstanding.

The Commission is hereby designated as the fiscal agent for the administration of the Series 2024 Bonds Sinking Fund and the Series 2024 Bonds Reserve Account, created hereunder, and all amounts required for said accounts shall be remitted to the Commission from the Revenue Fund by the Issuer at the times provided herein. All remittances made by the Issuer to the Commission shall clearly identify the fund or account into which each amount is to be deposited. The Issuer shall make the necessary arrangements whereby required payments into said accounts shall be automatically debited from the Revenue Fund and electronically transferred to the Commission on the dates required hereunder.

Monies in the Series 2024 Bonds Sinking Fund and the Series 2024 Bonds Reserve Account shall be invested and reinvested by the Commission in accordance with Section 8.01 hereof.

The Series 2024 Bonds Sinking Fund and the Series 2024 Bonds Reserve Account shall be used solely and only for, and are hereby pledged for, the purpose of servicing the Series 2024 Bonds under the conditions and restrictions set forth herein.

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

C. The Issuer shall on the first day of each month (if the first day is not a business day, then the first business day of each month) deposit with the Commission the required principal, interest and reserve payments with respect to the Series 2024 Bonds and all such payments shall be remitted to the Commission with appropriate instructions as to the custody, use and application thereof consistent with the provisions of this Bond Legislation.

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

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

F. If on any monthly payment date the revenues are insufficient to place the required amount in any of the funds and accounts as herein above provided, the deficiency shall be made up in the subsequent payments in addition to the payments which would otherwise be required to be made into the funds and accounts on the subsequent payment dates; provided, however, that the priority of curing deficiencies in the funds and accounts herein shall be in the same order as payments are to be made pursuant to this Section 5.03, and the Net Revenues shall be applied to such deficiencies on a parity and pro rata with respect to the Series 2024 Bonds and the Prior Bonds all in accordance with the respective principal amounts outstanding before being applied to any other payments hereunder.

G. All remittances made by the Issuer to the Commission and the Depository Bank shall clearly identify the fund or account into which each amount is to be deposited.

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

I. All Tap Fees shall be deposited in the Revenue Fund and may be used for any lawful purpose of the System.

ARTICLE VI
APPLICATION OF BOND PROCEEDS

Section 6.01. Application of Bond Proceeds; Pledge of Unexpended Bond Proceeds. From the monies received from the sale of the Series 2024 Bonds, the following amounts shall be first deducted and deposited in the order set forth below:

A. From the proceeds of the Series 2024 Bonds, there shall first be deposited with the Commission in the Series 2024 Bonds Sinking Fund, the amount, if any, set forth in the Supplemental Resolution as capitalized interest.

B. Next, from the proceeds of the Series 2024 Bonds, there shall be deposited with the Commission in the Series 2024 Bonds Reserve Account, the amount, if any, set forth in the Supplemental Resolution for funding of the Series 2024 Bonds Reserve Account.

C. As the Issuer receives advances of the monies derived from the sale of the Series 2024 Bonds, such monies shall be deposited with the Depository Bank in the Series 2024 Bonds Construction Trust Fund and applied solely to payment of the costs of the Project in the manner set forth in Section 6.02 hereof and, until so expended, are hereby pledged as additional security for the Series 2024 Bonds.

Section 6.02. Disbursements of Bond Proceeds. The Board shall adopt requisitions based on unpaid invoices to draw principal of the Series 2024 Bonds.

ARTICLE VII
ADDITIONAL COVENANTS OF THE ISSUER

Section 7.01. General Covenants of the Issuer. All the covenants, agreements and provisions of this Bond Legislation shall be and constitute valid and legally binding covenants of the Issuer and shall be enforceable in any court of competent jurisdiction by any Holder or Holders of the Series 2024 Bonds. In addition to the other covenants, agreements and provisions of this Bond Legislation, the Issuer hereby covenants and agrees with the Holders of the Series 2024 Bonds as hereinafter provided in this Article VII. All such covenants, agreements and provisions shall be irrevocable, except as provided herein, as long as any of the Series 2024 Bonds or the interest, if any, thereon is Outstanding and unpaid.

Section 7.02. Bonds not to be Indebtedness of the Issuer. The Series 2024 Bonds shall not be nor constitute an indebtedness of the Issuer within the meaning of any constitutional, statutory or charter limitation of indebtedness, but shall be payable solely from the funds pledged for such payment by this Bond Legislation. No Holder or Holders of the Series 2024 Bonds shall ever have the right to compel the exercise of the taxing power of the Issuer to pay the Series 2024 Bonds or the interest thereon.

Section 7.03. Bonds Secured by Pledge of Net Revenues; Lien Position with respect to Prior Bonds. The payment of the debt service on the Series 2024 Bonds issued hereunder shall be secured equally and ratably by a first lien on the Net Revenues derived from the System, on a parity with each other and with the lien on the Net Revenues in favor of the Holders of the Prior Bonds. The Net Revenues in an amount sufficient to pay the principal of and interest on and other payments for the Bonds, and to make all other payments hereinafter set forth, are hereby irrevocably pledged to such payments as they become due.

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

So long as the Series 2024 Bonds are outstanding, the Issuer covenants and agrees to fix and collect rates, fees and other charges for the use of the System and to take all such actions necessary to provide funds sufficient to produce the required sums set forth in the Bond Legislation. In the event the schedule of rates and charges initially established for the System in connection with the Series 2024 Bonds shall prove to be insufficient to produce the amounts required by this Bond Legislation, the Issuer hereby covenants and agrees that it will, to the extent or in the manner authorized by law, immediately adjust and increase such schedule of rates and charges and take all such actions necessary to provide funds sufficient to produce the amounts required by this Bond Legislation.

Section 7.05. Sale of the System. So long as the Prior Bonds are outstanding, the Issuer shall not sell, lease, mortgage or in any manner dispose of or encumber the System, or any part thereof, except as provided in the Prior Ordinances.

So long as the Series 2024 Bonds are outstanding and except as otherwise required by law or with the written consent of the Purchaser, the System may not be sold, mortgaged, leased or otherwise disposed of, except as a whole, or substantially as a whole, and only if the net proceeds to be realized shall be sufficient to fully pay all the Bonds Outstanding, in accordance with Article X hereof. The proceeds from any such sale, mortgage, lease or other disposition of the System shall immediately be remitted to the Commission for deposit in the Series 2024 Bonds Sinking Fund, pro rata with respect to the principal amount of each of the Bonds then Outstanding, and the Issuer shall direct the Commission to apply such proceeds to the payment of principal of and interest, if any, on the Series 2024 Bonds in accordance with Article X hereof. Any balance remaining after the payment of the Bonds and interest thereon shall be remitted to the Issuer by the Commission unless necessary for the payment of other obligations of the Issuer payable out of the revenues of the System.

The foregoing provision notwithstanding, the Issuer shall have and hereby reserves the right to sell, lease or otherwise dispose of any of the property comprising a part of the System hereinafter determined by the Board to be no longer necessary, useful or profitable in the operation thereof. Prior to any such sale, lease or other disposition of such property, if the amount to be received therefor, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, is not in excess of $500,000. No sale, lease or other disposition of the properties of the System shall be made by the Issuer if the proceeds to be derived therefrom, together with all other amounts received during the same Fiscal Year for such sales, leases or other dispositions of such properties, shall be in excess of $500,000 and insufficient to pay all Bonds then Outstanding, without the prior approval and consent in writing of the Holders, or their duly authorized representatives, of the Bonds then Outstanding. The Issuer shall prepare the form of such approval and consent for execution by the then Holders of the Bonds for the disposition of the proceeds of the sale, lease or other disposition of such properties of the System.

Section 7.06. Issuance of Other Obligations Payable Out of Revenues and General Covenant Against Encumbrances. Except as provided for in the Section 7.06 and Section 7.07 hereof, the Issuer shall not issue any other obligations whatsoever payable from the revenues of the System which rank prior to, or equally, as to lien on and source of and security for payment from such revenues with the Series 2024 Bonds. All obligations issued by the Issuer after the issuance of the Series 2024 Bonds and payable from the revenues of the System, except such additional parity Bonds, shall contain an express statement that such obligations are junior and subordinate, as to lien on and source of and security for payment from such revenues and in all other respects, to the Series 2024 Bonds; provided, that no such subordinate obligations shall be issued unless all payments required to be made into all funds and accounts set forth herein have been made and are current at the time of the issuance of such subordinate obligations.

Except as provided above, the Issuer shall not create, or cause or permit to be created, any debt, lien, pledge, assignment, encumbrance or any other charge having priority over or being on a parity with the lien of the Series 2024 Bonds, and the interest, if any, thereon, upon any of the income and revenues of the System pledged for payment of the Series 2024 Bonds and the interest, if any, thereon in this Bond Legislation, or upon the System or any part thereof.

Section 7.07. Parity Bonds. So long as the Prior Bonds are outstanding, the limitations on the issuance of parity obligations set forth in the Prior Ordinances shall be applicable

No such additional Parity Bonds shall be issued except for the purposes of financing the costs of the design, acquisition and construction of extensions, additions, betterments or improvements to the System, refunding all or a portion of one or more series of bonds issued pursuant hereto, or to pay claims which may exist against the revenues or facilities of the System or all of such purposes.

So long as the Prior Bonds and the Series 2024 Bonds are outstanding, no Parity Bonds shall be issued at any time, however, unless and until there has been procured and filed with the Clerk a written statement by Independent Certified Public Accountants, reciting the conclusion that the Net Revenues actually derived, subject to the adjustment hereinafter provided for, from the System during any 12 consecutive months, within the 18 months immediately preceding the date of the actual issuance of such additional Parity Bonds, plus the estimated average increased annual Net Revenues to be received in each of the 3 succeeding years after the completion of the improvements to be financed by such Parity

Bonds, if any, shall be not less than 115%, of the largest aggregate amount that will mature and become due in any succeeding Fiscal Year for principal of and interest on the following:

(1) The Bonds then Outstanding;

(2) Any additional Parity Bonds theretofore issued pursuant to the provisions contained in the Prior Ordinances and this Bond Legislation then Outstanding; and

(3) The additional Parity Bonds then proposed to be issued.

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

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

All covenants and other provisions of this Ordinance (except as to details of such Parity Bonds inconsistent herewith) shall be for the equal benefit, protection and security of the Holders of the Bonds and the Holders of any Parity Bonds theretofore or subsequently issued from time to time within the limitations of and in compliance with this section. Bonds issued on a parity, regardless of the time or times of their issuance, shall rank equally with respect to their lien on the revenues of the System and their source of and security for payment from said revenues, without preference of any Bond of one series over any other Bond of the same series. The Issuer shall comply fully with all the increased payments into the various funds and accounts created in this Ordinance required for and on account of such Parity Bonds, in addition to the payments required for the Bonds theretofore issued pursuant to this Ordinance.

Parity Bonds shall not be deemed to include bonds, notes, certificates or other obligations subsequently issued, the lien of which on the revenues of the System is subject to the prior and superior liens of the Bonds on such revenues. The Issuer shall not issue any obligations whatsoever payable from the revenues of the System, or any part thereof, which rank prior to or, except in the manner and under the conditions provided in this section, equally, as to the lien on and source of and security for payment from such revenues, with the Bonds.

No Parity Bonds shall be issued any time, however, unless all the payments into the respective funds and accounts provided for in this Ordinance and the Prior Ordinances with respect to the

Bonds then Outstanding, and any other payments provided for in this Ordinance and the Prior Ordinances, shall have been made in full as required to the date of issuance of such Parity Bonds, and the Issuer shall then be in full compliance with all the covenants, agreements and terms of this Ordinance and the Prior Ordinances.

Provided that the requirements of this Section 7.07 are satisfied the consent, written or otherwise, of the Holder of the Series 2024 Bonds shall not be required for the issuance of Parity Bonds.

Section 7.08. Books; Records and Audit. The Issuer will keep books and records of the System, which shall be separate and apart from all other books, records and accounts of the Issuer, in which complete and correct entries shall be made of all transactions relating to the System, and any Holder of a Bond or Bonds issued pursuant to this Bond Legislation shall have the right at all reasonable times to inspect the System and all parts thereof and all records, accounts and data of the Issuer relating thereto.

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

The Issuer shall also, at least once a year, cause the books, records and accounts of the System to be audited by Independent Certified Public Accountants (and to the extent legally required in compliance with 2 CFR 200 Subpart F, or any successor thereof, and the Single Audit Act, or any successor thereof), and shall submit to the Holder of the Series 2024 Bonds the report of the Independent Certified Public Accountants, or a summary thereof. Such audit report shall include a statement that the Issuer is in compliance with the terms and provisions of the Act and this Bond Legislation and that the revenues of the System are adequate to meet the Issuer's Operating Expenses and debt service and reserve requirements.

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

The Issuer shall provide the DEP with all appropriate documentation to comply with any special conditions established by federal and/or state regulations as set forth in the Loan Agreement for the Series 2024 Bonds or any Exhibit thereto or as promulgated from time to time.

The Issuer shall permit the Holder of the Series 2024 Bonds, or their agents and representatives, to enter and inspect the Project site and Project facilities at all reasonable times.

Section 7.09. Rates. Prior to the issuance of the Series 2024 Bonds, rates or charges for the use of the services and facilities of the System will be fixed and established, all in the manner and form required by law, and a copy of such rates and charges so fixed and established shall at all times be kept on file in the office of the Clerk of the Issuer, which copy will be open to inspection by all interested parties. The schedule or schedules of rates and charges shall at all times be adequate to produce Gross Revenues from the System sufficient to pay Operating Expenses and to make the prescribed payments into the funds and accounts created hereunder. Such schedule or schedules of rates and charges shall be revised from time to time, whenever necessary, so that the aggregate of the rates and charges will be sufficient for such purposes. In order to assure full and continuous performance of this covenant with a margin for contingencies and temporary unanticipated reduction in income and revenues, the Issuer hereby covenants and agrees that the schedule or schedules of rates or charges from time to time in effect shall be sufficient, together with other revenues of the System, to meet the coverage requirements set forth in the Prior Ordinances so long as the Prior Bonds are outstanding and thereafter, (i) to provide for all Operating Expenses of the System and (ii) to leave a balance each year equal to at least 115% of the maximum amount required in any year for payment of principal of and interest, if any, on the Series 2024 Bonds, and all other obligations secured by a lien on or payable from such revenues on a parity with, or subordinate to, the Series 2024 Bonds including the Prior Bonds.

The Issuer hereby covenants to commence enactment of such ordinance or ordinances as shall be required to increase the rates and charges for the services and facilities of the System within 120 days following a determination of the Independent Certified Public Accountant that less than the above-required coverage exists or in the event that the annual audit report shows less than the above-required coverage, such increase to provide rates and charges sufficient to produce such required coverage.

Section 7.10. Operating Budget and Monthly Financial Report. The Issuer shall annually prepare and adopt by resolution a detailed, balanced budget of the estimated revenues and expenditures for operation and maintenance of the System during the succeeding Fiscal Year

Section 7.11. [RESERVED]

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

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

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

Section 7.14. No Free Services. The Issuer will not render or cause to be rendered any free services of any nature by the System, nor will any preferential rates be established for users of the same class; and in the event the Issuer, or any department, agency, instrumentality, officer or employee of either shall avail itself or themselves of the facilities or services provided by the System, or any part thereof, the same rates, fees or charges applicable to other customers receiving like services under similar circumstances shall be charged the Issuer and any such department, agency, instrumentality, officer or employee. The revenues so received shall be deemed to be revenues derived from the operation of the System, and shall be deposited and accounted for in the same manner as other revenues derived from such operation of the System.

Section 7.15. Insurance and Construction Bonds. A. The Issuer hereby covenants and agrees that so long as the Series 2024 Bonds remain Outstanding, the Issuer will, as an Operating Expense, procure, carry and maintain insurance with a reputable insurance carrier or carriers as is customarily covered with respect to works and properties similar to the System. Such insurance shall initially cover the following risks and be in the following amounts:

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

Project, such insurance to be made payable to the order of the Issuer, the contractors and subcontractors, as their interests may appear.

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

(3) WORKERS' COMPENSATION COVERAGE FOR ALL EMPLOYEES OF OR FOR THE SYSTEM ELIGIBLE THEREFOR; AND PERFORMANCE AND PAYMENT BONDS, such bonds to be in the amounts of 100% of the amount of any construction contract and to be required of each contractor contracting directly with the Issuer, and such payment bonds will be filed with the Clerk of The County Commission of the County in which such work is to be performed prior to commencement of construction of the Project in compliance with West Virginia Code, Chapter 38, Article 2, Section 39.

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

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

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

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

The Issuer shall also require all contractors engaged in the construction of the Project to carry such workers' compensation coverage for all employees working on the Project and public liability insurance, vehicular liability insurance and property damage insurance in amounts adequate for such purposes and as is customarily carried with respect to works and properties similar to the Project.

Section 7.16. Mandatory Connections. The mandatory use of the System is essential and necessary for the protection and preservation of the public health, comfort, safety, convenience and welfare of the inhabitants and residents of, and the economy of, the Issuer and in order to assure the rendering harmless of sewage and water-borne waste matter produced or arising within the territory served by the System. Accordingly, every owner, tenant or occupant of any house, dwelling or building located near the System, where sewage will flow by gravity or be transported by such other methods approved by the State Department of Health from such house, dwelling or building into the System, to the extent permitted by the laws of the State and the rules and regulations of the Public Service Commission of West Virginia, shall connect with and use the System and shall cease the use of all other means for the collection, treatment and disposal of sewage and waste matters from such house, dwelling or building where there is such gravity flow or transportation by such other method approved by the State Department of Health and such house, dwelling or building can be adequately served by the System, and every such owner, tenant or occupant shall, after a 30-day notice of the availability of the System, pay the rates and charges established therefor.

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

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

The Issuer will obtain all permits required by state and federal laws for the acquisition and construction of the Project, all orders and approvals required by State law necessary for the acquisition and construction of the Project and the operation of the System and all approvals of issuance of the Series 2024 Bonds required by State law, with all requisite appeal periods having expired without successful appeal, except as otherwise provided in Section 1.02(I).

Section 7.18. Compliance with the Law. The Issuer agrees to comply with all applicable laws, rules and regulations issued by State, federal or local bodies in regard to the acquisition and construction of the Project and the operation, maintenance and use of the System.

Section 7.19. [RESERVED].

Section 7.20. Contracts. The Issuer shall, simultaneously with the delivery of the Series 2024 Bonds or immediately thereafter, enter into written contracts for the immediate acquisition or construction of the Project.

Section 7.21. Statutory Mortgage Lien. For the further protection of the Holders of the Series 2024 Bonds, a statutory mortgage lien upon the System is granted and created by the Act, which statutory mortgage lien is hereby recognized and declared to be valid and binding, shall take effect immediately upon delivery of the Series 2024 Bonds and shall be on a parity with the statutory mortgage lien in favor of the Holders of the Prior Bonds.

ARTICLE VIII
INVESTMENT OF FUNDS; TAX COVENANTS

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

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

The Depository Bank shall keep complete and accurate records of all funds, accounts and investments, and shall distribute to the Issuer, at least once each year, or more often as reasonably requested by the Issuer, a summary of such funds, accounts and investment earnings. The Issuer shall retain all such records and any additional records with respect to such funds, accounts and investment earnings so long as any of the Series 2024 Bonds are Outstanding and as long thereafter as necessary to comply with the Code and to assure the exclusion of interest, if any, on the Series 2024 Bonds from gross income for federal income tax purposes.

Section 8.02. Tax Covenants. The Issuer hereby further covenants and agrees as follows:

A. PRIVATE BUSINESS USE LIMITATION. The Issuer shall assure that (i) not in excess of 10% of the Net Proceeds of the Series 2024 Bonds are used for Private Business Use if, in addition, the payment of more than 10% of the principal or 10% of the interest due on the Series 2024 Bonds during the term thereof is, under the terms of the Series 2022 A Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for a Private Business Use or in payments in respect of property used or to be used for a Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for a Private Business Use; and (ii) and that, in the event that both (A) in excess of 5% of the Net Proceeds of the Series 2024 Bonds are used for a Private Business Use, and (B) an amount in excess of 5% of the principal or 5% of the interest due on the Series 2024 Bonds during the term thereof is, under the terms of the Series 2024 Bonds or any underlying arrangement, directly or indirectly, secured by any interest in property used or to be used for said Private Business Use or in payments in respect of property used or to be used for said Private Business Use or is to be derived from payments, whether or not to the Issuer, in respect of property or borrowed money used or to be used for said Private Business Use, then said excess over said 5% of Net Proceeds of the Series 2024 A Bonds used for a Private Business Use shall be used for a Private Business Use related to the governmental use of the project, or if the Series 2024 Bonds is for the purpose of financing more than one project, a portion of the project, and shall not exceed the proceeds used for the governmental use of that portion of the project to which such Private Business Use is related. All of the foregoing shall be determined in accordance with the Code.

B. PRIVATE LOAN LIMITATION. The Issuer shall assure that not in excess of the lesser of 5% of the Net Proceeds of the Series 2024 Bonds or $5,000,000 are used, directly or indirectly, to make or finance a loan (other than loans constituting Nonpurpose Investments) to persons other than state or local government units.

C. FEDERAL GUARANTEE PROHIBITION. The Issuer shall not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Series 2024 Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Code.

D. INFORMATION RETURN. The Issuer will file all statements, instruments and returns necessary to assure the tax-exempt status of the Series 2024 Bonds and the interest thereon, including without limitation, the information return required under Section 149(e) of the Code.

E. FURTHER ACTIONS. The Issuer will take all actions that may be required of it so that the interest on the Series 2024 Bonds will be and remain excludable from gross income for federal income tax purposes, and will not take any actions, or fail to take any actions which would adversely affect such exclusion.

Section 8.03. Arbitrage and Tax Exemption. The Issuer covenants that (i) it shall not take, or permit or suffer to be taken, any action with respect to the gross or other proceeds of the Series 2024 Bonds which would cause the Series 2024 Bonds to be an "arbitrage bond" within the meaning of Section 148 of the Code, and (ii) it will take all actions that may be required of it (including, without implied limitation, the timely filing of a Federal information return with respect to the Series 2024 Bonds) so that the interest on the Series 2024 Bonds will be and remain excluded from gross income for Federal income tax purposes, and will not take any actions which would adversely affect such exclusion.

Section 8.04. Tax Certificate and Rebate. The Issuer shall deliver a certificate of arbitrage, a tax certificate or other similar certificate to be prepared by nationally recognized bond counsel or tax counsel relating to payment of arbitrage rebate and other tax matters as a condition to issuance of the Series 2024 Bonds. In addition, the Issuer covenants to comply with all Regulations from time to time in effect and applicable to the Series 2024 Bonds as may be necessary in order to fully comply with Section 148(f) of the Code, and covenants to take such actions, and refrain from taking such actions, as may be necessary to fully comply with such Section 148(f) of the Code and such Regulations, regardless of whether such actions may be contrary to any of the provisions of this Bond Legislation.

The Issuer shall calculate, annually, the rebatable arbitrage, determined in accordance with Section 148(f) of the Code. The Issuer shall pay, or cause to be paid, to the United States, the rebatable arbitrage in accordance with Section 148(f) of the Code and such Regulations. The Issuer shall remit payments to the United States in the time and at the address prescribed by the Regulations as the same may be in time to time in effect with such reports and statements as may be prescribed by such Regulations. The Issuer and the Depository Bank (at the expense of the Issuer) may provide for the employment of independent attorneys, accountants or consultants compensated on such reasonable basis as the Issuer or the Depository Bank may deem appropriate in order to assure compliance with this Section 7.03. The Issuer shall keep and retain, or cause to be kept and retained, records of the determinations made pursuant to this Section 7.03 in accordance with the requirements of Section 148(f) of the Code and such Regulations.

Section 8.05. Designation of Bonds "Qualified Tax-Exempt Obligations." The Issuer hereby designates the Series 2024 Bonds as "qualified tax-exempt obligations" for the purpose of Section 265(b)(3)(B) of the Code and covenants that the Series 2024 Bonds do not constitute private activity bonds as defined in Section 141 of the Code, and that not more than $10,000,000 aggregate principal amount of obligations the interest on which is excludable (under Section 103(a) of the Code) from gross income for federal income tax purposes (excluding, however, obligations issued to currently refund any obligation of the Issuer to the extent the amount of the refunding obligation does not exceed the amount of the refunded obligation and private activity bonds, other than 501(c)3 Bonds, as defined in Section 141 of the Code), including the Series 2024 Bonds, have been or shall be issued by the Issuer, including all subordinate entities of the Issuer, during calendar year 2024.

ARTICLE IX
DEFAULT AND REMEDIES

Section 9.01. Events of Default. Each of the following events shall constitute an "Event of Default" with respect to the Series 2024 Bonds:

(1) If default occurs in the due and punctual payment of the principal of or interest on any Series 2024 Bonds; or

(2) If default occurs in the Issuer's observance of any of the covenants, agreements or conditions relating to the Series 2024 Bonds set forth in this Bond Legislation, any supplemental resolution or in the Series 2024 Bonds, and such default shall have continued for a period of 30 days after the Issuer shall have been given written notice of such default by the Commission, the Depository Bank, the Registrar, the Paying Agent or any other Paying Agent or a Holder of a Bond; or

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

(4) If default occurs with respect to the Prior Bonds or the Prior Ordinances.

Section 9.02. Remedies. Upon the happening and continuance of any Event of Default, any Registered Owner or Holder of a Bond may exercise any available remedy and bring any appropriate action, suit or proceeding to enforce his or her rights and, in particular, (i) bring suit for any unpaid principal or interest then due, (ii) by mandamus or other appropriate proceeding enforce all rights of such Registered Owners or Bondholders including the right to require the Issuer to perform its duties under the Act and the Bond Legislation relating thereto, including but not limited to the making and collection of sufficient rates or charges for services rendered by the System, (iii) bring suit upon the Bonds; (iv) by action at law or bill in equity require the Issuer to account as if it were the trustee of an express trust for the Registered Owners or Bondholders of the Bonds, and (v) by action or bill in equity enjoin any acts in violation of the Bond Legislation with respect to the Bonds, or the rights of such Registered Owners; provided, that, all rights and remedies of the Holders of the Series 2024 Bonds shall be on a parity with those of the Holders of the Prior Bonds.

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

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

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

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

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

ARTICLE X
PAYMENT OF BONDS

Section 10.01. Payment of Series 2024 Bonds. If the Issuer shall pay, or there shall otherwise be paid, to the Registered Owners of the Series 2024 Bonds, the principal of and interest, if any, due or to become due thereon, at the times and in the manner stipulated therein and in this Bond Legislation, then the pledge of Net Revenues and other monies and securities pledged under this Bond Legislation and all covenants, agreements and other obligations of the Issuer to the Registered Owners of the Series 2024 Bonds shall thereupon cease, terminate and become void and be discharged and satisfied, except as may otherwise be necessary to assure the exclusion of interest, if any, on the Series 2024 Bonds from gross income for federal income tax purposes.

ARTICLE XI
MISCELLANEOUS

Section 11.01. Amendment or Modification of Bond Legislation. Prior to issuance of the Series 2024 Bonds, this Ordinance may be amended or supplemented in any way by the Supplemental Resolution. Following issuance of the Series 2024 Bonds, no material modification or amendment of this Ordinance, or of any ordinance, resolution or order amendatory or supplemental hereto, that would materially and adversely affect the rights of Registered Owners of the Series 2024 Bonds shall be made without the consent in writing of the Registered Owners of the Series 2024 Bonds so affected and then Outstanding; provided, that no change shall be made in the maturity of the Series 2024 Bonds or the rate of interest thereon, or in the principal amount thereof, or affecting the unconditional promise of the Issuer to pay such principal and interest out of the funds herein pledged therefor without the consent of the Registered Owner thereof. No amendment or modification shall be made that would reduce the percentage of the principal amount of the Series 2024 Bonds required for consent to the above-permitted amendments or modifications. Notwithstanding the foregoing, this Bond Legislation may be amended without the consent of any Bondholder as may be necessary to assure compliance with Section 148(f) of the Code relating to rebate requirements or otherwise as may be necessary to assure the excludability of interest, if any, on the Series 2024 Bonds from gross income of the holders thereof.

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

Section 11.03. Severability of Invalid Provisions. If any section, paragraph, clause or provision of this Ordinance should be held invalid by any court of competent jurisdiction, the invalidity of such section, paragraph, clause or provision shall not affect any of the remaining provisions of this Ordinance, the Supplemental Resolution or the Series 2024 Bonds.

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

Section 11.05. Conflicting Provisions Repealed; Prior Ordinances. All ordinances, orders or resolutions and or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed, provided, that, in the event of any conflict between this Ordinance and the Prior Ordinances, the Prior Ordinances shall control (unless less restrictive), so long as the Prior Bonds are outstanding.

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

Section 11.07. Statutory Notice and Public Hearing. Upon adoption hereof, an abstract of this Ordinance determined by the Governing Body to contain sufficient information as to give notice of the contents hereof shall be published once a week for 2 successive weeks within a period of fourteen consecutive days, with at least 6 full days intervening between each publication, in the *Inter Mountain*, a newspaper of general circulation in The City of Elkins, no newspaper being published therein, together with a notice stating that this Ordinance has been adopted and that the Issuer contemplates the issuance of the Series 2024 Bonds, and that any person interested may appear before the Governing Body upon a date certain, not less than ten days subsequent to the date of the first publication of such abstract of this

Ordinance and notice, and present protests, and that a certified copy of this Ordinance is on file with the Governing Body for review by interested persons during office hours of the Governing Body. At such hearing, all objections and suggestions shall be heard and the Governing Body shall take such action as it shall deem proper in the premises.

Section 11.08. Effective Date. This Ordinance shall take effect immediately following public hearing hereon.

Passed on First Reading:	January 18, 2024
Passed on Second Reading:	February 1, 2024
Passed on Final Reading Following Public Hearing:	February 15, 2024

THE CITY OF ELKINS

____

Mayor

CERTIFICATION

Certified a true copy of an Ordinance duly enacted by the Governing Body of THE CITY OF ELKINS on the _____ day of February, 2024.

Dated: March ___, 2024.

[SEAL]

____
Clerk

THE CITY OF ELKINS
SEWER REVENUE BONDS, SERIES 2024
(Bank Qualified)

<u>BOND ORDINANCE</u>

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[RESERVED]

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CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Ordinance
Agenda Item Name:	Ordinance 321: To consider for adoption on first reading an Ordinance of the City which authorizes (i) the design, acquisition, construction and equipping of a Sanitation Department Garage (the "Project"), (ii) the leasing of certain real property situate in Elkins Corporation District, Randolph County, on the east side of Baxter Street between Eleventh Street and Chestnut Street in the City of Elkins and all project improvements and appurtenances thereto by the City from the Elkins Municipal Building Commission, and (iii) the issuance by the Elkins Municipal Building Commission of its Lease Revenue Bonds in an amount not to exceed $2,000,000 for the purpose of financing the Project and matters relating thereto (first of two readings)
Recommended By:	Bond Counsel, City Attorney, Operations Manager
Summary:	The project to construct a new headquarters building for the Sanitation Department (i.e., garbage collection) involves steps that must be taken by both council and by the Elkins Building Commission. The building commission owns the property where the new building will be constructed. To finance the project, the building commission will be issuing bonds. Before it can do that, council must approve the ordinance attached to this agenda item. Ordinance 321 essentially authorizes the project to proceed and authorizes the building commission to take various actions, including issuing bonds. Because this ordinance is only authorizing the commission to issue bonds, it only requires two readings. (The actual ordinance issuing these bonds, which will be approved by the building commission, will require three readings, as all bond-issuance ordinances do.) Finally, this ordinance is completely separate from Ordinance 320, which will issue bonds related to a new garage for the Wastewater Department (i.e., Sanitary Sewer System).

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Fiscal Impact:	This ordinance authorizes the issuance by the building commission of up to $2,000,000 in Lease Revenue Bonds, which requires separate action by the building commission. There is no direct fiscal impact of approving Ordinance 321.
Recommendation:	Consider for approval
Attachments:	1. ORDINANCE OF CITY OF ELKINS(18932814.2 SJDOCS)

ORDINANCE NO. _____

AN ORDINANCE AUTHORIZING AND DIRECTING THE DESIGN, ACQUISITION, CONSTRUCTION AND EQUIPPING OF A SANITATION DEPARTMENT GARAGE TOGETHER WITH ALL NECESSARY APPURTENANCES THERETO (THE "PROJECT") BY THE CITY OF ELKINS (THE "CITY") ON REAL PROPERTY OWNED BY THE ELKINS MUNICIPAL BUILDING COMMISSION (THE "ISSUER"); THE LEASING OF THE PROJECT PROPERTY AND ALL PROJECT IMPROVEMENTS AND APPURTENANCES THERETO BY THE CITY FROM THE ISSUER; THE SALE AND ISSUANCE BY THE ELKINS MUNICIPAL BUILDING COMMISSION OF ITS NOT TO EXCEED $2,000,000 PRINCIAL AMOUNT OF LEASE REVENUE BONDS, IN ONE OR MORE SERIES (THE "BONDS") FOR THE PURPOSE OF PAYING COSTS OF THE PROJECT, COSTS OF ISSUANCE OF THE BONDS AND RELATED COSTS; AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT AND LEASE AND OTHER DOCUMENTS RELATING TO THE PROJECT AND THE ISSUANCE OF THE BONDS AND APPROVING OTHER MATTERS RELATING TO THE TERMS AND SECURITY OF SUCH BONDS; AND PROVIDING FOR OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the City of Elkins (the "City") has, pursuant to an ordinance enacted April 21, 1998, created and established the Elkins Municipal Building Commission (the "Issuer"), a public corporation and municipal building commission of the State of West Virginia, pursuant to the authority granted to it in Chapter 8, Article 33 of the West Virginia Code of 1931, as amended (the "Act");

WHEREAS, the Issuer, under the Act, has plenary power and authority to contract and be contracted with, acquire, purchase, own and hold any property, real or personal, and acquire, construct, equip, maintain and operate public buildings, structures, projects and appurtenant facilities of any type or types for which the City is permitted by law to expend public funds, sell, encumber or dispose of any property, real or personal, and lease its property or any part thereof, for public purposes to such persons and upon such terms as the Issuer deems proper;

WHEREAS, the City is empowered and authorized by Chapter 8, Article 16 of the West Virginia Code of 1931, as amended, to expend public funds for the construction, reconstruction, establishment, acquisition, improvement, renovation, extension, enlargement, increase, equipment, maintenance, repair (including replacements) and operation of municipal buildings, garbage disposal systems, public buildings, including a sanitation garage;

18932814.1

WHEREAS, the Issuer has heretofore acquired pursuant to a Deed dated September 20, 2019, which is of record in the Office of the Clerk of The County Commission of Randolph County at Deed Book 603, page 232 (the "Deed"), that certain real property situate in Elkins Corporation District, Randolph County, on the east side of Baxter Street between Eleventh Street and Chestnut Street in the City of Elkins, together with all improvements and appurtenances thereto, which real property shall be more particularly described in **EXHIBIT A – REAL ESTATE DESCRIPTION**, attached to the hereinafter described Lease and made a part hereof (the "Sanitation Garage Property");

WHEREAS, the City desires to design, acquire, construct and equip a Sanitation Department Garage located on the Sanitation Garage Property together with all necessary appurtenances in connection therewith (the "Project"; the Sanitation Garage Property, together with all rights of way, appurtenances, buildings, personal property and fixtures associated therewith, including, but not limited to, the Project improvements to be constructed thereon and all additions and improvements thereto now or hereafter acquired, created or constructed, of every kind and nature, herein called the "Facilities");

WHEREAS, the Issuer under the Act has plenary power and authority to issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided in the Act;

WHEREAS, the Issuer desires to issue its Lease Revenue Bonds, in one or more series, in an aggregate principal amount not to exceed $2,000,000 (the "Bonds") to (i) finance costs of the design, acquisition, construction and equipping of the Project, (ii) pay costs of issuance of the Bonds and related costs, (iii) repay any interim financing utilized to pay costs of the Project, (iv) fund a reserve account, if any, for the Bonds, and (v) pay capitalized interest, if any, on the Bonds;

WHEREAS, the City desires to lease the Facilities from the Issuer pursuant to an Agreement and Lease (the "Lease") to be dated on or prior to the Closing Date (as hereinafter defined), by and between the Issuer, as lessor, and the City, as lessee;

WHEREAS, the Issuer, pursuant to the Issuer Ordinance, has appointed the City to undertake the design, acquisition, construction and equipping of the Project including being party to any construction contracts and fulfilling the obligations of the City under such construction contracts as may be necessary in connection with same and for the purpose of requisitioning and applying the proceeds of the Bonds to the payment of the costs of the Project and the costs of issuance of such Bonds and related costs, and the City desires to authorize such actions on its part pursuant to this Ordinance; and

WHEREAS, the City desires to take all steps necessary to authorize its undertaking of the design, acquisition, construction and equipping of the Project, its requisitioning of the Bond proceeds and application thereof to the payment of the costs of the Project and the payment of costs of issuance of the Bonds, its leasing of the Facilities from the Issuer pursuant to the terms of the Lease and to permit the Issuer to promptly proceed with the issuance of the Bonds;

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

Section 1. Pursuant to the Act, this Ordinance is adopted and enacted and it is hereby found and determined that, to accomplish the purposes of the Act and the findings set forth in the preambles hereof, the following is hereby authorized and approved: (i) the design, acquisition, construction and equipping of the Project by the City including but not limited to engaging such architects and other professionals for the design of the Project, undertaking such public bidding processes, providing notice of award and notice to proceed to such construction contractors, entering into such construction contracts, purchase agreements and other documents as may be necessary in connection with same and performing under such agreements, and requisitioning the proceeds of the Bonds to pay costs of the Project and costs of issuance of the Bonds and related costs, (iii) the leasing of the Facilities by the City from the Issuer pursuant to the terms of the Lease and the payment of such lease rentals and other payments by the City which are provided for pursuant to the Lease, and (iv) the issuance and delivery of the Bonds by the Issuer in the aggregate principal amount of not to exceed $2,000,000 for the purpose of financing costs of the design, acquisition, construction and equipping of the Project, the payment of costs of issuance of the Bonds and related costs, the repayment of any interim financing incurred by the City to pay costs of the Project, the funding of a reserve account, if any, for the Bonds and the payment of capitalized interest, if any, on the Bonds, are hereby authorized, approved, ratified and confirmed. The Bonds shall be issued in accordance with, and shall have the terms provided in, the Issuer Ordinance authorizing the issuance of the Bonds, which Issuer Ordinance is hereby approved.

Section 2. The City hereby agrees to undertake all actions necessary for the design, acquisition, construction and equipping of the Project and to requisition and apply the proceeds of the Bonds to the payment of the costs of the Project, the costs of issuance of the Bonds and related costs, and to execute all construction contracts, requisitions, certificates or other documents necessary in connection therewith, and to give any and all authorizations as may be necessitated thereby. The City hereby authorizes and approves the payment of costs of the Project which may be incurred prior to the issuance of the Bonds from its Sanitation Fund and the reimbursement of such fund from the proceeds of the Bonds following their execution and delivery.

Section 3. The Lease, by and between the Issuer, as lessor, and the City, as lessee, pursuant to which the City will lease the Facilities from the Issuer and will agree to pay as Lease Rentals (but only from the sources set forth therein), amounts sufficient to pay the principal of and interest on the Bonds and any other amounts payable thereunder, substantially in the form as shall be approved pursuant to a resolution to be adopted by the City which will supplement this Ordinance (the "Supplemental Resolution") is hereby approved, with such changes, variations, insertions and omissions as may be approved by the Mayor of the City. The Mayor of the City is hereby authorized to execute, acknowledge, as necessary, and deliver the Lease and the City Clerk of the City is hereby authorized and directed to affix the seal of the City thereto and to attest the seal. The execution of the Lease by the Mayor shall be conclusive evidence of any approval required by this Section.

Section 4. The Lease Assignment (the "Assignment"), by the Issuer to the purchaser of the Bonds as shall be approved by the Supplemental Resolution (the "Purchaser"), pursuant to which the Issuer shall assign certain of its rights under the Lease and rentals thereunder, to be dated or effective as of the Closing Date, substantially in the form as shall be approved by the Supplemental Resolution, shall be and the same is hereby approved, with such changes, variations, insertions and omissions as may be approved by the Issuer. The execution of the Assignment by the Chairman of the Issuer shall be conclusive evidence of any such approval.

Section 5. The Assignment of Funds and Accounts (the "Funds Assignment"), by the Issuer to the Purchaser, pursuant to which the Issuer shall assign its rights in and to certain funds and accounts established in connection with the Bonds pursuant to the Lease, to be dated or effective as of the Closing Date, substantially in the form as shall be approved by the Supplemental Resolution shall be and the same is hereby approved, with such changes, variations, insertions and omissions as may be approved by the Issuer. The execution of the Assignment by the Chairman of the Issuer shall be conclusive evidence of any such approval.

Section 6. The Credit Line Deed of Trust, Fixture Filing and Security Agreement (the "Deed of Trust") by the Issuer to the trustees named therein, pursuant to which the Issuer shall convey the Facilities to the trustees named therein, in trust, for the benefit and security of the Purchaser in the repayment of the Bonds, substantially in the form as shall be approved by the Supplemental Resolution shall be and the same is hereby approved, with such changes, variations, insertions and omissions as may be approved by the Issuer. The execution of the Deed of Trust by the Chairman of the Issuer shall be conclusive evidence of any such approval.

Section 7. The Bonds, substantially in the form approved pursuant to the Issuer Ordinance, shall be and the same are hereby approved in all respects, with such changes, variations, insertions and omissions as may be approved by the Issuer. Such approval shall constitute the approval of the issuance of the Bonds by an "applicable elected official" to the extent such approval may be required by any State or federal law. The Purchaser of the Bonds along with the interest rate and maturity date of the Bonds shall be approved by the City pursuant to the Supplemental Resolution.

Section 8. All covenants, stipulations, obligations and agreements of the City contained herein and contained in the Lease and all other instruments and documents relating thereto shall be deemed to be the special and limited covenants, stipulations, obligations and agreements of the City to the full extent permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the City and its successors from time to time and upon any board or body to which any powers or duties, affecting such covenants, stipulations, obligations and agreements, shall be transferred by or in accordance with law. Except as otherwise provided herein, all rights, powers and privileges conferred and duties and liabilities imposed upon the City or the officials thereof by the provisions hereof and by the Lease and all other instruments and documents relating thereto shall be exercised or performed by the City or by such officers, board or body as may be required or permitted by law to exercise such powers and to perform such duties.

No covenant, stipulation, obligation or agreement herein contained or contained in the Lease and all other instruments and documents relating thereto shall be deemed to be a covenant, stipulation, obligation or agreement of any officer, agent or employee of the City in his or her individual capacity and neither the City nor any officer or employee thereof shall be liable personally on the Lease or the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 9. The City hereby ratifies all prior actions taken by City officials and employees necessary to authorize and approve the design, acquisition, construction and equipping of the Project by the City.

Section 10. The firm of Steptoe & Johnson PLLC, Bridgeport, West Virginia, is hereby designated as bond counsel in connection with the issuance of the Bonds and the Mayor is hereby authorized to execute and deliver such engagement letters as may be necessary to retain such firm for these services.

Section 11. The execution, delivery and due performance of the Lease are hereby in all respects approved, authorized, ratified and confirmed, including, without limitation, all acts heretofore taken in connection with the design, acquisition, construction and equipping of the Project; the issuance of the Bonds and the leasing of the Facilities, and it is hereby ordered that the Mayor, the City Clerk, the council members and other employees and officers of the City execute and deliver such other documents, certificates, agreements and instruments and take such other action as may be required or desirable to carry out the purposes of this Ordinance, the Bonds and the aforesaid documents, certificates, agreements and instruments.

Section 12. All ordinances, orders, resolutions or parts thereof in conflict with the provisions of this Ordinance are, to the extent of such conflict, hereby repealed.

Section 13. This Ordinance shall take effect immediately following the public hearing hereon and approval on second and final reading.

Section 14. Upon adoption on first reading 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 adopted and that the City contemplates the leasing of the Facilities and the issuance of the Bonds by the Issuer, and that any person interested may appear before the City upon a date certain, not less than ten days subsequent to the date of the first publication of the 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 of the City for review by interested parties during regular office hours. At such hearing, all objections and suggestions shall be heard and the Council of the City shall take such action as they shall deem proper in the premises.

First Reading: February 15, 2024

Enacted on Second Reading
Following Public Hearing: March 7, 2024

CITY OF ELKINS

By: ___________________________
Its Mayor

18932814.1

CERTIFICATION

The undersigned, being the duly qualified, elected and acting City Clerk of the City of Elkins does hereby certify that the foregoing Ordinance was duly adopted and enacted by the council of the City of Elkins at regular meetings duly held, pursuant to proper notice thereof, on February 15, 2024 and March 7, 2024, quorums being present and acting throughout, and which Ordinance has not been repealed, rescinded, modified, amended or revoked and is a true, correct and complete copy thereof as witness my hand and the seal of the City of Elkins this ________, 2024.

By: ___________________________
City Clerk, City of Elkins

18932814.1

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Ordinance
Agenda Item Name:	Ordinance 322: An Ordinance Of The Common Council Of Elkins, West Virginia Amending Sections Of City Code, Chapter 152, Zoning Regarding Sign Regulations (first of two readings)
Recommended By:	Planning Commission
Summary:	Elkins City Code defines two types of electronic signs. One kind, "animated signs" (such as the billboard near the car wash on Randolph Avenue, which is grandfathered in) are prohibited in Elkins. Another kind, "electronic message display signs," was limited to the "monument sign" format. This ordinance clarifies rules concerning "multi-tenant signs" (such as at a shopping center) and allows EMD signs on multi-tenant signs.
Fiscal Impact:	None
Recommendation:	Consider for approval
Attachments:	1. zoning code LED vs electronic message displays 2. O-322 - zoning of electronic message signs and multi-tenant

Summary of Elkins Zoning Laws Concerning Certain Kinds of Electronic Signs

Elkins City Clerk
October 10, 2023

Elkins prohibits “animated signs,” “flashing signs,” and “signs displaying flashing, scrolling, or intermittent lights of changing degrees of intensity.” Elkins allows (in certain districts, including Commercial) “Static electronic message display signs” and “Static electronic message display signs and static electronic message display with transition feature signs” (transitions cannot occur more often than every seven seconds).

As of October 10, 2023, the following West Virginia cities impose similar restrictions (based on search at https://codelibrary.amlegal.com/): Bridgeport, Granville, Fayetteville, Weston, Moundsville, Saint Albans, South Charleston, Lewisburg, Marmet, Phillipi, Nitro, Wheeling, Clarksburg, White Hall, Mannington, and Winfield. (There may be others; these are drawn only from West Virginia cities using American Legal Publishing’s online code service.)

Relevant code sections are excerpted below. Where code gives the exception “except where… expressly permitted,” none of the given signs are currently “expressly permitted” in the Elkins zoning code. Review Elkins sign laws here: https://codelibrary.amlegal.com/codes/elkinswv/latest/elkins_wv/0-0-0-13161

§ 152.223 PROHIBITED SIGNS.

(5) Animated signs, except where animated sign features as part of an electronic message display are expressly permitted.

(6) Flashing signs or other signs displaying flashing, scrolling, or intermittent lights or lights of changing degrees of intensity, except where flashing sign features as part of an electronic message display are expressly permitted.

§ 152.224 GENERAL REQUIREMENTS.

(G) *Electronic message display (EMD) signs.* Static electronic message display signs and static electronic message display with transition feature signs are permitted only as monument signs. All other EMDs are prohibited.

[From § 152.056 DEFINITIONS (19) ***MONUMENT SIGN.*** A sign affixed to a structure built on grade in which the sign and the structure are an integral part of one another; not a pole sign.]

§ 152.056 DEFINITIONS.

(2) ***ANIMATED SIGN.*** A sign or part of a sign that is designed to rotate, move, or appear to rotate or move. Such a sign is sometimes referred to as a ***MOVING SIGN***. ***ANIMATED SIGNS*** include signs with moving graphic features such as scrolling text or images that appear to move; moving sign change features such as fly-in, wipe-off, fading, dissolving, traveling, or expanding displays or any other full message sign change taking longer than three-tenths of a seconds; and static electronic message displays displayed less than seven seconds. ***ANIMATED SIGNS*** also include signs propelled by vehicle, watercraft, or aircraft where the primary purpose of the vehicle, watercraft, or aircraft at the time of sign display is to propel the sign.

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(9) ***ELECTRONIC MESSAGE DISPLAY.*** A sign that is either light emitting or light reflective and that is capable of changing the displayed message through electronic programming. ***ELECTRONIC MESSAGE DISPLAYS*** are divided into four categories:

(a) ***STATIC ELECTRONIC MESSAGE DISPLAY.*** An electronic message display that remains static, with no animated features or animated transition features with each static display lasting longer than seven seconds.

(b) ***STATIC ELECTRONIC MESSAGE DISPLAY WITH TRANSITION FEATURES.*** An electronic message display that remains static except for no more than a two-second transition feature such as fading, dissolving or a single instance of fly-in, wipe-off, expansion, or traveling that occurs no more often than every seven seconds.

(c) ***ELECTRONIC MESSAGE DISPLAY, PARTIALLY ANIMATED.*** An electronic message display with animated or moving text or graphics.

(d) ***ELECTRONIC MESSAGE DISPLAY, FULLY ANIMATED.*** An electronic message display with full animation features.

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(12) ***FLASHING SIGN.*** A sign that includes lights that flash, blink, turn on and off intermittently, or otherwise vary light intensity during the display of a message.

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(19) "***MONUMENT SIGN.*** A sign affixed to a structure built on grade in which the sign and the structure are an integral part of one another; not a pole sign.

§ 152.231 SIGNS FOR EDUCATIONAL (E) AND COMMERCIAL (B-1) DISTRICTS.

(A) *Purpose*. Signage in Educational (E) and Commercial (B-1) Districts is allowed to a somewhat greater extent, while maintaining proportion to the size and scope of uses typically present. However, even these more intensive uses in smaller communities are limited in signage to some degree in order to maintain small-town character and limit visual distraction by signage.

(1) Permitted sign use as accessory to dwellings shall be the same as for § 152.228.

(2) *Signs permitted as accessory to non-dwellings*.

(a) *Permitted permanent sign use as accessory to non-dwellings*. A-frame, awning, canopy, chalkboard, changeable copy, static electronic message display, static electronic message display with transition feature, freestanding, geological, marquee, minor, monument, neon, projecting, temporary, topiary, wall, and window signs. Only one of each is permitted per use per frontage, except wall signs and window signs. More than 200 square feet of frontage is required for a use to have more than one pole sign. No more than six permanent signs are permitted by right per use.

(b) *Permitted temporary signs as accessory to non-dwellings*. A-frame, banner, chalkboard, minor, person-assisted, wall, wicket, window. No more than six temporary signs are permitted in one calendar year per use.

(c) No more than three flags as accessory to a non-dwelling are permitted.

(3) Off-premises signs are prohibited.

(B) *Dimension specifications chart*. All maximum sign area requirements include the sum total sign area of all signs per use.

	Freestanding, Monument, and Wall Signs	*All Other Signs*	*Temporary Signs*	*Flags*
Max. sign area	1 sq. ft. per 1 ft. of lineal frontage, not to exceed 32 sq. ft.	0.5 sq. ft. per 1 ft. of lineal frontage, not to exceed 24 sq. ft.	6 sq. ft. displayed at one time	60 sq. ft. ea.
Max. height	8 ft.	4 ft.	4 ft.	40 ft.

ORDINANCE 322

AN ORDINANCE OF THE COMMON COUNCIL OF ELKINS, WEST VIRGINIA AMENDING SECTIONS OF CITY CODE, CHAPTER 152, ZONING

WHEREAS, the Common Council previously adopted a zoning ordinance which is codified in City Code Chapter 152, Zoning; and

WHEREAS, following the enactment of the zoning ordinance there have been several instances where the imposition of the sections of Chapter 152, Zoning regarding certain sign regulations has proven problematic in their application; and

WHEREAS the Elkins Planning Commission has met and reviewed the instances where sign permits cannot be issued because of certain sign regulations which are applicable ; and

WHEREAS, the Elkins Planning Commission has voted , pursuant to City Code §152.04, thereby recommending to the Common Council that certain designated sections of Chapter 152; Zoning, only concerning sign regulations be amended ; and

WHEREAS it appears that the Elkins Planning Commission has made the recommendation in furtherance of its authority and responsibilities to advise Council of any amendments to Chapter 152: Zoning; and

WHEREAS, the Common Council has determined that by accepting the recommendation of the Elkins Planning Commission it is in the best interest of the citizens of the City.

NOW THEREFORE BE IT ORDAINED and ENACTED by the Common Council that City Code, Chapter 152: Zoning be amended to add the following language to the noted sections:

§152.056 Definitions

Multi-Tenant Sign

A freestanding sign structure at or near the entrance of a shopping center to which are affixed signs of various dimensions identifying tenants or businesses in the shopping center.

Non-Conforming Sign

A sign which was lawfully erected in compliance with the applicable regulations of the City prior to the effective date of this Zoning Code and which does not conform to current standards and regulations of this Zoning Code.

For muti-tenant signs at a shopping center, the addition of new signs not otherwise complying with the size restrictions of this Zoning Code shall be considered non-conforming as in compliance with this definition, provided that the addition of new signs, subject to the approval of the Zoning Officer, does not substantially change the overall dimensions of the original multi-tenant sign.

§152.224 General Requirements

(G) Electronic message display (EMD) signs, static electronic message signs and the static electronic signs display with transition feature signs are permitted only as monument signs, except in the instance of multi-tenant signs at shopping centers.

The changes and amendments to Chapter 152: Zoning are only to the sections referred to herein and all other sections of said Chapter shall remain in full force in effect.

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

This Ordinance shall become effective upon passage.

PASSED AND APPROVED ON THE FIRST READING: ____________________, 2024.

PASSED AND APPROVED ON THE SECOND AND FINAL READING: _______________, 2024.

CITY OF ELKINS, WEST VIRGINIA

____
Jerry A. Marco, Mayor

Attest:

____
Sutton Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Ordinance
Agenda Item Name:	Ordinance 323: An Ordinance Of The Common Council Of Elkins, West Virginia Eliminating Sections Of City Code, Chapter 112, Solicitors and Canvassers (first of two readings)
Recommended By:	City Clerk
Summary:	The attached ordinance eliminates the current requirement in city code for door-to-door solicitors to register with the city clerk. See attached memo for explanation of the recommended change.
Fiscal Impact:	None
Recommendation:	Consider for approval
Attachments:	1. Memo - eliminate solictor licenses - 2024_02_02 2. ORDINANCE 323 (Repealing Sections of Chapter 112) 3. elkinswv-wv-1 (48)112.15-112.19

Memo

To: Rules & Ordinances Committee

From: Sutton Stokes, City Clerk

Date: Feb. 2, 2024

Re: Elimination of solicitor licenses

This memo recommends elimination of special licensing requirements for door-to-door salespeople (“solicitors”).

City code § 112.15 currently requires solicitors to register with the City Clerk and receive a permit before engaging in door-to-door sales. To register, code requires that they provide:

(A) The name, local and permanent addresses, age, weight, height, color of hair and eyes and any other distinguishing physical characteristics
(B) The nature or purpose for which solicitations will be made and the nature of the goods, wares, merchandise and services offered for sale; and
(C) The name and permanent address of the employer or organization represented.

After registration, they are provided with a “permit” for engaging in door-to-door sales.

This requirement wastes staff time and provides no clear public benefit.

It is not possible to vet or verify who these people are or the nature of the company they represent. Nonetheless, a city-issued permit may appear to lend legitimacy to citizens who are approached. “If the city issued a permit, this salesperson must be legitimate,” some people may think.

It seems that the intention of this law was to prevent scam artists or other criminals from pretending to be solicitors. If it were the case that someone without a permit could be prevented from knocking on doors, and if therefore everyone who knocked on doors had had to identify themselves at city hall, this might tend to reduce the number of criminals willing to try to knock on doors.

Obviously, however, law-abiding people will get the permits unnecessarily, criminals will feel free to knock on doors and commit crimes, and dodgy sales operations (i.e., most door-to-door solicitors) may use our permit to claim nonexistent background checking or other vetting.

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ORDINANCE 323

AN ORDINANCE OF THE COMMON COUNCIL OF ELKINS, WEST VIRGINIA, ELIMINATING SECTIONS OF THE CITY CODE, CHAPTER 112, SOLICITORS AND CANVASERS

WHEREAS, the Common Council of the City of Elkins has previously enacted an ordinance which is codified in Elkins City Code, Chapter 112, Solicitors and Canvassers, specifically §112.15 through §112.19; and

WHEREAS, the Rules and Ordinances Committee has reviewed the City Code sections referred to herein ,considered the issues of enforceability, the public perception that an issuance of a permit by the City is an endorsement or an approval of a solicitor and the possible liability associated with the issuance of a permit ; and

WHEREAS, the Rules and Ordinance Committee, upon consideration of these issues, has recommended that these specific sections of Chapter 112, Solicitors and Canvassers , § 112.15 through § 112.19 be repealed; and

WHEREAS, the Common Council has reviewed the Committee's recommendation and the specific sections referred to herein of Chapter 112, Solicitors and Canvassers, and believes that it would be in the best interest of the citizens of Elkins to repeal Elkins City Code, Chapter 112, Solicitors and Canvassers, §112.15 through §112.19.

NOW THEREFORE, be it Ordained and Enacted by the Common Council of the City of Elkins that Elkins City Code, Chapter 112, Solicitors and Canvassers, §112.15 through §112.19 be REPEALED. All other sections of Chapter 112, Solicitors and Canvassers shall remain in full force and effect.

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

This Ordinance shall become effective upon passage.

PASSED AND APPROVED ON THE FIRST READING: ____________________, 2024.

PASSED AND APPROVED ON THE SECOND READING: __________________, 2024.

CITY OF ELKINS, WEST VIRGINIA

____

Jerry A. Marco, Mayor

Attest:

____

Sutton Stokes, City Clerk

SOLICITORS AND CANVASSERS

§ 112.15 DEFINITION.

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

SOLICITOR. A person who goes from door to door, visiting multi-family or single-family dwellings or places of business for the following purposes:

(1) To sell goods, wares, merchandise or services or accept subscriptions or orders therefor; and

(2) To accept or request donations for any purpose.

(1991 Code, § 17-1)

§ 112.16 REGISTRATION.

All persons, before entering into or upon a residential or business premises within the city for the purpose of soliciting, shall register with the City Clerk and furnish the City Clerk with the following information:

(A) The name, local and permanent addresses, age, weight, height, color of hair and eyes and any other distinguishing physical characteristics of the applicant;

(B) The nature or purpose for which solicitations will be made and the nature of the goods, wares, merchandise and services offered for sale; and

(C) The name and permanent address of the employer or organization represented.

(1991 Code, § 17-2)

§ 112.17 ISSUANCE, TERM AND DISPLAY OF PERMIT.

(A) Upon furnishing the information required under § 112.16, the applicant shall be issued a permit 24 hours from the date of submission of the application.

(B) A permit issued under this subchapter shall be valid for one year from the date of issuance.

(C) Every solicitor shall carry his or her permit with him or her at all times while engaged in soliciting, and shall display such permit to any person who shall demand to see such permit while he or she is so engaged.

(1991 Code, § 17-3)

§ 112.18 PROHIBITED ACTS.

No person shall:

(A) Enter into or upon a residential or business premises in the city under false pretenses, to solicit for any purpose;

(B) Remain in or on any residential or business premises after the owner or occupant, or his or her agent or employee, has requested any such person to leave;

(C) Enter upon any residential or business premises for soliciting, when the owner or occupant, or his or her agent or employee, has displayed a “No Soliciting” sign on such premises;

(D) Engage in the practice of soliciting in the city without a permit, as provided by this subchapter and

(E) Knowingly give false information or withhold correct information in obtaining a permit.

(1991 Code, § 17-5) Penalty, see § 112.99

§ 112.19 EXCEPTIONS.

The provisions of this chapter, except § 112.18, shall not apply to:

(A) Any person who visits any residence or business at the request or invitation of the owner or occupant, or his or her agent or employee;

(B) Newsboys soliciting subscriptions to any newspaper for home delivery within the city; and

(C) Route delivery persons who make deliveries at least once a week to regular customers and whose solicitation is only incidental to their regular deliveries.

(1991 Code, § 17-6)

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1716: Delegation of ABCA endorsement authority from council to mayor
Recommended By:	Rules & Ordinances Committee
Summary:	This resolution delegates authority to the mayor or the mayor's designeer to endorse applications to ABCA for Floorplan Extensions and Fair and Festival Permits. The purpose is to avoid unnecessary delays in granting endorsement to businesses and organizations trying to plan special events in the Elkins community.
Fiscal Impact:	None
Recommendation:	Consider for approval
Attachments:	1. Memo - delegate ABCA endorsement authority - 2024_02_02 2. R-1716 - Delegation of ABCA endorsement authority from council to mayor

Memo

To: Rules & Ordinances Committee

From: Sutton Stokes, City Clerk

Date: Feb. 2, 2024

Re: Delegation of ABCA endorsement authority

This memo recommends the delegation of council's authority to endorse applications to the W. Va. Alcoholic Beverage Control Administration (ABCA) for two categories of special/temporary licenses to sell alcoholic liquors and/or nonintoxicating beer/craft beer.

- Fair and Festival Permits allow for events on private property to sell liquor and beer for on-premises consumption. E.g., homecoming concert at D&E.
- Floor Plan Extensions allow for currently licensed bars/restaurants to sell nonintoxicating beer (i.e., beer) in an area, often outside, that is contiguous with the licensed property. E.g., when Beanders serves beer in a tent in the alley next to its establishment.

Applications for these permits in Elkins require endorsement by the city's governing body. Currently, these permits are approved as council agenda items. However, this can introduce delays for applicants, who are asked by ABCA to apply well in advance of their events to ensure time for processing.

This memo recommends delegating this authority to the mayor.

Questions to be resolved:

- Are there certain types of these events that council should retain approval authority for? For example, a floorplan extension that involves a public right-of-way (like the Beander's example above). Keep in mind that, if alcohol were not being served, a request to close an alley or street is currently reviewed and approved by administrative officers.
- What criteria might be given to the mayor for declining to approve such an event? Should the resolution simply state that the mayor has the discretion to bring an event to council if he or she is not sure it should be approved?

For what it is worth, events serving only nonintoxicating beer are not violating any city laws, even if they are allowing people to drink on a public right of way (e.g., the Beander's example). There is no prohibition in Elkins City Code against drinking beer in public.

##

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

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

(#1716)
February 15, 2024

Delegating Authority to the Mayor or a the Mayor's Designee to Endorse Applications to ABCA for Floorplan Extensions and Fair and Festival Permits

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WHEREAS, W. Va. State Code assigns regulation of the sale and service of beverages containing alcohol to the W. Va. Alcoholic Beverage Control Administration ("ABCA"); and,

WHEREAS, Class A Licensees are eligible to apply to ABCA for Floor Plan Extensions, allowing them to temporarily extend service to an area contiguous to their licensed premises (per W. Va. Code §11-16-3); and,

WHEREAS, other entities and organizations are eligible to apply to ABCA for Fair and Festival Permits, allowing them to provide the retail sale of alcoholic liquors and nonintoxicating beer for on-premises consumption for no more than 10 consecutive days (per W. Va. Code §60-7-8a); and,

WHEREAS, in both cases, these applications must be endorsed or approved by the governing body of the jurisdiction where the license or event is located;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby delegates to the Mayor or the Mayor's designee the authority to provide the required endorsement or approval for applications to ABCA for both Floorplan Extensions and Fair and Festival Permits.

____
Jerry A. Marco, Mayor

Attest:

____
Sutton R. Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1717: Reappointing S. Bennett to the Water Board
Recommended By:	Mayor, Chief Operator of the Elkins Public Water System
Summary:	Shawn Bennett is currently a member of the Elkins Water Board, which manages the Elkins Public Water System. His term ends March 31. This resolution appoints him to a new four-year term, expiring March 31, 2028.
Fiscal Impact:	None
Recommendation:	Consider for approval
Attachments:	1. R-1717 - Reappointment of Bennett to the Water Board

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

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

(#1717)
February 15, 2024

Reappointment of S. Bennett to the Elkins Water Board

WHEREAS, Shawn Bennett's term on the Elkins Water Board expires March 31, 2024; and,

WHEREAS, the Common Council of the City of Elkins wishes to reappoint Mr. Bennett for an additional four-year term beginning April 1, 2024; and,

WHEREAS, the incumbent wishes to continue to serve on the Elkins Water Board;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby reappoints Shawn Bennett to the Elkins Water Board for a term to end on March 31, 2028.

____
Jerry A. Marco, Mayor

Attest:

____
Sutton Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1718: Revision of the policy for government closure during weather and similar emergencies
Recommended By:	Personnel Committee
Summary:	The city's current policy for closing in response to weather and related emergencies forces the city to close whenever the governor declares a state of emergency and shifts employee pay status as of the effective time of the announcement. This is not a good practice, as the announcement and effective time of these declarations rarely coincides with the actual arrival of inclement weather. The attachments show proposed changes to this policy that would shift authority for initiating and announcing closures to the mayor, in consultation with the appropriate staff. Certain other changes clarify compensation changes during emergency closures and related details. • One attachment shows all new language and struck out old language, based on the current policy. (File name ending "marked up") • The other attachment simply shows all new and retained language, for easier reading. (File name ending "after changes")
Fiscal Impact:	Potential cost-savings due to personnel spending less time in emergency pay status
Recommendation:	Consider for approval
Attachments:	1. R-1718 - amending personnel policy concerning inclement weather closures 2. Recommended Revision of the Emergency Closure Plan - marked up 3. Recommended Revision of the Emergency Closure Plan - after changes

CITY OF ELKINS
AGENDA ITEM REPORT

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1718)
February 15, 2024

Amending the City of Elkins Personnel Policy to Revise the Section Concerning Government Closures During Inclement Weather

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

WHEREAS, Council's Personnel Committee has recommended revisions to the Manual's section concerning government closures during inclement weather (attached and made part of this record); and

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

RESOLVED, that the Elkins Common Council hereby adopts the attached revisions to the Manual's policy concerning government closures during inclement weather.

____
Jerry A. Marco, Mayor

Attest:

____
Sutton Stokes, City Clerk

Recommended Revision of the Emergency Closure Plan

See below for recommended changes to the city's policies concerning closures for inclement weather and similar emergencies.

Deletions are marked with strikethroughs; new text is highlighted yellow.

8. H: Inclement Weather & Related Emergencies

Section H: Inclement Weather and Emergencies

Employees are expected to exercise appropriate judgment if faced with inclement weather or emergency conditions. While employees should not jeopardize their personal safety unnecessarily to get to work or remain on the job for the full workday, neither should they overreact to normal fluctuations in the weather.

If local weather or similar conditions warrant, the city government may announce a closure. This section provides guidance for how work schedules and compensation may adjust during emergency closures of the city government. This section also explains how closure times will be determined and announced.

H.1. Essential and Non-essential Employees

When the city government is closed because of inclement weather or emergencies, employees are affected differently depending on whether they are considered "essential" or "non-essential." These categories are defined below. ~~So far as practical, supervisors should inform employees of their "essential" or "non-essential" status in advance of the arrival of inclement weather or emergency conditions.~~

H.1.1. Essential Employees

Essential employees are those whose work duties either involve responding to weather/emergency conditions (e.g., snowplow or equipment operators) or cannot be suspended without posing danger to persons and/or property (e.g., first responders, plant operators, etc.). Availability for response to emergencies is a condition of employment for many city positions. Check with your supervisor if you are not sure whether your position would be considered "essential" during an emergency closure.

When the city government is closed because of weather or other emergencies, essential employees should report for or remain at work as usual or otherwise operate as directed by their supervisors.

As of the announced closure time (explained below), essential workers will be paid under the terms of the Call-Out Policy described earlier in this document. That is, essential workers will only be paid for hours actually worked, but they will be entitled to a minimum of two and one-half hours' overtime pay each time they report for a new shift during the emergency. They will be paid one-and-a-half times their usual rate for all hours worked during the emergency. Essential workers are not required to punch out for meals during the emergency.

~~automatically receive Call-Out Pay and begin receiving time-and-a-half emergency pay,~~

~~regardless of the total number of hours worked so far that week. Essential workers will continue to be paid for all hours worked during the declared emergency at a rate of time-and-a-half their usual pay rate, regardless of the total number of hours worked. Essential workers will be entitled to an additional Call-Out Pay payment each time they report to work during the emergency. E~~

~~For time worked during such closures, hourly essential employees receive Call-Out Pay (section C, above) and are paid time-and-a-half for actual hours worked. For time worked during such closures, exempt essential employees receive one hour of compensatory time for each hour worked. (See below for more information.)~~

~~are paid as per the city's Call-out Policy (see section C, above).~~

H.1.2. Non-Essential Employees

Non-essential employees are those whose work (1) does not involve responding to the weather/emergency condition and (2) can be suspended temporarily without posing danger to persons and/or property.

When the city government is closed, non-essential employees are excused from work but continue to receive the same pay they would have received for all previously scheduled shifts that they would have worked if not for the closure.

When the city government is closed because of weather or other emergencies, non-essential employees should not report to work or perform any non-essential work without authorization from the appropriate administrative officer. Some employees generally considered non-essential may be needed from time to time during the emergency to perform essential tasks related to the emergency (e.g., periodic public-facing communication; analysis and decision-making concerning the duration of the closure; or coordination of response to the emergency). Availability for such tasks is a condition of employment for some city positions. Check with your supervisor if you are not sure whether some of your job duties might be considered essential during an emergency closure.

If hourly non-essential employees perform any work for the city during the closure, they will be compensated at time and a half. If exempt non-essential employees perform any work for the city during the closure, they will receive one hour of compensatory time for each hour worked. (See below for more information.)

~~Non-essential employees' pay status for those hours the city is closed is the same as when they work a normal workday, and they are not charged for annual leave, personal days or compensatory time.~~

~~H.2. Unscheduled Time Off~~

~~Because of the wide geographic area in which city employees reside, some employees may face substantially different conditions near their residences than are occurring in Elkins. The city cannot excuse some employees when the city is otherwise open. In this case, an employee has the option of using unscheduled time off. There are two different circumstances when this might occur: (1) when the city is open or, (2) for essential~~

~~employees, when the city is closed.~~

~~H.2.1. Unscheduled Time Off when City is Open~~

~~When the city is open, but, in an employee's best judgment, conditions make it unsafe to travel to work, that employee may be excused from work by using accrued annual leave, personal days, or compensatory time. Similarly, an employee already at work might decide to leave early because of worsening conditions that lead that employee to believe that it will soon be unsafe to travel home. Such an employee must also use accrued annual leave, personal days, or compensatory time.~~

~~Employees electing not to report to work under this "unscheduled time off" option must notify their supervisors no later than 45 minutes after the start of their standard workday, or as soon as possible thereafter when such communication is not possible or safe; such notice should include whether they intend to use annual leave, personal days, or compensatory time for the hours they were scheduled to work.~~

~~Employees electing to leave work early under this option must similarly document their decision and reasons to their supervisor.~~

~~Failure to provide this notification may result in the absence being considered unauthorized; disciplinary action may result.~~

~~Where possible, supervisors should allow employees to make up missed time; to avoid unnecessary overtime charges, this makeup time should occur during the same week when the time was missed unless extraordinary circumstances prevent this.~~

~~H.2.2. Unscheduled Time Off when City is Closed~~

~~If the city is closed but an essential employee believes that conditions make it unsafe to travel to work, that employee may be excused from work by using accrued annual leave, personal days, or compensatory time. Overuse of this option may result in a determination that the employee is not suited for a position considered "essential."~~

H.3. Closures Announced During a Workday

It may happen that the city is open at the beginning of a workday but must be closed later, due to the onset of severe weather or other emergency conditions.

As of the announced closure time, essential employees will operate and be compensated as described in section H.1.1., "Essential Employees." They will receive Call-Out Pay as of the announced closure time, provided that they remain on-site and available for work as directed by their supervisors.

As of the announced closure time, non-essential employees will operate and be compensated as described in section H.1.2., "Non-Essential Employees." These employees' excused paid period commences as of the announced closure time.

~~In this case, as described in section H.1.2 ("Non-Essential Employees"), all non-essential employees present at work when the closure is announced will be excused as of the announced closure time but remain on a normal workday pay status for the period of the standard workday remaining after the announced closure time; they will not be charged for annual leave, personal days, or compensatory time.~~

~~In the situation in which a closure is announced after the start of a standard workday, there might be some employees who will have already made the individual determination to either stay home or to depart from work early because of weather or emergency conditions (i.e., as described in section H..2.1., "Unscheduled time off when the city is open").~~

~~Employees who, before a closure was announced, requested unscheduled time off because of weather or emergency conditions will be charged for annual leave, personal days, or compensatory time for all time missed *before the closure announcement*. Starting at the announced closure time, they will stop being charged for annual leave, personal days, or compensatory time and return to a normal workday pay status for the remaining period of the standard workday.~~

H.4. Delayed Openings

When conditions require delaying the start of the workday, non-essential employees will be excused and essential employees must report, as described in sections H.1.1 "Essential employees" and H.1.2. "Non-essential employees."

H.5. Employees Unavailable for Work

During a closure, early closing, or delayed opening, the status of any employees who are already absent due to illness or on previously scheduled time off will not be affected. They will be charged ~~either~~ for sick leave, annual leave, personal days, or compensatory time, as previously planned.

H.6. Closure Announcements

Closures will be announced by the Mayor or the Mayor's designee. Closure decisions will be made by the Mayor or the Mayor's designee, after consultation with appropriate staff, depending on the nature of the emergency. Emergency announcements from other levels of government will not automatically result in a closure of the city government.

H.6.1. Announced Closure Time

In the closure announcement, the Mayor or the Mayor's designee will specify the closure time. The announced closure time will signal the beginning of special emergency pay status for essential workers (see H.1.1., above). The announced closure time will signal the beginning of the paid excused period for non-essential workers (see H.1.2., above). ~~As of the announced closure time, essential workers will automatically receive Call-Out Pay and begin receiving time-and-a-half emergency pay, regardless of the total number of hours worked so far that week. Essential workers will continue to be paid for all hours worked during the declared emergency at a rate of time-and-a-half their usual pay rate, regardless of the total number of hours worked. Essential workers will be entitled to an additional Call-Out Pay payment each time they report to work during the emergency. Essential workers are not required to punch out for meals during the emergency.~~

H.6.2. Announced End-of-Closure Time

The Mayor or the Mayor's designee will announce the date and time of the lifting of the emergency, after consultation with appropriate staff, ~~the Operations Manager and/or other administrative officers~~, depending on the nature of the emergency.

For non-essential workers, the announced end time will signal the end of their paid excused period. As of the announced end time, non-essential workers will be expected to report for work at the beginning of their next regularly scheduled workday and return to their normal work schedules thereafter.

For essential workers, the announced end time will signal the end of their special pay status. As of the announced end time, essential workers will be released from special emergency duties. These workers will be expected to report for the beginning of their next regular workday and return to their normal work schedules thereafter.

~~There are several ways that a closure may be announced. All of the following will constitute announcement of a closure, excusing non-essential employees without charges against annual leave, personal days, or compensatory time and triggering call-out pay for essential employees who report for work:~~

1. ~~Announcement by the mayor that city hall is closed or will be opening late due to weather or citywide emergency conditions. (Closure or delayed opening of the city hall building because of internal conditions, such as a burst pipe or loss of heat, will only affect employees assigned to work inside city hall.)~~
2. ~~Declaration by the mayor of a state of emergency for the City of Elkins.~~
3. ~~Announcement by Randolph County officials that the Randolph County Courthouse is closed due to city/countywide weather or emergency conditions.~~
4. ~~Declaration of a countywide state of emergency by Randolph County officials.~~
5. ~~Declaration by the governor of a statewide state of emergency.~~
6. ~~Declaration by the governor of a state of emergency for Randolph County or the City of Elkins.~~
7. ~~Announcement of delayed reporting for state employees, either statewide or in Randolph County. (In this case, city employees will be expected to report at the announced reporting time for state employees.)~~

~~Employees are advised that the governor or other state or local officials may make public statements that include the word "emergency"~~ ~~*without actually declaring a state of emergency.*~~

~~For example, the governor may make a statement to the effect that "non-emergency travel should be suspended." Such announcements~~ ~~*do not*~~ ~~constitute declaration of a state of emergency; unless~~ ~~*state employees*~~ ~~are being explicitly ordered not to report for work, either statewide or in Randolph County, these announcements~~ ~~*do not*~~ ~~constitute closure announcements for City of Elkins personnel.~~

~~In the event of any declaration of a state of emergency, city hall will be closed for either:~~

1. ~~The remainder of the current workday (if the state of emergency is declared during a workday), or~~
2. ~~The next full workday (if the state of emergency is declared outside of city hall's regular business hours; but see exception below).~~

~~Exception: a state of emergency declared between 4:30 p.m. on a Friday and 4:30 p.m. on the following Sunday will not trigger an automatic closure of city hall; in such cases, the mayor will announce any closures related to the circumstances that triggered the state of emergency. However, in the case of states of emergency declared during or extended to include weekends and/or holidays, essential employees normally assigned to weekend or holiday work hours (e.g., water and wastewater plant operators and wastewater collection employees) will receive call-out pay for any such hours worked while other employees are earning call-out pay for work assignments related to hazardous weather conditions (e.g., snowplow operators).~~

~~After the first workday on which a closure has been triggered by a state of emergency (as described above), and after local conditions have been evaluated, the mayor will announce either any further closures or the time of the reopening of city hall. Essential employees will receive call-out pay for hours worked between the effective time of any state-of-emergency declaration and any subsequent reopening of city hall, as announced by the mayor. (For other circumstances in which call-out pay is received, please see section 8.C of this manual.)~~

~~As usual, if local conditions make it unsafe to travel to work, employees should exercise the “unscheduled time off” options described above.~~

~~Closure announcements will be made over the following communication channels:~~

- ~~Homepage of city website: www.cityofelkinswv.com~~
- ~~City Facebook page: www.facebook.com/ElkinsCityHall~~
- ~~City Twitter feed: www.twitter.com/ElkinsCityHall~~

~~We will also supply any such announcements to local media outlets.~~

8. H: Inclement Weather & Related Emergencies

Section H: Inclement Weather and Emergencies

Employees are expected to exercise appropriate judgment if faced with inclement weather or emergency conditions. While employees should not jeopardize their personal safety unnecessarily to get to work or remain on the job for the full workday, neither should they overreact to normal fluctuations in the weather.

If local weather or similar conditions warrant, the city government may announce a closure. This section provides guidance for how work schedules and compensation may adjust during emergency closures of the city government. This section also explains how closure times will be determined and announced.

H.1. Essential and Non-essential Employees

When the city government is closed because of inclement weather or emergencies, employees are affected differently depending on whether they are considered "essential" or "non-essential." These categories are defined below.

H.1.1. Essential Employees

Essential employees are those whose work duties either involve responding to weather/emergency conditions (e.g., snowplow or equipment operators) or cannot be suspended without posing danger to persons and/or property (e.g., first responders, plant operators, etc.).

Availability for response to emergencies is a condition of employment for many city positions. Check with your supervisor if you are not sure whether your position would be considered "essential" during an emergency closure.

When the city government is closed because of weather or other emergencies, essential employees should report for or remain at work as usual or otherwise operate as directed by their supervisors.

As of the announced closure time (explained below), essential workers will be paid under the terms of the Call-Out Policy described earlier in this document. That is, essential workers will only be paid for hours actually worked, but they will be entitled to a minimum of two and one-half hours' overtime pay each time they report for a new shift during the emergency. They will be paid one-and-a-half times their usual rate for all hours worked during the emergency. Essential workers are not required to punch out for meals during the emergency.

H.1.2. Non-Essential Employees

Non-essential employees are those whose work (1) does not involve responding to the weather/emergency condition and (2) can be suspended temporarily without posing danger to persons and/or property.

When the city government is closed, non-essential employees are excused from work but continue to receive the same pay they would have received for all previously scheduled shifts that they would have worked if not for the closure.

When the city government is closed because of weather or other emergencies, non-essential employees should not report to work or perform any non-essential work without authorization from the appropriate administrative officer. Some employees generally considered non-essential may be needed from time to time during the emergency to perform essential tasks related to the emergency (e.g., periodic public-facing communication; analysis and decision-making concerning the duration of the closure; or coordination of response to the emergency).

Availability for such tasks is a condition of employment for some city positions. Check with your supervisor if you are not sure whether some of your job duties might be considered essential during an emergency closure.

If hourly non-essential employees perform any work for the city during the closure, they will be compensated at time and a half. If exempt non-essential employees perform any work for the city during the closure, they will receive one hour of compensatory time for each hour worked. (See below for more information.)

H.3. Closures Announced During a Workday

It may happen that the city is open at the beginning of a workday but must be closed later, due to the onset of severe weather or other emergency conditions.

As of the announced closure time, essential employees will operate and be compensated as described in section H.1.1., “Essential Employees.” They will receive Call-Out Pay as of the announced closure time, provided that they remain on-site and available for work as directed by their supervisors.

As of the announced closure time, non-essential employees will operate and be compensated as described in section H.1.2., “Non-Essential Employees.” These employees’ excused paid period commences as of the announced closure time.

H.4. Delayed Openings

When conditions require delaying the start of the workday, non-essential employees will be excused and essential employees must report, as described in sections H.1.1 “Essential employees” and H.1.2. “Non-essential employees.”

H.5. Employees Unavailable for Work

During a closure, early closing, or delayed opening, the status of any employees who are already absent due to illness or on previously scheduled time off will not be affected. They will be charged ~~either~~ for sick leave, annual leave, personal days, or compensatory time, as previously planned.

H.6. Closure Announcements

Closures will be announced by the Mayor or the Mayor’s designee. Closure decisions will be made by the Mayor or the Mayor’s designee, after consultation with appropriate staff, depending on the nature of the emergency. Emergency announcements from other levels of government will not automatically result in a closure of the city government.

H.6.1. Announced Closure Time

In the closure announcement, the Mayor or the Mayor’s designee will specify the closure time. The announced closure time will signal the beginning of special emergency pay status for essential workers (see H.1.1., above). The announced closure time will signal the beginning of the paid excused period for non-essential workers (see H.1.2., above).

H.6.2. Announced End-of-Closure Time

The Mayor or the Mayor's designee will announce the date and time of the lifting of the emergency, after consultation with appropriate staff, depending on the nature of the emergency.

For non-essential workers, the announced end time will signal the end of their paid excused period. As of the announced end time, non-essential workers will be expected to report for work at the beginning of their next regularly scheduled workday and return to their normal work schedules thereafter.

For essential workers, the announced end time will signal the end of their special pay status. As of the announced end time, essential workers will be released from special emergency duties. These workers will be expected to report for the beginning of their next regular workday and return to their normal work schedules thereafter.

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1719: Selecting Aflac/Health Equity as the administrator for PEIA Plan C Health Savings Accounts
Recommended By:	Personnel Committee
Summary:	This resolution would expand the city's relationship with Aflac, a provider of supplementary insurance services, as part of an arrangement to secure administration of Health Savings Accounts at no cost to the city. HSAs are needed as a result of selecting PEIA Plan C as the base plan for FY 2025. From the City Attorney: I have reviewed the LOU from Aflac dated January 18,2024 which I received following the recent Committee meeting. It does not appear that the City has any obligation to pay any funds to Aflac for the services that they will provide. This allows Aflac to offer their products to City employees, which products shall remain in effect for at least three years. It also states that Aflac will pay the monthly per participant cost of HAS. There is a reference to a separate Statement of Work between HealthEquity and Aflac which I have not seen and does not affect the City directly as far as any commitment of funds. Although the LOU makes several references to a minimum period of 3 years, I don't see that as a problem since there is no commitment of City revenues for any specified period of time. I do not see any reason that the City cannot consent to the LOU.
Fiscal Impact:	None
Recommendation:	Consider for approval
Attachments:	1. Plan C Plan Admin Recommendation - Health Equity _ Aflac 2. R-1719 - Accept letter of understanding from aflac 3. Aflac LOU

CITY OF ELKINS
AGENDA ITEM REPORT

HR Recommendation: Assign Health Equity as the HSA Administrator and Aflac as primary supplemental insurance provider.

Plan C is designed to work with either a health savings account or a health reimbursement arrangement. Moving towards Plan C as our base plan will require us to have an HSA trustee/custodian administer the account. Employees can use the HSA funds to go toward the high deductible amount of Plan C.

Employee benefits of an HSA:

- HSA contributions are tax–deductible or pre–tax (if made by payroll deduction). See IRS Publication 969(external link)(PDF file).
- Interest earned on your account is tax–free
- Withdrawals for qualified medical expenses(external link) are tax–free
- Unused funds and interest are carried over, without limit, from year to year
- Employees own the HSA and it is theirs to keep — even when they change plans or retire

Employer benefits of an HSA:

- Employers can receive tax savings by contributing to HSAs. HSA contributions are untaxed and can receive a triple tax advantage under federal law when set up under the Section 125 Cafeteria plan. Employers can also reduce their payroll tax on the amounts employees contribute to their HSAs.

There is an opportunity to secure HSA administration through an Aflac partner named Health Equity.

- There will be no fee for HSA administration because we are a public sector entity and can have it waived by Aflac.
- Aflac will help us update our Premium Only Plan documents/ Cafeteria Plan documents.
- Aflac does not charge a fee to us but under the agreement with Aflac we would need to offer two or more lines of Aflac products during the open enrollment period and the products need to remain in effect for a minimum of 3 years from the effective date of the products. Also, under the agreement, Aflac will cover the monthly per participant cost of the HSA administration facilitated by Heath Equity for three years.
- Aflac is also going to help with our open enrollment onsite and be available to help with the training of staff and family members prior to the open enrollment start date for educational purposes.

Staff recommends the following actions:

- Secure HSA administration through Health Equity and work with Aflac.
- Assign Aflac as our primary supplementary insurance provider and grandfather in the other plans for three health plan years.

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1719)
February 15, 2024

Authorizing Execution of a Letter of Understanding with Aflac for Provision of Employee Benefits and Procurement of Health Savings Account Administration Services

---

WHEREAS, the Common Council of the City of Elkins ("Council") has previously adopted a Personnel Manual ("Manual"), on October 21, 2010; and,

WHEREAS, Chapter 5 of the Manual provides that all full-time employees are eligible to participate in the State of West Virginia's group medical insurance plan or such plan to which the City may subscribe and that Council will determine how much of the medical insurance premium cost for employees will be paid by the city; and,

WHEREAS, the City currently subscribes to the Public Employee Insurance Agency ("PEIA") medical insurance plan and offers all available plans to full-time employees; and,

WHEREAS, Council has previously, via Resolution 1713, designated PEIA Plan C, a high-deductible plan, as the City's base plan starting July 1, 2024, and requiring the appointment of an administrator for associated Health Savings Accounts; and,

WHEREAS, it appears that HSA administration services may be procured from Health Equity, an Aflac partner, under the terms of the attached Letter of Understanding; and,

WHEREAS, it appears that entering into this Letter of Understanding with Aflac is in the best interests of the City of Elkins and city employees;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby authorizes M. Washington, Human Resources, to execute the attached Letter of Understanding with Aflac;

AND BE IT FURTHER RESOLVED THAT:

- Aflac/Health Equity is hereby selected as the HSA plan administrator under the terms of the attached Letter of Understanding.
- Any current supplemental insurance policyholders be grandfathered after any changes.
- Human resources personnel be authorized to take any other steps necessary to implement the attached Letter of Understanding.

Jerry A. Marco Mayor

Attest:

Sutton Stokes, City Clerk

January 18, 2024

City of Elkins
401 Davis Ave .
Elkins, WV 26241

Re: City of Elkins – 0ND10
HSA Administration Effective Date: 7/1/2024

To whom it may concern:

This is a Letter of Understanding ("LOU") issued by American Family Life Assurance Company ("Aflac") to City of Elkins. The intent of this letter is to certify and outline the expectations of the relationship among the parties.

Contained in this letter are the assumptions and details of the engagement:

- City of Elkins has approximately 100 benefits-eligible employees, whom in which will be able participate in an active 1 on 1 enrollment.
- City of Elkins shall offer two or more lines of Aflac products during the open enrollment period, and such products shall remain in effect for a minimum period of three (3) years from the effective date of the products.
- Aflac shall cover the monthly per participant cost of the Health Savings Account (HSA) administration facilitated by HealthEquity to the employees of City of Elkins, for a three-year period. The HSA services provided by HealthEquity shall be pursuant to a separately executed Statement of Work between HealthEquity and Aflac.

Please review this letter and obtain consent from the authorizing party at City of Elkins and return to Aflac no later than February 16, 2024.

Aflac Officer	Date
Authorizing Officer / City of Elkins	Date

Aflac paid FSA fees, whether in whole or in part, cannot be offered when:

(1) An account is located in (whether home office or worksite) Idaho, Maryland, Minnesota, New Mexico, New York and Puerto Rico (collectively, the "Prohibited States")

(2) An individual employee is a resident of Idaho, Minnesota or New Mexico, regardless of their worksite location cannot participate.

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1720: Corrective resolution clarifying termination of stipend for declining health insurance coverage
Recommended By:	City Clerk
Summary:	Clarifies that a policy providing a cash payment to employees in lieu of health insurance has been canceled for new employees hired on or after January 19, 2023.
Fiscal Impact:	None
Recommendation:	Consider for approval
Attachments:	1. R-1720 - corrective resolution confirming cancellation of health insurance waiver incentive

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1720)
February 15, 2024

Confirming Cancellation of Incentive for Employees Choosing Not to Participate in the City's Health Insurance Plan

---

WHEREAS, the Common Council of the City of Elkins ("Council") has previously adopted a Personnel Manual ("Manual"), on October 21, 2010; and,

WHEREAS, Chapter 5 of the Manual provides that all full-time employees are eligible to participate in the State of West Virginia's group medical insurance plan ("Plan"); and,

WHEREAS, Council previously instituted a policy under which employees electing not to participate in the Plan received a cash value payment ("Policy"); and

WHEREAS, Council took action to terminate this Policy via Resolution 1610, adopted January 19, 2023, effective upon adoption for employees hired on or after that date; and,

WHEREAS, Council subsequently adopted Resolution 1650, adopted April 20, 2023, which was intended to correct an unrelated element of Resolution 1610, but which also may have inadvertently seemed to reverse the cancellation of the Policy;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby confirms the cancellation of the Policy whereby new employees electing not to participate in the State of West Virginia's group medical insurance plan receive a cash value payment, with the said cancellation effective as of January 19, 2023 for employees hired on or after that date.

____
Jerry A. Marco, Mayor

Attest:

____
Sutton R. Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1721: Appointment of R. Day as Judge of the Elkins Municipal Court
Recommended By:	Mayor, Personnel Committee, Human Resources, City Attorney
Summary:	Appoints Rebecca Day as Judge of the Elkins Municipal Court.
Fiscal Impact:	Fills a vacant, previously budgeted-for position
Recommendation:	Consider for approval
Attachments:	1. R-1721 - appointing Day as municipal court judge

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

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

(#1721)
February 15, 2024

Approving the Appointment of and Establishing a Compensation Level for R. Day as Judge of the Elkins Municipal Court

---

WHEREAS, the Elkins Common Council Personnel Committee has recommended the appointment of Rebecca Day to the position of Judge of the Elkins Municipal Court; and,

WHEREAS, the proposed wage associated with this non-exempt position is $16.72 per hour; 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 available within the Municipal Court account of the current fiscal year's General Fund budget;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Common Council of the City of Elkins hereby appoints Rebecca Day to the position of Judge of the Elkins Municipal Court, effective immediately; and,

BE IT FURTHER RESOLVED, that the amount of compensation shall $16.72 per hour, with the position classified as non-exempt.

____
Jerry Marco, Mayor

Attest:

____
Sutton R. Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1722: Rosie the Riveter Memorial - Permission to apply to DOH for right-of-way access
Recommended By:	Mayor
Summary:	The Emma Scott Garden Club has been raising funds for the installation of a Rosie the Riveter Statue adjacent to the All Veterans Memorial, near the intersection of U.S. 33 and Railroad Avenue. This land is leased by City of Elkins from the W. Va. DOH. Council approval is sought for a W. Va. DOH Right-of-Way Entry Permit Application.
Fiscal Impact:	No direct costs to install the memorial.
Recommendation:	Consider for recommendation to council
Attachments:	1. Rosie the Riveter statue ROW entry application and artwork agreement - 2024_02_09 2. R-1722 - ROW application to DOH for Rosie memorial

Form MM-109

Revised 05-17-2023

West Virginia Department of Transportation
Division of Highways
Right of Way Entry Permit Application

PERMIT NO. 08-2024-0007

By signing below, APPLICANT agrees to all terms and conditions (see page 2) associated with this permit to enter upon, under, over, or across the state road right(s) of way of the State of West Virginia.

Applicant: EMMA SCOTT GARDEN CLUB

Address: 118 CHESTNUT ST. City: ELKINS State: WV Zip 26241

Phone Number: 7038619351 Email:

Route Type: ☐ US ☐ WV ☐ County Route Number: N/A Milepost: n/a County: 42 - Randolph

☐ Interstate ☐ HARP

Latitude/Longitude at/along Roadway (in decimal degrees): 38.92949/-79.85138

Description of Work: **Permit is to construct and mintain a Rosy the Riveter Statue on State Right of Way in the City of Elkins adjacent to the existing Veterans Memorial near the intersection of U. S. 33 and Railaroad Avenue. Any shrubs/flowers that could impede visibility/sight distance along the roadway will not be permitted.**

Length of Installation: Estimated Construction Duration:

DOH Project Number/Name (if applicable):

Inspection Fees (must check one):

☐ For any inspection fees incurred under this permit

☐ At $0.85 per linear foot of water line installed under this permit

☐ At $3.37 per linear foot of sewer line installed under this permit

Applicant: [signature] Applicant Title: President ESGC

Applicant Printed Name: Date: 1/2/2024

DOH Reviewer: JGG [signature] DOH Reviewer Title: PERMIT SUPERVISOR

DOH Approver: [signature] DOH Approver Title: DE

FOR DIVISION USE ONLY

DEPOSIT/BOND REQUIRED: ☐ YES ☐ NO DEPOSIT/BOND AMOUNT: $

☐ Check Attached ☐ Bond Attached ☐ Bond On File BOND NUMBER: DATE:

INSPECTION: ☐ By Owner/Consultant ☐ By Division

☐ Full Time ☐ Part Time ☐ Periodic

☐ Reimbursable (Authorization) ☐ No Cost

PERMIT ISSUE DATE: 1/5/2024

CUSTOM ARTWORK AGREEMENT

I. Introduction

This Custom Artwork Agreement (the "Agreement") is entered into and made effective as of January 16th, 2024, by and between Big Statues, LLC (the "Artist"), and Linda Shomo (the "Buyer"). For purposes of this Agreement, each of the Artist and the Buyer may be referred to individually as a "Party" and jointly as the "Parties." Intending to be bound hereby, the Parties agree as set forth below.

II. Project Description

In accordance with the terms and conditions of this Agreement, Artist agrees to design, create, and execute a commissioned piece of art (the "Work") a Life-Size Rosie the Riveter Statue, 24x36 inch Plaque, 48" Wide by 36" High. As described in Exhibit A, <u>Project Description</u>, and sell the Work to the Buyer. Buyer shall provide such specifications, sketches, samples, written description, etc. as may be reasonably necessary for the Artist to create the Work.

III. Purchase Price

The commission or purchase price for the Work shall be at the set price of $72,800 which includes the production of the art work, all labor and materials, Sculpting, design, Rush fees, Silicone molds and steel armature but not shipping. Shipping costs are being finalized and will be added to the final invoice.

IV. Intellectual Property Rights

Buyer hereby represents and warrants that Buyer either holds or has obtained all intellectual property rights, including all right, title and interest reasonably necessary for Artist to legally and lawfully create the Work without any valid claim of infringement being brought by any third party.

V. Indemnification

Buyer shall indemnify and hold Artist harmless from any and all costs and damages, including court costs and reasonable attorney fees, associated with any claim of intellectual property infringement related to Buyer's failure to obtain or control the title or necessary rights and licenses required to produce the Work. Buyer expressly acknowledges and agrees that any use of the Work is at Buyer's sole risk.

VI. Payment

Buyer agrees to pay for the commissioned statue through checks, credit cards (a 3.5% convenience charge will be assessed for all credit card payments), or wire transfers/ACH payment. Buyer must send verification of ACH payment with reference/invoice number attached. Buyer is responsible for the timely payment of all fees and for providing the Artist with a valid payment method for payment of all fees.

Will you be paying with **credit card**, and if so, do you agree to pay the **3.5% convenience charge**?

Yes, I will be paying with credit card and agree to the 3.5% convenience charge ____
No, I will not be paying with credit card ____

Initial _____

VII. Alteration

After the initial design of the statue is established and clay work has commenced, minor alterations and changes to features and textures can be changed at the request of the buyer. However, any major alterations, such as pose or clothing changes requested by the Buyer will be subject to a minimum fee of $900, unless it is an incorrect design by the artist.

VIII. Delivery

Buyer agrees to provide accurate and complete delivery information. Once received, Artist will deliver the property to the Buyer by way of a third party delivery service to the address provided by the Buyer. Artist is in no way responsible for inaccurate delivery information if the Buyer provided address and information is used; and Buyer agrees to correct all delivery discrepancies at their expense. Buyer agrees to submit final payment upon the completion of their project. All funds/final payment must be received by the seller prior to the sculpture being shipped to its final destination.

IX. Bill of Sale

Concurrent with the delivery of the property to the Buyer, Artist will execute and deliver to Buyer and transfer ownership of the property to Buyer through a bill of sale.

X. Other Terms and Conditions

Artist will be responsible for facilitating the transportation of the statue to the Buyer at the Buyer's expense. All costs for insurance and transportation will be included.

- The finished statue will be insured for the full replacement cost during shipping from the Artist to the Buyer.

XI. Invalidity

If any part of this Agreement is held invalid or unenforceable, that portion shall be construed in a manner consistent with applicable law to reflect, as nearly as possible, the original intentions of the Parties, and the remaining portions shall remain in full force and effect. A Party's failure to enforce any right or provisions in this Agreement will not constitute a future waiver of such or any other provision.

XII. Force Majeure

Neither Party will be responsible for failures to fulfill any obligations under this Agreement due to causes beyond their control.

XIII. Successors and Assignees

This Agreement binds and benefits the heirs, successors and assignees of the Parties.

XIV. Notices

All notices issued to a Party pertaining to the rights and obligations of the Parties as set forth in this Agreement must be made in writing. Any notice provided to the other Party must be delivered to a Party at the address shown below or some other address that a Party designates in writing or via an email with confirmed receipt. To be effective, all notices must be delivered: i) in person; ii) by certified mail; iii) by email with confirmed receipt; or by a nationally recognized overnight delivery service such as FedEx or UPS.

XV. Counterparts

This Agreement may be signed in multiple counterparts and the signature pages, when combined, will create a single document binding on the Parties.

XVI. Modification

No modification may be made to this Agreement except by the written consent of both Parties.

XVII. Waiver

If one Party waives any terms or provisions of this agreement at any time, that waiver will be effective only for the specific instance and specific purpose for which the waiver was given. If either Party fails to exercise or delays exercising any of its rights or remedies under this agreement, that Party retains the right to enforce that term or provision at a later time.

XVIII. Severability

If a court of competent jurisdiction determines that any provision of this Agreement is invalid or unenforceable, any such invalidity or unenforceability will affect only that provision and will not make any other provision of this Agreement invalid or unenforceable and shall be modified, amended or limited only to the extent necessary to render it valid and enforceable.

XIX. Merger; Integration

This Agreement constitutes the entire agreement between Artist and Buyer and governs terms and conditions between them and supersedes any prior agreements, oral and written, between Artist and Buyer.

XX. Publication

The Buyer gives permission to the Artist to publish press releases and social media content regarding the project once it is complete and upon Buyer review and approval.

FOR ARTIST:

____________________________ ________________

Matt Glenn, CEO Date

Address:
815 West Columbia
Lane Provo, Utah

FOR BUYER:

____________________________ ________________

Linda Shomo Date

Address:

EXHIBIT A:

Shipping Information & Social Media

XXI. Shipping Address

If you could please provide the shipping address for your project as well as the name and contact number of who will oversee taking the shipment!

Shipping Address:

Name:

Contact/Phone Number:

XXII. Social Media Platforms

If you have them/would be willing to let us tag you in photos, please share your social media handles with us!

- Facebook:
- Instagram:
- Twitter:
- Tik Tok:

PROJECT DESCRIPTION:

A. Life-Size Rosie the Riveter Statue, 24x36 inch Plaque, 48” Wide by 36” High*

PAYMENTS:

B. Payment Amounts and Payment Dates

Statue(s): *$72,800*
Shipping: *YTD*
Installation: $5,000
Total Outstanding Payment: *$52,800*

1st Payment

Amount: $20,000   Payment Date: Paid

2nd Payment

Amount: $26,400   Payment Date: Upon finishing of clay work

3rd Payment (+ Shipping and/or Installation)

Amount: $26,400   Payment Date: Upon finishing of statue

A. Estimated Installed Completion Date:
7-9 Months Upon Signing Agreement

B. Special Instructions

* If checked, see additional Project specifications (e.g., drawings, sketches, samples, etc.) attached

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

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

(#1722)
February 15, 2024

Authorizing Execution of Right-of-Way Permit Application to W. Va. DOT/DOH for Construction of a Rosie the Riveter Statue on DOH Property Leased by City of Elkins

---

WHEREAS, The West Virginia Department of Transportation, Division of Highways ("DOH") is the owner of real property, containing 1.840 acres more or less and located southeast of the intersection of Railroad Avenue and Randolph Avenue, in the City of Elkins, West Virginia, where the All-Veterans Memorial is located; and,

WHEREAS, the City of Elkins, West Virginia ("City") has leased this property from DOH since an agreement first entered into on July 29th, 1993, and renewed every five years since; and,

WHEREAS, the Emma Scott Garden Club is managing the funding, design, and installation of a Rosie the Riveter Statue on this property, requiring submission of a Right-of-Way Permit Application to DOH; and,

WHEREAS, it appears that authorizing execution of this Right-of-Way Permit Application 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 Right-of-Way Permit Application to DOH by Emma Scott Garden Club on behalf of the City of Elkins.

____
Jerry A. Marco, Mayor

Attest:

____
Sutton R. Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1723: Appointing C. Talbott to the Elkins Tree Board
Recommended By:	
Summary:	
Fiscal Impact:	
Recommendation:	
Attachments:	1. R-1723 - Appointment of Talbott to Tree Board

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

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

(#1723)
February 15, 2024

Authorizing the Appointment of C. Talbott to the Elkins Tree Board

---

WHEREAS, the Elkins Common Council, upon final reading July 1, 2021, adopted Ordinance 284 allowing the Elkins Tree Board to maintain a board of no less than six and no more than eight members; and,

WHEREAS, there are currently seven members of the Board; and

WHEREAS, upon the recommendation of the Board, the mayor has nominated Clare Talbott to fill the new term ending December 31, 2026;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby appoints Clare Talbott to the Elkins Tree Board with a term ending December 31, 2026.

____
Jerry A. Marco, Mayor

Attest:

____
Sutton R. Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1724: Request from the Tygart Hotel for reserved loading/unloading in front of building
Recommended By:	Municipal Properties Committee
Summary:	The Tygart Hotel is requesting two reserved loading/unloading spaces on Davis Avenue in front of the building. Please see the attached letter from Shane Jones, the hotel's general manager.
Fiscal Impact:	None
Recommendation:	Consider for approval
Attachments:	1. R-1724 - Tygart Hotel reserved loading and unloading space 2. Tygart Hotel Request Letter - Municipal Properties Committee Meeting

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

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

(#1724)
February 15, 2024

Establishment of Dedicated Loading/Unloading Area on Davis Avenue for the Tygart Hotel

---

WHEREAS, the City of Elkins, West Virginia ("City") has, per Resolution #1154, adopted the 2018 – 2023 Strategic Plan, including milestones and deadlines to serve as a guide in decision-making and resource assignment for the City; and,

WHEREAS, Strategic Area #2, item E, focuses entirely on the Tygart Hotel restoration, including working in cooperation with Woodlands Development Group in identifying parking options; and,

WHEREAS, Woodlands Development Group and the management of the Tygart Hotel have requested that two standard-sized parking spaces on Davis Avenue, immediately in front of the hotel, be dedicated to the hotel for loading and unloading (letter attached); and,

WHEREAS, Elkins Common Council Municipal Properties Committee has reviewed and recommended Council approval of this request; and,

WHEREAS, it appears that establishing a reserved loading/unloading zone in front of the Tygart Hotel is in the best interests of the citizens of the City of Elkins;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby dedicates two standard-sized parking spaces for the establishment of a reserved loading/unloading zone in front of the Tygart Hotel.

____
Jerry A. Marco, Mayor

Attest:

____
Sutton R. Stokes, City Clerk

Tygart Hotel
206 Davis Avenue
Elkins, West Virginia 26241
304.924.4279
gm.tygart@uptoparmanagement.com

February 8th, 2024

Municipal Properties Committee
City of Elkins
917 S. Railroad Ave,
Elkins, West Virginia 26241

Dear Members of the Municipal Properties Committee,

I hope this letter finds you well- my name is Shane Jones, General Manager of the Tygart Hotel & Oxley House Restaurant in Elkins, West Virginia.

I am writing to formally request the designation of two parking spots in front of the Tygart Hotel as loading/unloading zones specific to the Tygart Hotel. The purpose of this request is to facilitate a smoother and more convenient check-in process for our hotel guests.

The Tygart Hotel is a prominent establishment in the heart of Elkins, contributing to the local economy and providing a welcoming atmosphere for visitors. In an effort to enhance the guest experience, we propose the allocation of the specified parking spaces to be used exclusively for loading and unloading purposes.

The proposed loading/unloading zones will allow our guests to pull in front of the Tygart Hotel, providing them with easy access to the check-in area. Once guests have completed the check-in process, they will be directed to the assigned parking area located behind the hotel. This arrangement will not only streamline the check-in process but also contribute to the overall efficiency of the hotel's operations.

We understand the importance of proper traffic flow and the need for designated spaces within the city, and we assure you that the proposed loading/unloading zones will be utilized responsibly and exclusively for their intended purpose.

To address any concerns or questions you may have regarding this request, we are more than willing to collaborate with the committee and provide any additional information or clarification needed. Our goal is to work together to enhance the overall experience for both our guests and the community.

Please find attached on the next page, the two parking spaces that are being requested from the City of Elkins for Tygart Hotel use.

The Tygart Hotel would like to brand these two spaces specific to the Tygart Hotel in guidelines with City of Elkins requirements. The Tygart Hotel will take on the cost and production of these signs pending the design approval by the City of Elkins.

Thank you for considering our request. We look forward to the possibility of implementing these loading/unloading zones to better serve our guests and contribute positively to the community.

Sincerely,

Shane Jones
General Manager

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1725: Establishing compensation for Members, Treasurer, and Secretaries of the Elkins Water and Sanitary Boards
Recommended By:	Chief Operators of the Elkins Public Water and Wastewater Systems
Summary:	The resolution standardizes compensation amounts for members, secretaries, and treasurers of the Elkins Sanitary and Water Boards. The Sanitary Board is already compensated in the amounts shown, but no compensation was ever established for the Water Board.
Fiscal Impact:	$4,200 annual cost (a $2,100 increase over the amount currently paid only to the Sanitary Board). These payments will come out of the Sanitary Fund and Water Fund, not the General Fund.
Recommendation:	Consider for approval
Attachments:	1. R-1725 - establishing compensation for Water and Sanitary Boards

IN THE COMMON COUNCIL OF THE CITY OF ELKINS, WV

A RESOLUTION OF COMMON COUNCIL

(#1725)
February 15, 2024

Establishing Compensation for the Members, Secretaries, and Treasurers of the Elkins Sanitary and Water Boards

---

WHEREAS, the Common Council of the City of Elkins ("Council") has established both the Elkins Sanitary Board and the Elkins Water Board, under the terms and provisions of Elkins City Code § 52.25 et seq. and § 33.125 et seq., respectively; and,

WHEREAS, the relevant sections of the Elkins City Code provide that compensation may be provided to these boards' members, secretaries, and treasurers in amounts to be determined by council from time to time; and,

WHEREAS, Council now desires to establish compensation for the said offices;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council hereby establishes the following compensation amounts for the Members, Secretaries, and Treasurers of the Elkins Sanitary and Water Boards, for attendance at and services during and related to these boards' meetings:

- Members: $75/month
- Secretary: $50/month
- Treasurer: $50/month

AND, FURTHER, BE IT RESOLVED, THAT:

These compensation amounts are in addition to the regular wages or salaries of city employees serving as either Secretary or Treasurer of either board.

____
Jerry A. Marco, Mayor

Attest:

____
Sutton R. Stokes, City Clerk

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1726: FY24 intradepartmental budget revisions (Fire Department Fund #2, General Fund #1-7, Sanitation #2)
Recommended By:	City Treasurer
Summary:	See attached budget revision forms
Fiscal Impact:	Shifts already budgeted monies within the given funds
Recommendation:	Consider for approval
Attachments:	1. R-1726 - FY24 budget revisions (Fire Department Fund #2, General Fund #1-7, Sanitation #2) 2. Fire BR #2 3. General Fund BR #1 thru #7 4. Sanitation BR #2

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

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

(#1726)
February 15, 2024

Resolution to Approve FY 2024 Budget Revisions (Fire Department Fund #2, General Fund #1-7, Sanitation #2)

WHEREAS, the City of Elkins has previously prepared and submitted its Fire Department Fund, General Fund, and Sanitation Fund Budgets for the Fiscal Year 2024; and,

WHEREAS, it has become necessary to make revisions to said Budgets; and,

WHEREAS, the attached Budget Revisions transfer funds as shown;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Common Council of the City of Elkins hereby approves the attached FY 2024 Budget Revisions (Fire Department Fund #2, General Fund #1-7, Sanitation #2).

____
Jerry Marco, Mayor

Attest:

____
Sutton R. Stokes, City Clerk

Fire Budget Revision

Revision Number 2

Revenues

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
036	000-Revenues	352-0000 Fire Protection Fees	$4,780.00	000-Revenues	380-0000 Interest Earned	$4,500.00
					381-0000 Reimbursements	$80.00
					382-0000 Refunds & Rebates	$200.00
TOTAL			$4,780.00			$4,780.00

Expenses

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
036	706	459-0000 Capital Outlay Equipment	$6,300.00	706	226-0000 W/C Insurance	$5,600.00
				706	457-0000 Capital Outlay Buildings	$700.00
TOTAL			$6,300.00			$6,300.00

Admin. Signature: Stephen Hus

Date: 2/9/24

General Fund Budget Revision

Revision Number 1

Revenues

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
001	000-Revenues			000-Revenues		
TOTAL			$0.00			$0.00

Expenses

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
001	566-Public Works	105-0000 Group Insurance	$4,570.00	566-Public Works	104-0000 FICA Expense	$2,470.00
					218-0000 Postage	$100.00
					222-0000 Dues & Subscriptions	$500.00
					230-0000 Contracted Services	$1,000.00
					343-0000 Automobile Supplies	$500.00
TOTAL			$4,570.00			$4,570.00

General Fund Budget Revision

Revision Number 2

Revenues

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
001	000-Revenues			000-Revenues		
TOTAL			$0.00			$0.00

Expenses

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
001	714-Flood Control	341-0000 Supplies & Materials	$1,225.00	714-Flood Control	222-0000 Dues & Subscriptions	$1,225.00
TOTAL			$1,225.00			$1,225.00

General Fund Budget Revision

Revision Number 3

Revenues

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
001	000-Revenues			000-Revenues		
TOTAL			$0.00			$0.00

Expenses

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
001	750-Streets	341-0000 Supplies & Materials	$1,000.00	750-Streets	220-0000 Advertising	$1,000.00
TOTAL			$1,000.00			$1,000.00

General Fund Budget Revision

Revision Number | **4**

Revenues

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
001	000-Revenues			000-Revenues		
TOTAL			$0.00			$0.00

Expenses

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
001	436-Building Inspector	103-0000 Salary & Wages	$1,700.00	436-Building Inspector	108-0000 Overtime	$500.00
					220-0000 Advertising	$200.00
					343-0000 Automobile Supplies	$1,000.00
TOTAL			$1,700.00			$1,700.00

General Fund Budget Revision

Revision Number 5

Revenues

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
001	000-Revenues			000-Revenues		
TOTAL			$0.00			$0.00

Expenses

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
001	433-Custodial	230-0000 Contracted Services	$1,000.00	433-Custodial	108-0000 Overtime	$1,000.00
TOTAL			$1,000.00			$1,000.00

General Fund Budget Revision

Revision Number 6

Revenues

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
001	000-Revenues			000-Revenues		
TOTAL			$0.00			$0.00

Expenses

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
001	416-Municipal Judge	103-0000 Salary & Wages	$5,150.00	416-Municipal Judge	105-0000 Group Insurance	$4,750.00
					214-0000 Travel	$200.00
					353-0000 Computer Software	$200.00
TOTAL			$5,150.00			$5,150.00

General Fund Budget Revision

Revision Number 7

Revenues

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
001	000-Revenues			000-Revenues		
TOTAL			$0.00			$0.00

Expenses

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
001	700-Police	103-0000 Salary & Wages	$153,100.00	700-Police	104-0000 FICA Expense	$29,400.00
					108-0000 Overtime	$100,000.00
					218-0000 Postage	$200.00
					222-0000 Dues & Subscriptions	$1,500.00
					227-0000 K-9	$7,000.00
					343-0000 Automobile Supplies	$15,000.00
TOTAL			$153,100.00			$153,100.00

Sanitation Budget Revision

Revision Number 2

Revenues

Fund	Department	Decrease	Amount	Department	Increase	Amount
404	000-Revenues	299-0000 Carryover	$1,283,284.00	000-Revenues	381-0000 Reimbursements	$1,500.00
					382-0000 Refunds & Rebates	$1,500.00
TOTAL			$1,283,284.00			$3,000.00

Expenses

Fund	Department	Transfer From/Description	Amount	Department	Transfer To/Description	Amount
404				800-Sanitation	103-0000 Salary & Wages	$20,000.00
					105-0000 Group Insurance	$18,940.00
					217-0000 Maint of Autos & Trucks	$5,000.00
					230-0000 Contracted Services	$201,000.00
					459-0000 Capital Outlay Equipment	$30,000.00
					459-0001 Sanitation Garage	$920,944.00
				802-Admin & General	106-0000 Retirement	$1,400.00
					353-0000 Computer Software	$500.00
					460-0000 Sanitation Garage CIP	$85,500.00
TOTAL			$0.00			$1,283,284.00

Admin. Signature:______________________________

Date:______________________________

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1727: FY24 state budget revision #4
Recommended By:	City Treasurer
Summary:	Accounts for higher-than-budgeted receipts in Federal Government Grants, State Government Grants, and Gas and Oil Severance Taxes. See attached form.
Fiscal Impact:	Accounts for $191,190 in unbudgeted inflows
Recommendation:	Consider for approval on roll-call vote
Attachments:	1. SAO 2024-001-04

LGSD BR (Ver. 2020)

Ora Ash, Deputy State Auditor
West Virginia State Auditor's Office
200 West Main Street
Clarksburg, WV 26301
Phone: 627-2415 ext. 5114
Fax: 304-340-5090
Email: lgs@wvsao.gov

REQUEST FOR REVISION TO APPROVED BUDGET

Subject to approval of the state auditor, the governing body requests that the budget be revised prior to the expenditure or obligation of funds for which no appropriation or insufficient appropriation currently exists. (§ 11-8-26a)

CONTROL NUMBER
Fiscal Year Ending: 2024
Fund: 1
Revision Number: 4
Pages: 1 of 1

City of Elkins
GOVERNMENT ENTITY

401 Davis Ave.
STREET OR PO BOX

Elkins — CITY
26241 — ZIP CODE

Municipality
Government Type

Person To Contact Regarding Request:
Name: Tracy Judy
Phone: 304-636-1414, ext 1317
Fax: 304-635-7135
Email: tjudy@cityofelkinswv.com

REVENUES: (net each acct.)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
365	Federal Government Grants	45,000	11,100		56,100
366	State Government Grants	113,074	113,490		226,564
303	Gas and Oil Severance Tax	25,000	45,500		70,500
	#N/A				
	#N/A				
	#N/A				

NET INCREASE/(DECREASE) Revenues (ALL PAGES) 191,190

Explanation for Account # 378, Municipal Specific:
Explanation for Account # 369, Contributions from Other Funds:

EXPENDITURES: (net each account category)

(WV CODE 7-1-9)

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
404	State Grants	113,074	89,500		202,574
409	Mayor's Office	30,230	2,500		32,730
413	Treasurer's Office	325,700	20,000		345,700
429	Clearing	250	10,000		10,250
436	Building Inspection	127,650		10,000	117,650
440	City Hall	556,801	78,090		634,891
707	Dog Warden/Humane Society	7,000	100		7,100
802	Recycling Center	3,000	1,000		4,000
	#N/A				
	#N/A				

NET INCREASE/(DECREASE) Expenditures 191,190

APPROVED BY THE STATE AUDITOR

BY:

Deputy State Auditor, Local Government Services Division **Date**

AUTHORIZED SIGNATURE OF ENTITY

APPROVAL DATE

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Resolution
Agenda Item Name:	Resolution 1728: Approving the Transfer by Deed From the City of An Abandoned and Vacated Portion of Tannery Drive to the Randolph County Development Authority
Recommended By:	City Attorney
Summary:	This action completes an intended transfer from the 1990s of a piece of abandoned unopened right of way to the Randolph County Development Authority
Fiscal Impact:	None
Recommendation:	Consider for approval
Attachments:	1. R-1728 - transferring part of Tannery Drive to RCDA 2. DEED Special Warranty 3. Ordinance-Tannery Drive 4. Plat-RCDA deed

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

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

(#1728)
February 15, 2024

Approving the Transfer by Deed from the City of An Abandoned and Vacated Portion of Tannery Drive to the Randolph County Development Authority

---

WHEREAS, the Common Council of the City of Elkins, West Virginia ("Council") previously passed an Ordinance on November 21, 1991, whereby Council vacated and abandoned a portion of Tannery Drive at the request of the Randolph County Development Authority ("RCDA") for the construction of the Wood Institute Technology Center. Said Ordinance is recorded in the Office of the Clerk of Randolph County Commission in Deed Book 416 at page 42. (<u>See</u> attached); and

WHEREAS, the portion of Tannery Drive, vacated and abandoned by the 1991 Ordinance , which is on the real property owned by RCDA and where the Wood Institute Technology Center is located was not transferred and conveyed to the RCDA; and

WHEREAS, the RCDA has requested that the final step of the vacation and abandonment of this portion of Tannery Drive located on its real property be completed by the transfer and conveyance by deed from the City to RCDA as shown in the proposed deed (<u>See</u> attached); and

WHEREAS, the Municipal Properties Committee has reviewed this request , the supporting documentation and recommends that the transfer and conveyance of this portion of Tannery Drive, previously abandoned and vacated, located on RCDA's real property, be completed;

NOW, THEREFORE, BE IT RESOLVED, THAT:

The Elkins Common Council approves the transfer and conveyance by the City of a portion of Tannery Drive , previously vacated and abandoned, located on RCDA's real property, to RCDA and authorizes Mayor Marco to complete this transfer and conveyance by signing the proposed deed attached hereto.

____
Jerry A. Marco, Mayor

Attest:

____
Sutton Stokes, City Clerk

THIS SPECIAL WARRANTY DEED, made this the ___ day of February, 2024, by **THE CITY OF ELKINS**, Grantor, and **RANDOLPH COUNTY DEVELOPMENT AUTHORITY**, Grantee.

WITNESSETH: That for and in consideration of the sum of cash in hand paid, the receipt of which is hereby acknowledged, the Grantor does grant, sell and convey, with covenants of SPECIAL WARRANTY of title, unto the Grantee, all of the following described lot or parcel of real property, together with the improvements thereon and the appurtenances thereto, a tract or parcel or real estate situate in in Elkins Corporation, Randolph County, West Virginia lying at the western end of Tannery Drive, being more particularly bounded and described as follows:

Beginning at a found 1” iron pipe, common corner to Arbogast, DB 560/244, and common corner to Randolph County Industrial Development Authority, DB 318/303, said iron pipe bears N 77°56’18” W, 332.36’ from a found 3/4" rebar. Said found 1”iron pipe also bears N 13°35’11” E, 117.95’ from a found 3/4" rebar; thence

N 77°56’18” W	228.20’	leaving Arbogast, DB 560/244, traveling with a line common to Randolph County Industrial Development Authority, DB 318/303, passing a found 5/8” rebar with cap at 29.63’ to a PK nail set in asphalt, said PK nail bears S 77°58’14” E, 36.09’ from a found 5/8” rebar with cap; thence
N 12°03’42” E	32.00”	traveling with a line common to Randolph County Industrial Development Authority, DB 318/303, to a PK nail set in asphalt, said PK nail bears S 77°56’18” E 32.25’ from a found 5/8” rebar with cap; thence
S 78°02’24” E	228.15’	traveling with a line common to Randolph County Industrial Development

	Authority, DB 318/303, to a point at or near the end of Tannery Drive, said Point bears N 78°02’24” W 114.39’from a found 1” iron pipe in concrete; thence
S 11°58’07” W 32.41’	leaving Randolph County Industrial Development Authority, DB 318/303, traveling with or near the end of Tannery Drive, to the point of beginning.

The surveyed parcel **containing 0.17 acres**, more or less, as surveyed by Kelly Surveying, PLLC, under the supervision of Kenneth Kelly, Professional Surveyor No. 973, of Dailey, WV in November 2023 and shown on a plat attached hereto and made part of this report.

And being the same real estate conveyed to the City of Elkins by an Ordinance to Vacate, Abandon and Close a Portion of Tannery Drive recorded November 21, 1991 in the Office of the Clerk of the County Commission of Randolph County, West Virginia, in Deed Book 416, at Page 42.

This conveyance is made subject to any and all reservations, restrictions, exceptions, covenants, agreements, rights-of-way and easements as may be set forth in prior instruments of record in the chain of title to said real estate.

Pursuant to West Virginia Code §11-21-71b, the undersigned Grantor certifies under penalty of perjury, that they are a resident entity of the State of West Virginia.

Declaration of Consideration or Value – The Grantor hereby declares that this conveyance is exempt from the payment of excise tax on the privilege of transferring real estate in the State of West Virginia, as it is a transfer to and from government entities.

WITNESS the following signature:

City of Elkins

By:___________________________

Its: _________________________

STATE OF WEST VIRGINIA,

COUNTY OF RANDOLPH, TO-WIT:

The foregoing Deed was acknowledged before me this ____ day of February, 2024, by the City of Elkins,

by ________________________, its __________________.

My Commission Expires: __________________________

____
Notary Public

This Deed prepared, without title examination, by:

Jennifer L. Morgan
BUSCH, ZURBUCH & THOMPSON, PLLC
Attorneys at Law
P.O. Box 1819
Elkins, WV 26241

dej

ORDINANCE TO VACATE, ABANDON AND CLOSE
A PORTION OF TANNERY DRIVE

2673

WHEREAS, a portion of Tannery Drive, being all of that tract or parcel of land situate in Elkins Corporation, Randolph County and State of West Virginia, said land being a strip of land thirty (30) feet wide, more particularly bounded and described as set out in the attached "Exhibit 1 -- Property Description" with attached plat, is, in the opinion of this Council, of no benefit to the general traveling public, serves no public purpose, and is unnecessary for the public use or for the public good; and

WHEREAS, the best interest of the City of Elkins will be best served by vacating and abandoning said portion of Tannery Drive; and

WHEREAS, it appearing to the Common Council of the City of Elkins that the Randolph County Development Authority has requested the vacating, closing, and abandoning thereof for the benefit of ~~of~~ said Authority and the construction of Wood Institute Technology Center, and it appearing that the property or interest of no person, firm or corporation will be damaged or injured thereby; and

WHEREAS, the Common Council deems it to be in the public interest that said portion of Tannery Drive should be vacated, closed, and abandoned as unnecessary for the public use or for the public good.

THEREFORE, BE IT ORDAINED by the Common Council of the City of Elkins that:

Section 1. The subject portion of Tannery Drive be, and it is hereby vacated, closed and abandoned, and that from and after the date of the final adoption of this Ordinance, the same shall cease to be a public way of street in said City; Provided, however, that the City shall, and does hereby, retain and reserve such easements and rights-of-way therein as are necessary for the location, maintenance, repair and removal of City water and sewer lines.

Section 2. A public hearing with regard to the adoption hereof will be held before the Common Council at a duly called meeting thereof pursuant to notice of such meeting to be published in the Elkins Inter-Mountain prior to the second reading.

Section 3. The Randolph County Development Authority will bear the cost of repair and/or replacement of any water or sewer lines that are affected by closing of the subject street portion.

Section 4. Upon final adoption of this Ordinance, a duly certified copy hereof shall be recorded in the Office of the Clerk of the County Commission of Randolph County, West Virginia.

Section 5. This Ordinance shall become effective from the date of its final adoption.

Passed First Reading: Nov 7, 1991.

Passed Second Reading: Nov 21, 1991.

Stephen E. Shepler
MAYOR

Attest: Michael A. Karlen
CITY CLERK

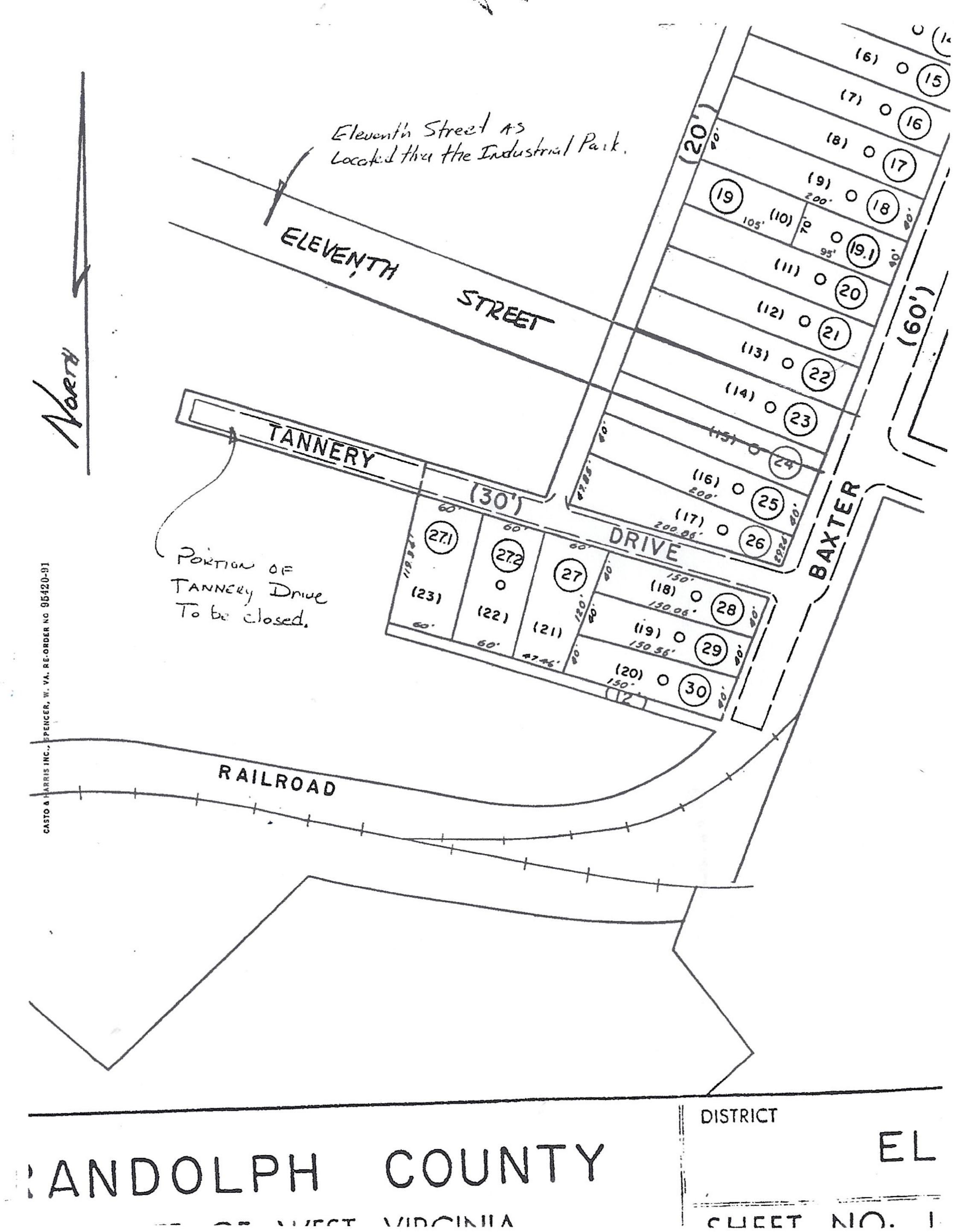
DEC 6 9 11 AM '91
FILED

STATE OF WEST VIRGINIA,
COUNTY OF RANDOLPH,
CITY OF ELKINS, TO WIT:

I, Michael A. Karlen, the duly appointed, qualified and acting City Clerk of the City of Elkins, and as such the official custodian of its books and records, do hereby certify that the foregoing Ordinance was adopted by the Common Council of the City of Elkins at a Regular Meeting of said Council held for that purpose Nov 21, 1991.

Given under my hand and the Official Seal of the City of Elkins this 22 day of November, 1991.

Michael A. Karlen
CITY CLERK


Eleventh Street as
Located thru the Industrial Park.
ELEVENTH STREET
NORTH
TANNERY DRIVE
(30')
(20')
(60')
BAXTER
Portion of
Tannery Drive
To be closed.
RAILROAD
CASTO & HARRIS INC., SPENCER, W. VA. RE-ORDER NO 95420-91
RANDOLPH COUNTY
DISTRICT
EL
SHEET NO.

PROPERTY DESCRIPTION

CLOSING OF A PORTION OF TANNERY DRIVE

RANDOLPH COUNTY DEVELOPMENT AUTHORITY

ALL OF THAT TRACT OR PARCEL OF LAND SITUATE IN ELKINS CORPORATION, RANDOLPH COUNTY AND STATE OF WEST VIRGINIA, SAID LAND BEING A STRIP OF LAND 30 FEET WIDE, MORE PARTICULARLY BOUND AND DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE SOUTHERN BOUNDARY OF TANNERY DRIVE, SAID POINT BEING THE NORTHWEST CORNER OF LOT 23 OF THE KISTLER LEATHER COMPANY ADDITION TO THE CITY OF ELKINS, SAID LOT 23 BEING THE LAST LOT LOCATED ON TANNERY DRIVE;

THENCE WITH THE SOUTHERN BOUNDARY OF TANNERY DRIVE ALONG THE PROPERTY OF THE RANDOLPH COUNTY DEVELOPMENT AUTHORITY (DB 318/304) N 76-04 W, 228.2 FEET TO THE WESTERN END OF TANNERY DRIVE;

THENCE CONTINUING WITH THE RANDOLPH COUNTY DEVELOPMENT AUTHORITY PROPERTY ACROSS THE END OF TANNERY DRIVE N 13-56 E, 30.00 FEET TO A POINT IN THE NORTHERN BOUNDARY OF TANNERY DRIVE;

THENCE CONTINUING WITH THE LINE OF THE RANDOLPH COUNTY DEVELOPMENT AUTHORITY ALONG THE NORTHERN BOUNDARY OF TANNERY DRIVE S 76-04 E, 228.2 FEET TO A POINT IN THE NORTHERN BOUNDARY OF TANNERY DRIVE;

THENCE ACROSS TANNERY DRIVE S 13-56 W, 30.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 6,846 SQUARE FEET MORE OR LESS AS SURVEYED BY WILLIAM D. SWECKER OF ELKINS, W. VA.

BEING A PORTION OF A 30 FOOT WIDE ALLEY CALLED TANNERY DRIVE AS SHOWN ON A PLAT OF THE KISTLER LEATHER COMPANY ADDITION TO THE CITY OF ELKINS AS PREPARED BY D. W. CARPENTER DATED OCT. 8, 1953 AND RECORDED IN THE RANDOLPH COUNTY CLERK'S OFFICE IN PLAT CABINET A AT PAGE 91.

Mailed or Delivered to:

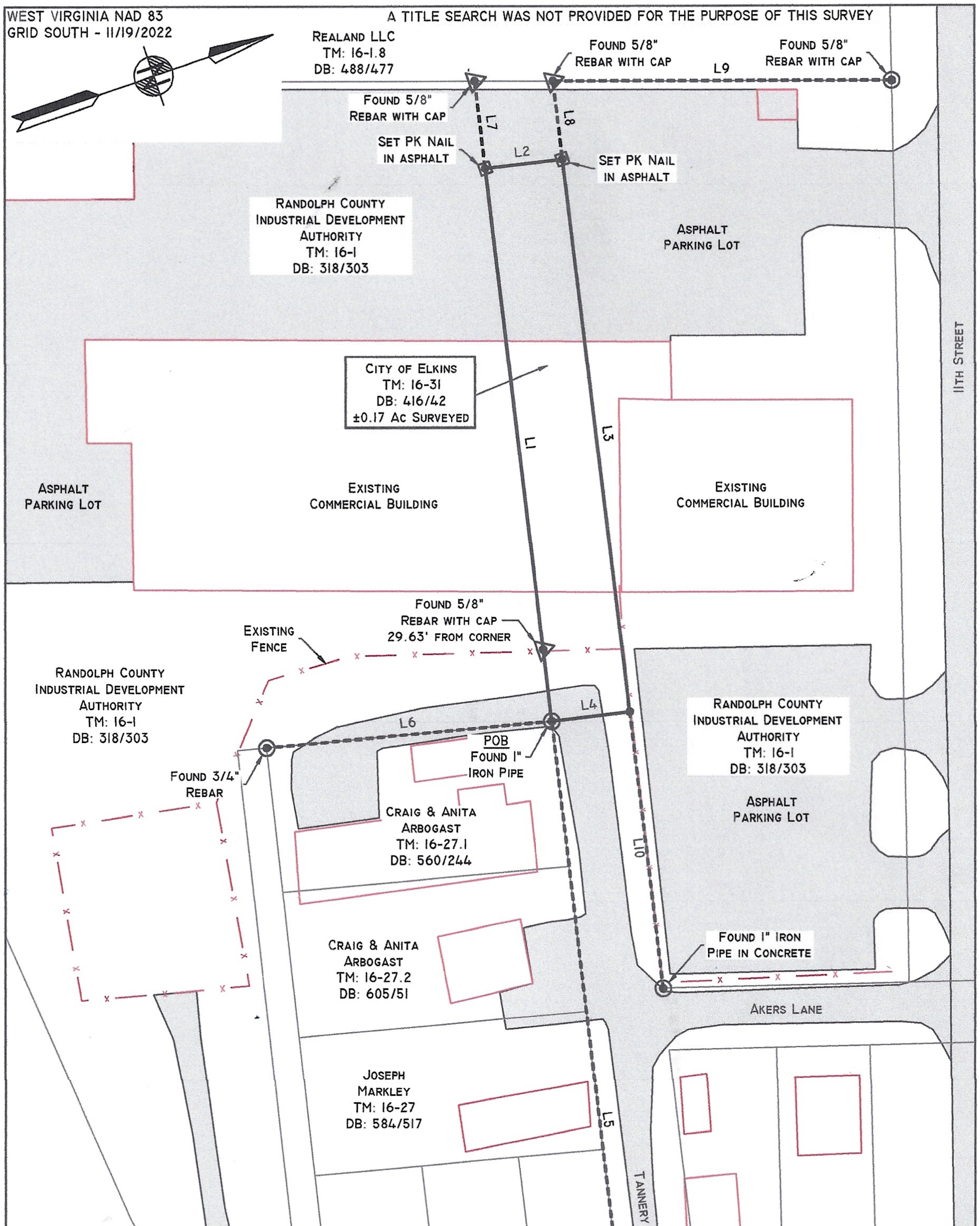
R. Sue Cozé

Date: 12/6/91

WEST VIRGINIA, RANDOLPH COUNTY CLERK'S OFFICE: 12-6-91

This instrument was this day presented to me in my office. and thereupon, together with the Certificate thereto annexed, is admitted to record.

Teste: Roszetta Lloyd Clerk



LINE TABLE "L"

LINE	BEARING	DISTANCE
L1	N 77°56'18" W	228.20'
L2	N 12°03'42" E	32.00'
L3	S 78°02'24" E	228.15'
L4	S 11°58'07" W	32.41'
L5	S 77°56'18" E	332.36'
L6	S 13°35'11" W	117.95'
L7	N 77°58'14" W	36.09'
L8	N 77°56'18" W	32.25'
L9	N 18°53'16" E	139.53'
L10	S 78°02'24" E	114.39'

SURVEYED BY
KENNETH KELLY
P.O. BOX 254
DAILEY, WV 26259
(304) 338-6985

PLAT OF SURVEY
FOR

CITY OF ELKINS

ELKINS CORPORATION
RANDOLPH COUNTY
WEST VIRGINIA

DATE: NOV 2023	PROJ NO: E016031	SURV: TOPCON GR-5
DWN BY: ZCS TECH: ZCS	CHK BY: KNK	DWG NAME: E016031
FIELD BOOK: GR-5	PS: 50	DWG SCALE: 1" = 50'
PNT FILE: E016031		SHEET: 1 OF 1

KENNETH N. KELLY LICENSED No. 973 STATE OF WEST VIRGINIA PROFESSIONAL SURVEYOR

CERTIFIED BY: ____
KENNETH KELLY P.S. 973
DATE: November 29, 2023

CITY OF ELKINS
AGENDA ITEM REPORT

Meeting Date:	February 15, 2024
Section:	New business
Category:	Action Item
Agenda Item Name:	Emergency agenda item: Execution of agreement with Tyler Technologies Justification: Urgent circumstances related to the protection of city data require that the attached agreement be executed without any further delay. The action cannot safely be postponed without unreasonably endangering city data.
Recommended By:	Mayor and Administrative Officers
Summary:	Urgent circumstances related to the protection of city data require that the attached agreement be executed without any further delay. The action cannot safely be postponed without unreasonably endangering city data.
Fiscal Impact:	Approximately $20,000 per year in additional expenses. The attached agreement's "contract total" of approximately $60,000 does not represent the net impact on the city. This is because the city currently pays around $46,000 annually for use of various Tyler software apps that are installed on our server. As a result of this agreement, the city will no longer use or be charged for this server-installed software. Instead, the city will utilize equivalent software-as-a-service apps at a similar level of cost. The only substantial net new cost will be approximately $20,000 in data hosting costs.
Recommendation:	Authorize the City Treasurer to execute the attached agreement
Attachments:	1. Tyler Software Agreement 2. Expedited Agreement

SOFTWARE AS A SERVICE AGREEMENT

This Software as a Service Agreement is made between Tyler Technologies, Inc. and Client.

WHEREAS, Client selected Tyler to provide certain products and services set forth in the Investment Summary, including providing Client with access to Tyler's proprietary software products, and Tyler desires to provide such products and services under the terms of this Agreement;

NOW THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth in this Agreement, Tyler and Client agree as follows:

SECTION A – DEFINITIONS

- **"Agreement"** means this Software as a Service Agreement.
- **"Business Travel Policy"** means our business travel policy. A copy of our current Business Travel Policy is attached as Schedule 1 to Exhibit B.
- **"Client"** means the City of Elkins, West Viriginia.
- **"Data"** means your data necessary to utilize the Tyler Software.
- **"Data Storage Capacity"** means the contracted amount of storage capacity for your Data identified in the Investment Summary.
- **"Defect"** means a failure of the Tyler Software to substantially conform to the functional descriptions set forth in our written proposal to you, or their functional equivalent. Future functionality may be updated, modified, or otherwise enhanced through our maintenance and support services, and the governing functional descriptions for such future functionality will be set forth in our then-current Documentation.
- **"Defined Users"** means the number of users that are authorized to use the SaaS Services. The Defined Users for the Agreement are as identified in the Investment Summary. If Exhibit A contains Enterprise Permitting & Licensing labeled software, defined users mean the maximum number of named users that are authorized to use the Enterprise Permitting & Licensing labeled modules as indicated in the Investment Summary.
- **"Developer"** means a third party who owns the intellectual property rights to Third Party Software.
- **"Documentation"** means any online or written documentation related to the use or functionality of the Tyler Software that we provide or otherwise make available to you, including instructions, user guides, manuals and other training or self-help documentation.
- **"Effective Date"** means the date by which both your and our authorized representatives have signed the Agreement.
- **"Force Majeure"** means an event beyond the reasonable control of you or us, including, without limitation, governmental action, war, riot or civil commotion, fire, natural disaster, or any other cause that could not with reasonable diligence be foreseen or prevented by you or us.
- **"Investment Summary"** means the agreed upon cost proposal for the products and services attached as Exhibit A.

- **"Invoicing and Payment Policy"** means the invoicing and payment policy. A copy of our current Invoicing and Payment Policy is attached as Exhibit B.
- **"Order Form"** means an ordering document that includes a quote or investment summary and specifying the items to be provided by Tyler to Client, including any addenda and supplements thereto.
- **"SaaS Fees"** means the fees for the SaaS Services identified in the Investment Summary.
- **"SaaS Services"** means software as a service consisting of system administration, system management, and system monitoring activities that Tyler performs for the Tyler Software, and includes the right to access and use the Tyler Software, receive maintenance and support on the Tyler Software, including Downtime resolution under the terms of the SLA, and Data storage and archiving. SaaS Services do not include support of an operating system or hardware, support outside of our normal business hours, or training, consulting or other professional services.
- **"SLA"** means the service level agreement. A copy of our current SLA is attached hereto as Exhibit C.
- **"Support Call Process"** means the support call process applicable to all of our customers who have licensed the Tyler Software. A copy of our current Support Call Process is attached as Schedule 1 to Exhibit C.
- **"Third Party Hardware"** means the third party hardware, if any, identified in the Investment Summary.
- **"Third Party Products"** means the Third Party Software and Third Party Hardware.
- **"Third Party SaaS Services"** means software as a service provided by a third party, if any, identified in the Investment Summary.
- **"Third Party Services"** means the third party services, if any, identified in the Investment Summary.
- **"Third Party Software"** means the third party software, if any, identified in the Investment Summary.
- **"Third Party Terms"** means, if any, the end user license agreement(s) or similar terms for the Third Party Products or other parties' products or services, as applicable.
- **"Tyler"** means Tyler Technologies, Inc., a Delaware corporation.
- **"Tyler Software"** means our proprietary software, including any integrations, custom modifications, and/or other related interfaces identified in the Investment Summary and licensed by us to you through this Agreement.
- **"we", "us", "our"** and similar terms mean Tyler.
- **"you"** and similar terms mean Client.

SECTION B – SAAS SERVICES

1. Rights Granted. We grant to you the non-exclusive, non-assignable limited right to use the SaaS Services solely for your internal business purposes for the number of Defined Users only. The Tyler Software will be made available to you according to the terms of the SLA. You acknowledge that we have no delivery obligations and we will not ship copies of the Tyler Software as part of the SaaS Services. You may use the SaaS Services to access updates and enhancements to the Tyler Software, as further described in Section C(9). The foregoing notwithstanding, to the extent we have sold you perpetual licenses for Tyler Software, if and listed in the Investment Summary, for which you are receiving SaaS Services, your rights to use such Tyler Software are perpetual, subject to the terms and conditions of this Agreement including, without limitation, Section B(4). We will make any such software available to you for download.

2. SaaS Fees. You agree to pay us the SaaS Fees. Those amounts are payable in accordance with our Invoicing and Payment Policy. The SaaS Fees are based on the number of Defined Users and amount of Data Storage Capacity. You may add additional users or additional data storage capacity on the terms set forth in Section H(1). In the event you regularly and/or meaningfully exceed the Defined Users or Data Storage Capacity, we reserve the right to charge you additional fees commensurate with the overage(s).

3. Ownership.

   3.1 We retain all ownership and intellectual property rights to the SaaS Services, the Tyler Software, and anything developed by us under this Agreement. You do not acquire under this Agreement any license to use the Tyler Software in excess of the scope and/or duration of the SaaS Services.

   3.2 The Documentation is licensed to you and may be used and copied by your employees for internal, non-commercial reference purposes only.

   3.3 You retain all ownership and intellectual property rights to the Data. You expressly recognize that except to the extent necessary to carry out our obligations contained in this Agreement, we do not create or endorse any Data used in connection with the SaaS Services.

4. Restrictions. You may not: (a) make the Tyler Software or Documentation resulting from the SaaS Services available in any manner to any third party for use in the third party's business operations; (b) modify, make derivative works of, disassemble, reverse compile, or reverse engineer any part of the SaaS Services; (c) access or use the SaaS Services in order to build or support, and/or assist a third party in building or supporting, products or services competitive to us; or (d) license, sell, rent, lease, transfer, assign, distribute, display, host, outsource, disclose, permit timesharing or service bureau use, or otherwise commercially exploit or make the SaaS Services, Tyler Software, or Documentation available to any third party other than as expressly permitted by this Agreement.

5. Software Warranty. We warrant that the Tyler Software will perform without Defects during the term of this Agreement. If the Tyler Software does not perform as warranted, we will use all reasonable efforts, consistent with industry standards, to cure the Defect in accordance with the maintenance and support process set forth in Section C(9), below, the SLA and our then current Support Call Process.

6. SaaS Services.

   6.1 Our SaaS Services are audited at least yearly in accordance with the AICPA's Statement on Standards for Attestation Engagements ("SSAE") No. 21. We have attained, and will maintain, SOC 1 and SOC 2 compliance, or its equivalent, for so long as you are timely paying for SaaS Services. The scope of audit coverage varies for some Tyler Software solutions. Upon execution of a mutually agreeable Non-Disclosure Agreement ("NDA"), we will provide you with a summary of our compliance report(s) or its equivalent. Every year thereafter, for so long as the NDA is in effect and in which you make a written request, we will provide that same information. If our SaaS Services are provided using a 3rd party data center, we will provide available compliance reports for that data center.

6.2 You will be hosted on shared hardware in a Tyler data center or in a third-party data center. In either event, databases containing your Data will be dedicated to you and inaccessible to our other customers.

6.3 Our Tyler data centers have fully-redundant telecommunications access, electrical power, and the required hardware to provide access to the Tyler Software in the event of a disaster or component failure. In the event of a data center failure, we reserve the right to employ our disaster recovery plan for resumption of the SaaS Services. In that event, we commit to a Recovery Point Objective ("RPO") of 24 hours and a Recovery Time Objective ("RTO") of 24 hours. RPO represents the maximum duration of time between the most recent recoverable copy of your hosted Data and subsequent data center failure. RTO represents the maximum duration of time following data center failure within which your access to the Tyler Software must be restored.

6.4 We conduct annual penetration testing of either the production network and/or web application to be performed. We will maintain industry standard intrusion detection and prevention systems to monitor malicious activity in the network and to log and block any such activity. We will provide you with a written or electronic record of the actions taken by us in the event that any unauthorized access to your database(s) is detected as a result of our security protocols. We will undertake an additional security audit, on terms and timing to be mutually agreed to by the parties, at your written request. You may not attempt to bypass or subvert security restrictions in the SaaS Services or environments related to the Tyler Software. Unauthorized attempts to access files, passwords or other confidential information, and unauthorized vulnerability and penetration test scanning of our network and systems (hosted or otherwise) is prohibited without the prior written approval of our IT Security Officer.

6.5 We test our disaster recovery plan on an annual basis. Our standard test is not client-specific. Should you request a client-specific disaster recovery test, we will work with you to schedule and execute such a test on a mutually agreeable schedule. At your written request, we will provide test results to you within a commercially reasonable timeframe after receipt of the request.

6.6 We will be responsible for importing back-up and verifying that you can log-in. You will be responsible for running reports and testing critical processes to verify the returned Data.

6.7 We provide secure Data transmission paths between each of your workstations and our servers.

6.8 Tyler data centers are accessible only by authorized personnel with a unique key entry. All other visitors to Tyler data centers must be signed in and accompanied by authorized personnel. Entry attempts to the data center are regularly audited by internal staff and external auditors to ensure no unauthorized access.

6.9 Where applicable with respect to our applications that take or process card payment data, we are responsible for the security of cardholder data that we possess, including functions relating to storing, processing, and transmitting of the cardholder data and affirm that, as of the Effective Date, we comply with applicable requirements to be considered PCI DSS compliant and have performed the necessary steps to validate compliance with the PCI DSS. We agree to supply the current status of our PCI DSS compliance program in the form of an official

Attestation of Compliance, which can be found at https://www.tylertech.com/about-us/compliance, and in the event of any change in our status, will comply with applicable notice requirements.

SECTION C – PROFESSIONAL SERVICES

1. Professional Services. We will provide you the various implementation-related services itemized in the Investment Summary.

2. Professional Services Fees. You agree to pay us the professional services fees in the amounts set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy. You acknowledge that the fees stated in the Investment Summary are good-faith estimates of the amount of time and materials required for your implementation. We will bill you the actual fees incurred based on the in-scope services provided to you. Any discrepancies in the total values set forth in the Investment Summary will be resolved by multiplying the applicable hourly rate by the quoted hours.

3. Additional Services. The Investment Summary contains the scope of services and related costs (including programming and/or interface estimates) required for the project based on our understanding of the specifications you supplied. If additional work is required, or if you use or request additional services, we will provide you with an addendum or change order, as applicable, outlining the costs for the additional work. The price quotes in the addendum or change order will be valid for thirty (30) days from the date of the quote.

4. Cancellation. If you cancel services less than four (4) weeks in advance (other than for Force Majeure or breach by us), you will be liable for all (a) daily fees associated with cancelled professional services if we are unable to reassign our personnel and (b) any non-refundable travel expenses already incurred by us on your behalf. We will make all reasonable efforts to reassign personnel in the event you cancel within four (4) weeks of scheduled commitments.

5. Services Warranty. We will perform the services in a professional, workmanlike manner, consistent with industry standards. In the event we provide services that do not conform to this warranty, we will re-perform such services at no additional cost to you.

6. Site Access and Requirements. At no cost to us, you agree to provide us with full and free access to your personnel, facilities, and equipment as may be reasonably necessary for us to provide implementation services, subject to any reasonable security protocols or other written policies provided to us as of the Effective Date, and thereafter as mutually agreed to by you and us.

7. Background Checks. For at least the past twelve (12) years, all of our employees have undergone criminal background checks prior to hire. All employees sign our confidentiality agreement and security policies.

8. Client Assistance. You acknowledge that the implementation of the Tyler Software is a cooperative process requiring the time and resources of your personnel. You agree to use all reasonable efforts to cooperate with and assist us as may be reasonably required to meet the agreed upon project deadlines and other milestones for implementation. This cooperation includes at least working with us to schedule the implementation-related services outlined in this Agreement. We will not be

liable for failure to meet any deadlines and milestones when such failure is due to Force Majeure or to the failure by your personnel to provide such cooperation and assistance (either through action or omission).

9. Maintenance and Support. For so long as you timely pay your SaaS Fees according to the Invoicing and Payment Policy, then in addition to the terms set forth in the SLA and the Support Call Process, we will:

   9.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standards, to resolve Defects in the Tyler Software (subject to any applicable release life cycle policy);

   9.2 provide support during our established support hours;

   9.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and Third Party Software, if any, in order to provide maintenance and support services;

   9.4 make available to you all releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and

   9.5 provide non-Defect resolution support of prior releases of the Tyler Software in accordance with any applicable release life cycle policy.

We will use all reasonable efforts to perform support services remotely. Currently, we use a third-party secure unattended connectivity tool called Bomgar, as well as GotoAssist by Citrix. Therefore, you agree to maintain a high-speed internet connection capable of connecting us to your PCs and server(s). You agree to provide us with a login account and local administrative privileges as we may reasonably require to perform remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we cannot resolve a support issue remotely, we may be required to provide onsite services. In such event, we will be responsible for our travel expenses, unless it is determined that the reason onsite support was required was a reason outside our control. Either way, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain your VPN for backup connectivity purposes.

For the avoidance of doubt, SaaS Fees do not include the following services: (a) onsite support (unless Tyler cannot remotely correct a Defect in the Tyler Software, as set forth above); (b) application design; (c) other consulting services; or (d) support outside our normal business hours as listed in our then-current Support Call Process. Requested services such as those outlined in this section will be billed to you on a time and materials basis at our then current rates. You must request those services with at least one (1) weeks' advance notice.

SECTION D – THIRD PARTY PRODUCTS

1. Third Party Hardware. We will sell, deliver, and install onsite the Third Party Hardware, if you have purchased any, for the price set forth in the Investment Summary. Those amounts are payable in accordance with our Invoicing and Payment Policy.

2. Third Party Software. As part of the SaaS Services, you will receive access to the Third Party Software and related documentation for internal business purposes only. Your rights to the Third Party Software will be governed by the Third Party Terms.

3. Third Party Products Warranties.

   3.1 We are authorized by each Developer to grant access to the Third Party Software.

   3.2 The Third Party Hardware will be new and unused, and upon payment in full, you will receive free and clear title to the Third Party Hardware.

   3.3 You acknowledge that we are not the manufacturer of the Third Party Products. We do not warrant or guarantee the performance of the Third Party Products. However, we grant and pass through to you any warranty that we may receive from the Developer or supplier of the Third Party Products.

4. Third Party Services. If you have purchased Third Party Services, those services will be provided independent of Tyler by such third-party at the rates set forth in the Investment Summary and in accordance with our Invoicing and Payment Policy.

SECTION E - INVOICING AND PAYMENT; INVOICE DISPUTES

1. Invoicing and Payment. We will invoice you the SaaS Fees and fees for other professional services in the Investment Summary per our Invoicing and Payment Policy, subject to Section E(2).

2. Invoice Disputes. If you believe any delivered software or service does not conform to the warranties in this Agreement, you will provide us with written notice within thirty (30) days of your receipt of the applicable invoice. The written notice must contain reasonable detail of the issues you contend are in dispute so that we can confirm the issue and respond to your notice with either a justification of the invoice, an adjustment to the invoice, or a proposal addressing the issues presented in your notice. We will work with you as may be necessary to develop an action plan that outlines reasonable steps to be taken by each of us to resolve any issues presented in your notice. You may withhold payment of the amount(s) actually in dispute, and only those amounts, until we complete the action items outlined in the plan. If we are unable to complete the action items outlined in the action plan because of your failure to complete the items agreed to be done by you, then you will remit full payment of the invoice. We reserve the right to suspend delivery of all SaaS Services, including maintenance and support services, if you fail to pay an invoice not disputed as described above within fifteen (15) days of notice of our intent to do so.

SECTION F – TERM AND TERMINATION

1. Term. The initial term of this Agreement is equal to the number of years indicated for SaaS Services in Exhibit A, commencing on the first day of the first month following the date Tyler makes the SaaS environment available to you, unless earlier terminated as set forth below. If no duration is indicated in Exhibit A, the initial term is one (1) year. Upon expiration of the initial term, this Agreement will renew automatically for additional one (1) year renewal terms at our then-current SaaS Fees unless terminated in writing by either party at least sixty (60) days prior to the end of the then-current renewal term. Your right to access or use the Tyler Software and the SaaS Services will terminate at the end of this Agreement.

2. Termination. This Agreement may be terminated as set forth below. In the event of termination, you will pay us for all undisputed fees and expenses related to the software, products, and/or services you have received, or we have incurred or delivered, prior to the effective date of termination. Disputed fees and expenses in all terminations other than your termination for cause must have been submitted as invoice disputes in accordance with Section E(2).

   2.1 Failure to Pay SaaS Fees. You acknowledge that continued access to the SaaS Services is contingent upon your timely payment of SaaS Fees. If you fail to timely pay the SaaS Fees, we may discontinue the SaaS Services and deny your access to the Tyler Software. We may also terminate this Agreement if you don't cure such failure to pay within forty-five (45) days of receiving written notice of our intent to terminate.

   2.2 For Cause. If you believe we have materially breached this Agreement, you will invoke the Dispute Resolution clause set forth in Section H(3). You may terminate this Agreement for cause in the event we do not cure, or create a mutually agreeable action plan to address, a material breach of this Agreement within the thirty (30) day window set forth in Section H(3).

   2.3 Force Majeure. Either party has the right to terminate this Agreement if a Force Majeure event suspends performance of the SaaS Services for a period of forty-five (45) days or more.

   2.4 Lack of Appropriations. If you should not appropriate or otherwise make available funds sufficient to utilize the SaaS Services, you may unilaterally terminate this Agreement upon thirty (30) days written notice to us. You will not be entitled to a refund or offset of previously paid, but unused SaaS Fees. You agree not to use termination for lack of appropriations as a substitute for termination for convenience.

SECTION G – INDEMNIFICATION, LIMITATION OF LIABILITY AND INSURANCE

1. Intellectual Property Infringement Indemnification.

   1.1 We will defend you against any third party claim(s) that the Tyler Software or Documentation infringes that third party's patent, copyright, or trademark, or misappropriates its trade secrets, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.

1.2 Our obligations under this Section G(1) will not apply to the extent the claim or adverse final judgment is based on your use of the Tyler Software in contradiction of this Agreement, including with non-licensed third parties, or your willful infringement.

1.3 If we receive information concerning an infringement or misappropriation claim related to the Tyler Software, we may, at our expense and without obligation to do so, either: (a) procure for you the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent, in which case you will stop running the allegedly infringing Tyler Software immediately. Alternatively, we may decide to litigate the claim to judgment, in which case you may continue to use the Tyler Software consistent with the terms of this Agreement.

1.4 If an infringement or misappropriation claim is fully litigated and your use of the Tyler Software is enjoined by a court of competent jurisdiction, in addition to paying any adverse final judgment (or settlement to which we consent), we will, at our option, either: (a) procure the right to continue its use; (b) modify it to make it non-infringing; or (c) replace it with a functional equivalent. This section provides your exclusive remedy for third party copyright, patent, or trademark infringement and trade secret misappropriation claims.

2. General Indemnification.

2.1 We will indemnify and hold harmless you and your agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by our negligence or willful misconduct; or (b) our violation of PCI-DSS requirements or a law applicable to our performance under this Agreement. You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance, cooperation, and information in defending the claim at our expense.

2.2 To the extent permitted by applicable law, you will indemnify and hold harmless us and our agents, officials, and employees from and against any and all third-party claims, losses, liabilities, damages, costs, and expenses (including reasonable attorney's fees and costs) for (a) personal injury or property damage to the extent caused by your negligence or willful misconduct; or (b) your violation of a law applicable to your performance under this Agreement. We will notify you promptly in writing of the claim and will give you sole control over its defense or settlement. We agree to provide you with reasonable assistance, cooperation, and information in defending the claim at your expense.

3. **DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE HEREBY DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES, DUTIES, OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. CLIENT UNDERSTANDS AND AGREES THAT TYLER DISCLAIMS ANY LIABILITY FOR ERRORS THAT RELATE TO USER ERROR.**

4. **LIMITATION OF LIABILITY. EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT, OUR LIABILITY FOR DAMAGES ARISING OUT OF THIS AGREEMENT, WHETHER BASED ON A THEORY**

OF CONTRACT OR TORT, INCLUDING NEGLIGENCE AND STRICT LIABILITY, SHALL BE LIMITED TO YOUR ACTUAL DIRECT DAMAGES, NOT TO EXCEED (A) DURING THE INITIAL TERM, AS SET FORTH IN SECTION F(1), TOTAL FEES PAID AS OF THE TIME OF THE CLAIM; OR (B) DURING ANY RENEWAL TERM, THE THEN-CURRENT ANNUAL SAAS FEES PAYABLE IN THAT RENEWAL TERM. THE PARTIES ACKNOWLEDGE AND AGREE THAT THE PRICES SET FORTH IN THIS AGREEMENT ARE SET IN RELIANCE UPON THIS LIMITATION OF LIABILITY AND TO THE MAXIMUM EXTENT ALLOWED UNDER APPLICABLE LAW, THE EXCLUSION OF CERTAIN DAMAGES, AND EACH SHALL APPLY REGARDLESS OF THE FAILURE OF AN ESSENTIAL PURPOSE OF ANY REMEDY. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS THAT ARE SUBJECT TO SECTIONS G(1) AND G(2).

5. **EXCLUSION OF CERTAIN DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL WE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

6. Insurance. During the course of performing services under this Agreement, we agree to maintain the following levels of insurance: (a) Commercial General Liability of at least $1,000,000; (b) Automobile Liability of at least $1,000,000; (c) Professional Liability of at least $1,000,000; (d) Workers Compensation complying with applicable statutory requirements; and (e) Excess/Umbrella Liability of at least $5,000,000. We will add you as an additional insured to our Commercial General Liability and Automobile Liability policies, which will automatically add you as an additional insured to our Excess/Umbrella Liability policy as well. We will provide you with copies of certificates of insurance upon your written request.

SECTION H – GENERAL TERMS AND CONDITIONS

1. Additional Products and Services. You may purchase additional products and services at the rates set forth in the Investment Summary for twelve (12) months from the Effective Date by executing a mutually agreed addendum. If no rate is provided in the Investment Summary, or those twelve (12) months have expired, you may purchase additional products and services at our then-current list price, also by executing a mutually agreed addendum. The terms of this Agreement will control any such additional purchase(s), unless otherwise specifically provided in the addendum.

2. Optional Items. Pricing for any listed optional products and services in the Investment Summary will be valid for twelve (12) months from the Effective Date.

3. Dispute Resolution. You agree to provide us with written notice within thirty (30) days of becoming aware of a dispute. You agree to cooperate with us in trying to reasonably resolve all disputes, including, if requested by either party, appointing a senior representative to meet and engage in good faith negotiations with our appointed senior representative. Senior representatives will convene within thirty (30) days of the written dispute notice, unless otherwise agreed. All meetings and discussions between senior representatives will be deemed confidential settlement discussions not subject to disclosure under Federal Rule of Evidence 408 or any similar applicable state rule. If we fail to resolve the dispute, then the parties shall participate in non-binding mediation in an effort to resolve the dispute. If the dispute remains unresolved after mediation, then either of us may assert our respective rights and remedies in a court of competent jurisdiction. Nothing in this section shall prevent you or us from seeking necessary injunctive relief during the dispute resolution procedures.

4. Taxes. The fees in the Investment Summary do not include any taxes, including, without limitation, sales, use, or excise tax. If you are a tax-exempt entity, you agree to provide us with a tax-exempt certificate. Otherwise, we will pay all applicable taxes to the proper authorities and you will reimburse us for such taxes. If you have a valid direct-pay permit, you agree to provide us with a copy. For clarity, we are responsible for paying our income taxes, both federal and state, as applicable, arising from our performance of this Agreement.

5. Nondiscrimination. We will not discriminate against any person employed or applying for employment concerning the performance of our responsibilities under this Agreement. This discrimination prohibition will apply to all matters of initial employment, tenure, and terms of employment, or otherwise with respect to any matter directly or indirectly relating to employment concerning race, color, religion, national origin, age, sex, sexual orientation, ancestry, disability that is unrelated to the individual's ability to perform the duties of a particular job or position, height, weight, marital status, or political affiliation. We will post, where appropriate, all notices related to nondiscrimination as may be required by applicable law.

6. E-Verify. We have complied, and will comply, with the E-Verify procedures administered by the U.S. Citizenship and Immigration Services Verification Division for all of our employees assigned to your project.

7. Subcontractors. We will not subcontract any services under this Agreement without your prior written consent, not to be unreasonably withheld.

8. Binding Effect; No Assignment. This Agreement shall be binding on, and shall be for the benefit of, either your or our successor(s) or permitted assign(s). Neither party may assign this Agreement without the prior written consent of the other party; provided, however, your consent is not required for an assignment by us as a result of a corporate reorganization, merger, acquisition, or purchase of substantially all of our assets.

9. Force Majeure. Except for your payment obligations, neither party will be liable for delays in performing its obligations under this Agreement to the extent that the delay is caused by Force Majeure; provided, however, that within ten (10) business days of the Force Majeure event, the party whose performance is delayed provides the other party with written notice explaining the cause and extent thereof, as well as a request for a reasonable time extension equal to the estimated duration of the Force Majeure event.

10. No Intended Third Party Beneficiaries. This Agreement is entered into solely for the benefit of you and us. No third party will be deemed a beneficiary of this Agreement, and no third party will have the right to make any claim or assert any right under this Agreement. This provision does not affect the rights of third parties under any Third Party Terms.

11. Entire Agreement; Amendment. This Agreement represents the entire agreement between you and us with respect to the subject matter hereof, and supersedes any prior agreements, understandings, and representations, whether written, oral, expressed, implied, or statutory. Purchase orders submitted by you, if any, are for your internal administrative purposes only, and the terms and conditions contained in those purchase orders will have no force or effect. This Agreement may only be modified by a written amendment signed by an authorized representative of each party.

12. Severability. If any term or provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement will be considered valid and enforceable to the fullest extent permitted by law.

13. No Waiver. In the event that the terms and conditions of this Agreement are not strictly enforced by either party, such non-enforcement will not act as or be deemed to act as a waiver or modification of this Agreement, nor will such non-enforcement prevent such party from enforcing each and every term of this Agreement thereafter.

14. Independent Contractor. We are an independent contractor for all purposes under this Agreement.

15. Notices. All notices or communications required or permitted as a part of this Agreement, such as notice of an alleged material breach for a termination for cause or a dispute that must be submitted to dispute resolution, must be in writing and will be deemed delivered upon the earlier of the following: (a) actual receipt by the receiving party; (b) upon receipt by sender of a certified mail, return receipt signed by an employee or agent of the receiving party; (c) upon receipt by sender of proof of email delivery; or (d) if not actually received, five (5) days after deposit with the United States Postal Service authorized mail center with proper postage (certified mail, return receipt requested) affixed and addressed to the other party at the address set forth on the signature page hereto or such other address as the party may have designated by proper notice. The consequences for the failure to receive a notice due to improper notification by the intended receiving party of a change in address will be borne by the intended receiving party.

16. Client Lists. You agree that we may identify you by name in client lists, marketing presentations, and promotional materials.

17. Confidentiality. Both parties recognize that their respective employees and agents, in the course of performance of this Agreement, may be exposed to confidential information and that disclosure of such information could violate rights to private individuals and entities, including the parties. Confidential information is nonpublic information that a reasonable person would believe to be confidential and includes, without limitation, personal identifying information (*e.g.*, social security numbers) and trade secrets, each as defined by applicable state law. Each party agrees that it will not disclose any confidential information of the other party and further agrees to take all reasonable and appropriate action to prevent such disclosure by its employees or agents. The confidentiality covenants contained herein will survive the termination or cancellation of this Agreement. This obligation of confidentiality will not apply to information that:
    (a) is in the public domain, either at the time of disclosure or afterwards, except by breach of this Agreement by a party or its employees or agents;
    (b) a party can establish by reasonable proof was in that party's possession at the time of initial disclosure;
    (c) a party receives from a third party who has a right to disclose it to the receiving party; or
    (d) is the subject of a legitimate disclosure request under the open records laws or similar applicable public disclosure laws governing this Agreement; provided, however, that in the event you receive an open records or other similar applicable request, you will give us prompt notice and otherwise perform the functions required by applicable law.

18. Quarantining of Client Data. Some services provided by Tyler require us to be in possession of your Data. In the event we detect malware or other conditions associated with your Data that are reasonably suspected of putting Tyler resources or other Tyler clients' data at risk, we reserve the absolute right to move your Data from its location within a multi-tenancy Tyler hosted environment to an isolated "quarantined" environment without advance notice. Your Data will remain in such quarantine for a period of at least six (6) months during which time we will review the Data, and all traffic associated with the Data, for signs of malware or other similar issues. If no issues are detected through such reviews during the six (6) month period of quarantine, we will coordinate with you the restoration of your Data to a non-quarantined environment. In the event your Data must remain in quarantine beyond this six (6) month period through no fault of Tyler's, we reserve the right to require payment of additional fees for the extended duration of quarantine. We will provide an estimate of what those costs will be upon your request.

19. Business License. In the event a local business license is required for us to perform services hereunder, you will promptly notify us and provide us with the necessary paperwork and/or contact information so that we may timely obtain such license.

20. Governing Law. This Agreement will be governed by and construed in accordance with the laws of your state of domicile, without regard to its rules on conflicts of law.

21. Multiple Originals and Authorized Signatures. This Agreement may be executed in multiple originals, any of which will be independently treated as an original document. Any electronic, faxed, scanned, photocopied, or similarly reproduced signature on this Agreement or any amendment hereto will be deemed an original signature and will be fully enforceable as if an original signature. Each party represents to the other that the signatory set forth below is duly authorized to bind that party to this Agreement.

22. Cooperative Procurement. To the maximum extent permitted by applicable law, we agree that this Agreement may be used as a cooperative procurement vehicle by eligible jurisdictions. We reserve the right to negotiate and customize the terms and conditions set forth herein, including but not limited to pricing, to the scope and circumstances of that cooperative procurement.

23. Data & Insights Solution Terms. Your use of certain Tyler solutions includes Tyler's Data & Insights data platform. Your rights, and the rights of any of your end users, to use Tyler's Data & Insights data platform is subject to the Data & Insights SaaS Services Terms of Service, available at https://www.tylertech.com/terms/data-insights-saas-services-terms-of-service. By signing a Tyler Agreement or Order Form, or accessing, installing, or using any of the Tyler solutions listed at the linked terms, you certify that you have reviewed, understand, and agree to said terms.

24. Contract Documents. This Agreement includes the following exhibits:

Exhibit A	Investment Summary
Exhibit B	Invoicing and Payment Policy
	Schedule 1: Business Travel Policy
Exhibit C	Service Level Agreement
	Schedule 1: Support Call Process

SIGNATURE PAGE FOLLOWS

IN WITNESS WHEREOF, a duly authorized representative of each party has executed this Agreement as of the date(s) set forth below.

Tyler Technologies, Inc.	City of Elkins, WV
By:________________	By:________________
Name:________________	Name:________________
Title:________________	Title:________________
Date:________________	Date:________________
Address for Notices: Tyler Technologies, Inc. One Tyler Drive Yarmouth, ME 04096 Attention: Chief Legal Officer	Address for Notices: City of Elkins 401 Davis Avenue Ofc Elkins, WV 26247 Attention: ________________

Exhibit A
Investment Summary

The following Investment Summary details the software and services to be delivered by us to you under the Agreement. This Investment Summary is effective as of the Effective Date, despite any expiration date in the Investment Summary that may have lapsed as of the Effective Date. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement. In the event of conflict between the Agreement and terms in the Comments section of this Investment Summary, the language in the Agreement will prevail.

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Exhibit A

Sales Quotation For:
City of Elkins
401 Davis Ave Ofc
Elkins WV 26241-3874

Quoted BY: Tyler Richardson
Quote Expiration: 2/12/24
Quote Name:

Tyler Annual Software – SaaS Description	Annual
ERP Pro powered by Incode	
ERP Pro 9 Financial Management Suite	
Core Financials	$ 7,111
Fixed Assets	$ 914
Purchase Orders	$ 3,108
Payroll	$ 2,194
Electronic Time Clock Interface	$ 996
System Software Non SQL	$ 1,760
Accounts Receivable	$ 1,500
ERP Pro 9 Customer Relationship Management Suite	
Utility Billing Water/Gas	$ 8,776
Utility Meter-Reader Interface	$ 1,091
Third-Party Printing Interface	$ 3,015
Output Processor Server	$ 1,828

Tyler Annual Software – SaaS Description	Annual
Additional Utility Meter-Reader Interface	$ 1,463
Cashiering	$ 2,659
Forms Overlay	$ 1,265
Sales Tax	$ 5,730
ERP Pro Community Development Suite	
Code Enforcement	$ 2,925
Licensing	$ 1,463
Permitting	$ 2,194
Municipal Justice powered by Incode	
Municipal Justice 9 Suite	
Criminal Case Manager	$ 2,527
Centralized Cash Collections	$ 505
Citation Issuing Device Third-Party Interface	$ 2,297
Tyler One	
Time & Attendance powered by ExecuTime	
Time & Attendance	$ 2,236
Content Manager Suite	
Content Manager Core	$ 3,989
TOTAL:	**$ 61,546**

Exhibit A

Summary	One Time Fees	Recurring Fees
Total SaaS		$ 61,546
Total Tyler Services		
Summary Total	**$ 0**	**$ 61,546**
Contract Total	**$ 61,546**	

Comments

Work will be delivered remotely unless otherwise noted in this agreement.

Expenses associated with onsite services are invoiced as incurred according to Tyler's standard business travel policy.

SaaS is considered a term of one year unless otherwise indicated.

Core Financials Core Financials includes general ledger, budget prep, bank recon, accounts payable.

Client agrees that items in this sales quotation are, upon Client's signature or approval of same, hereby added to the existing agreement ("Agreement") between the parties and subject to its terms. Additionally, payment for said items, as applicable but subject to any listed assumptions herein, shall conform to the following terms, subject to payment terms in an agreement, amendment, or similar document in which this sales quotation is included:

- License fees for Tyler and third-party software are invoiced upon the earlier of (i) delivery of the license key or (ii) when Tyler makes such software available accessible.
- Fees for hardware are invoiced upon delivery.
- Fees for year one of hardware maintenance are invoiced upon delivery of the hardware.
- Annual Maintenance and Support fees, SaaS fees, Hosting fees, and Subscription fees are first payable when Tyler makes the software accessible to the Client (for Maintenance) or on the first day of the month following the date this quotation was signed (for SaaS, Hosting, and Subscription), and any such fees are prorated to align with the applicable term under the agreement, with renewals invoiced annually thereafter in accord with the Agreement.

Fees for services included in this sales quotation shall be invoiced as indicated below.

- Implementation and other professional services fees shall be invoiced as delivered.
- Fixed-fee Business Process Consulting services shall be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module.
- Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion option, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, Tyler will invoice Client the actual services delivered on a time and materials basis.
- Except as otherwise provided, other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, where "Project Planning Services" are provided, payment shall be invoiced upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be invoiced monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
- If Client has purchased any change management services, those services will be invoiced in accordance with the Agreement.
- Notwithstanding anything to the contrary stated above, the following payment terms shall apply to fees specifically for migrations: Tyler will invoice Client 50% of any Migration Services Fees listed above upon Client approval of the product suite migration schedule. The remaining 50%, by line item, will be billed upon the go-live of the applicable product

suite. Tyler will invoice Client for any Project Management Fees listed above upon the go-live of the first product suite. Annual SaaS Fees will be invoiced upon availability of the hosted environment.

Any SaaS or hosted solutions added to an agreement containing Client-hosted Tyler solutions are subject to Tyler's SaaS Services terms found here: https://www.tylertech.com/terms/tyler-saas-services.

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held
For six (6) months from the Quote date or the Effective Date of the Contract, whichever is later.

Customer Approval: ______________________ Date: ______________________

Print Name: ______________________ P.O.#: ______________________

Exhibit B
Invoicing and Payment Policy

We will provide you with the software and services set forth in the Investment Summary of the Agreement. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

Invoicing: We will invoice you for the applicable software and services in the Investment Summary as set forth below. Your rights to dispute any invoice are set forth in the Agreement.

1. SaaS Fees. SaaS Fees are invoiced on an annual basis, beginning on the commencement of the initial term as set forth in Section F (1) of this Agreement. Your annual SaaS fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual SaaS fees will be at our then-current rates.

2. Other Tyler Software and Services.
   2.1 *Implementation and Other Professional Services (including training)*: Implementation and other professional services (including training) are billed and invoiced as delivered, at the rates set forth in the Investment Summary.
   2.2 *Consulting Services*: If you have purchased any Business Process Consulting services, if they have been quoted as fixed-fee services, they will be invoiced 50% upon your acceptance of the Best Practice Recommendations, by module, and 50% upon your acceptance of custom desktop procedures, by module. If you have purchased any Business Process Consulting services and they are quoted as an estimate, then we will bill you the actual services delivered on a time and materials basis.
   2.3 *Conversions*: Fixed-fee conversions are invoiced 50% upon initial delivery of the converted Data, by conversion option, and 50% upon Client acceptance to load the converted Data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, we will bill you the actual services delivered on a time and materials basis.
   2.4 *Requested Modifications to the Tyler Software*: Requested modifications to the Tyler Software are invoiced 50% upon delivery of specifications and 50% upon delivery of the applicable modification. You must report any failure of the modification to conform to the specifications within thirty (30) days of delivery; otherwise, the modification will be deemed to be in compliance with the specifications after the 30-day window has passed. You may still report Defects to us as set forth in this Agreement.
   2.5 *Other Fixed Price Services*: Other fixed price services are invoiced as delivered, at the rates set forth in the Investment Summary. For the avoidance of doubt, where "Project Planning Services" are provided, payment will be due upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be billed monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
   2.6 *Web Services*: Annual fees for web services are payable in advance, commencing upon the availability of the service. Your annual fees for the initial term are set forth in the

Investment Summary. Upon expiration of the initial term, your annual fees will be at our then-current rates.

2.7 *Annual Services*: Unless otherwise indicated in this Exhibit B, fees for annual services are due annually, in advance, commencing on the availability of the service. Your annual fees for the initial term are set forth in the Investment Summary. Upon expiration of the initial term, your annual fees will be at our then-current rates.

3. Third Party Products.

3.1 *Third Party Software License Fees*: License fees for Third Party Software, if any, are invoiced when we make it available to you for downloading.

3.2 *Third Party Software Maintenance*: The first year maintenance for the Third Party Software is invoiced when we make it available to you for downloading.

3.3 *Third Party Hardware*: Third Party Hardware costs, if any, are invoiced upon delivery.

3.4 *Third Party Services:* Fees for Third Party Services, if any, are invoiced as delivered, along with applicable expenses, at the rates set forth in the Investment Summary. For the avoidance of doubt, Finite Matters will invoice Client directly for any services fees for Pattern Stream.

3.5 *Third Party SaaS*: Third Party SaaS Services fees, if any, are invoiced annually, in advance, commencing with availability of the respective Third Party SaaS Services. Pricing for the first year of Third Party SaaS Services is indicated in the Investment Summary. Pricing for subsequent years will be at the respective third party's then-current rates.

4. Transaction Fees. Unless paid directly by an end user at the time of transaction, per transaction (call, message, etc.) fees are invoiced on a quarterly basis. Fees are indicated in the Investment Summary and may be increased by Tyler upon notice of no less than thirty (30) days.

5. Expenses. The service rates in the Investment Summary do not include travel expenses. Expenses for Tyler delivered services will be billed as incurred and only in accordance with our then-current Business Travel Policy, plus a 10% travel agency processing fee. Our current Business Travel Policy is attached to this Exhibit B as Schedule 1. Copies of receipts will be provided upon request; we reserve the right to charge you an administrative fee depending on the extent of your requests. Receipts for miscellaneous items less than twenty-five dollars and mileage logs are not available.

6. Credit for Prepaid Maintenance and Support Fees for Tyler Software. Client will receive a credit for the maintenance and support fees prepaid for the Tyler Software for the time period commencing on the first day of the SaaS Term.

Payment. Payment for undisputed invoices is due within forty-five (45) days of the invoice date. We prefer to receive payments electronically. Our electronic payment information is available by contacting AR@tylertech.com.

Exhibit B
Schedule 1
Business Travel Policy

1. Air Travel

A. Reservations & Tickets

The Travel Management Company (TMC) used by Tyler will provide an employee with a direct flight within two hours before or after the requested departure time, assuming that flight does not add more than three hours to the employee's total trip duration and the fare is within $100 (each way) of the lowest logical fare. If a net savings of $200 or more (each way) is possible through a connecting flight that is within two hours before or after the requested departure time and that does not add more than three hours to the employee's total trip duration, the connecting flight should be accepted.

Employees are encouraged to make advanced reservations to take full advantage of discount opportunities. Employees should use all reasonable efforts to make travel arrangements at least two (2) weeks in advance of commitments. A seven (7) day advance booking requirement is mandatory. When booking less than seven (7) days in advance, management approval will be required.

Except in the case of international travel where a segment of continuous air travel is six (6) or more consecutive hours in length, only economy or coach class seating is reimbursable. Employees shall not be reimbursed for "Basic Economy Fares" because these fares are non-refundable and have many restrictions that outweigh the cost-savings.

B. Baggage Fees

Reimbursement of personal baggage charges are based on trip duration as follows:

- Up to five (5) days = one (1) checked bag
- Six (6) or more days = two (2) checked bags

Baggage fees for sports equipment are not reimbursable.

2. Ground Transportation

A. Private Automobile

Mileage Allowance – Business use of an employee's private automobile will be reimbursed at the current IRS allowable rate, plus out of pocket costs for tolls and parking. Mileage will be calculated by using the employee's office as the starting and ending point, in compliance with IRS regulations. Employees who have been designated a home office should calculate miles from their home.

B. Rental Car

Employees are authorized to rent cars only in conjunction with air travel when cost, convenience, and the specific situation reasonably require their use. When renting a car for Tyler business, employees should select a "mid-size" or "intermediate" car. "Full" size cars may be rented when three or more employees are traveling together. Tyler carries leased vehicle coverage for business car rentals; except for employees traveling to Alaska and internationally (excluding Canada), additional insurance on the rental agreement should be declined.

C. Public Transportation

Taxi or airport limousine services may be considered when traveling in and around cities or to and from airports when less expensive means of transportation are unavailable or impractical. The actual fare plus a reasonable tip (15-18%) are reimbursable. In the case of a free hotel shuttle to the airport, tips are included in the per diem rates and will not be reimbursed separately.

D. Parking & Tolls

When parking at the airport, employees must use longer term parking areas that are measured in days as opposed to hours. Park and fly options located near some airports may also be used. For extended trips that would result in excessive parking charges, public transportation to/from the airport should be considered. Tolls will be reimbursed when receipts are presented.

3. Lodging

Tyler's TMC will select hotel chains that are well established, reasonable in price, and conveniently located in relation to the traveler's work assignment. Typical hotel chains include Courtyard, Fairfield Inn, Hampton Inn, and Holiday Inn Express. If the employee has a discount rate with a local hotel, the hotel reservation should note that discount and the employee should confirm the lower rate with the hotel upon arrival. Employee memberships in travel clubs such as AAA should be noted in their travel profiles so that the employee can take advantage of any lower club rates.

"No shows" or cancellation fees are not reimbursable if the employee does not comply with the hotel's cancellation policy.

Tips for maids and other hotel staff are included in the per diem rate and are not reimbursed separately.

Employees are not authorized to reserve non-traditional short-term lodging, such as Airbnb, VRBO, and HomeAway. Employees who elect to make such reservations shall not be reimbursed.

4. Meals and Incidental Expenses

Employee meals and incidental expenses while on travel status within the continental U.S. are in accordance with the federal per diem rates published by the General Services Administration. Incidental expenses include tips to maids, hotel staff, and shuttle drivers and other minor travel expenses. Per diem rates are available at www.gsa.gov/perdiem.

Per diem for Alaska, Hawaii, U.S. protectorates and international destinations are provided separately by the Department of State and will be determined as required.

A. Overnight Travel

For each full day of travel, all three meals are reimbursable. Per diems on the first and last day of a trip are governed as set forth below.

Departure Day

Depart before 12:00 noon	Lunch and dinner
Depart after 12:00 noon	Dinner

Return Day

Return before 12:00 noon	Breakfast
Return between 12:00 noon & 7:00 p.m.	Breakfast and lunch
Return after 7:00 p.m.*	Breakfast, lunch and dinner

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

The reimbursement rates for individual meals are calculated as a percentage of the full day per diem as follows:

Breakfast	15%
Lunch	25%
Dinner	60%

B. Same Day Travel

Employees traveling at least 100 miles to a site and returning in the same day are eligible to claim lunch on an expense report. Employees on same day travel status are eligible to claim dinner in the event they return home after 7:00 p.m.*

*7:00 p.m. is defined as direct travel time and does not include time taken to stop for dinner.

5. Internet Access – Hotels and Airports

Employees who travel may need to access their e-mail at night. Many hotels provide free high speed internet access and Tyler employees are encouraged to use such hotels whenever possible. If an employee's hotel charges for internet access it is reimbursable up to $10.00 per day. Charges for internet access at airports are not reimbursable.

6. International Travel

All international flights with the exception of flights between the U.S. and Canada should be reserved through TMC using the "lowest practical coach fare" with the exception of flights that are six (6) or more consecutive hours in length. In such event, the next available seating class above coach shall be reimbursed.

When required to travel internationally for business, employees shall be reimbursed for photo fees, application fees, and execution fees when obtaining a new passport book, but fees related to passport renewals are not reimbursable. Visa application and legal fees, entry taxes and departure taxes are reimbursable.

The cost of vaccinations that are either required for travel to specific countries or suggested by the U.S. Department of Health & Human Services for travel to specific countries, is reimbursable.

Section 4, Meals & Incidental Expenses, and Section 2.b., Rental Car, shall apply to this section.

Exhibit C
SERVICE LEVEL AGREEMENT

I. Agreement Overview

This SLA operates in conjunction with, and does not supersede or replace any part of, the Agreement. It outlines the information technology service levels that we will provide to you to ensure the availability of the application services that you have requested us to provide. All other support services are documented in the Support Call Process. This SLA does not apply to any Third Party SaaS Services. All other support services are documented in the Support Call Process.

II. Definitions. Except as defined below, all defined terms have the meaning set forth in the Agreement.

Actual Attainment: The percentage of time the Tyler Software is available during a calendar month, calculated as follows: (Service Availability – Downtime) ÷ Service Availability.

Client Error Incident: Any service unavailability resulting from your applications, content or equipment, or the acts or omissions of any of your service users or third-party providers over whom we exercise no control.

Downtime: Those minutes during Service Availability, as defined below, when all users cannot launch, login, search or save primary data in the Tyler Software. Downtime does not include those instances in which only a Defect is present.

Emergency Maintenance Window: (1) maintenance that is required to patch a critical security vulnerability; (2) maintenance that is required to prevent an imminent outage of Service Availability; or (3) maintenance that is mutually agreed upon in writing by Tyler and the Client.

Planned Downtime: Downtime that occurs during a Standard or Emergency Maintenance window.

Service Availability: The total number of minutes in a calendar month that the Tyler Software is capable of receiving, processing, and responding to requests, excluding Planned Downtime, Client Error Incidents, denial of service attacks and Force Majeure. Service Availability only applies to Tyler Software being used in the live production environment.

Standard Maintenance: Routine maintenance to the Tyler Software and infrastructure. Standard Maintenance is limited to five (5) hours per week.

III. Service Availability

a. Your Responsibilities

Whenever you experience Downtime, you must make a support call according to the procedures outlined in the Support Call Process. You will receive a support case number.

b. Our Responsibilities

When our support team receives a call from you that Downtime has occurred or is occurring, we will work with you to identify the cause of the Downtime (including whether it may be the result of Planned Downtime, a Client Error Incident, denial of service attack or Force Majeure). We will also work with you to resume normal operations.

c. Client Relief

Our targeted Attainment Goal is 100%. You may be entitled to credits as indicated in the Client Relief Schedule found below. Your relief credit is calculated as a percentage of the SaaS Fees paid for the calendar month.

In order to receive relief credits, you must submit a request through one of the channels listed in our Support Call Process within fifteen days (15) of the end of the applicable month. We will respond to your relief request within thirty (30) day(s) of receipt.

The total credits confirmed by us will be applied to the SaaS Fee for the next billing cycle. Issuing of such credit does not relieve us of our obligations under the Agreement to correct the problem which created the service interruption.

Credits are only payable when Actual Attainment results in eligibility for credits in consecutive months and only for such consecutive months.

Client Relief Schedule	
Actual Attainment	**Client Relief**
99.99% - 98.00%	Remedial action will be taken
97.99% - 95.00%	4%
Below 95.00%	5%

IV. Maintenance Notifications

We perform Standard Maintenance during limited windows that are historically known to be reliably low-traffic times. If and when maintenance is predicted to occur during periods of higher traffic, we will provide advance notice of those windows and will coordinate to the greatest extent possible with you.

Not all maintenance activities will cause application unavailability. However, if Tyler anticipates that activities during a Standard or Emergency Maintenance window may make the Tyler Software unavailable, we will provide advance notice, as reasonably practicable, that the Tyler Software will be unavailable during the maintenance window.

Exhibit C
Schedule 1
Support Call Process

Support Channels

Tyler Technologies, Inc. provides the following channels of software support for authorized users*:

(1) On-line submission (portal) – for less urgent and functionality-based questions, users may create support incidents through the Tyler Customer Portal available at the Tyler Technologies website. A built-in Answer Panel provides users with resolutions to most "how-to" and configuration-based questions through a simplified search interface with machine learning, potentially eliminating the need to submit the support case.
(2) Email – for less urgent situations, users may submit emails directly to the software support group.
(3) Telephone – for urgent or complex questions, users receive toll-free, telephone software support.

** Channel availability may be limited for certain applications.*

Support Resources

A number of additional resources are available to provide a comprehensive and complete support experience:

(1) Tyler Website – www.tylertech.com – for accessing client tools, documentation, and other information including support contact information.
(2) Tyler Search -a knowledge based search engine that lets you search multiple sources simultaneously to find the answers you need, 24x7.
(3) Tyler Community –provides a venue for all Tyler clients with current maintenance agreements to collaborate with one another, share best practices and resources, and access documentation.
(4) Tyler University – online training courses on Tyler products.

Support Availability

Tyler Technologies support is available during the local business hours of 8 AM to 5 PM (Monday – Friday) across four US time zones (Pacific, Mountain, Central and Eastern). Tyler's holiday schedule is outlined below. There will be no support coverage on these days.

New Year's Day	Labor Day
Martin Luther King, Jr. Day	Thanksgiving Day
Memorial Day	Day after Thanksgiving
Independence Day	Christmas Day

For support teams that provide after-hours service, we will provide you with procedures for contacting support staff after normal business hours for reporting Priority Level 1 Defects only. Upon receipt of such a Defect notification, we will use commercially reasonable efforts to meet the resolution targets set forth below.

We will also make commercially reasonable efforts to be available for one pre-scheduled Saturday of each month to assist your IT staff with applying patches and release upgrades, as well as consulting with them on server maintenance and configuration of the Tyler Software environment.

Incident Handling

Incident Tracking

Every support incident is logged into Tyler's Customer Relationship Management System and given a unique case number. This system tracks the history of each incident. The case number is used to track and reference open issues when clients contact support. Clients may track incidents, using the case number, through Tyler's Customer Portal or by calling software support directly.

Incident Priority

Each incident is assigned a priority level, which corresponds to the Client's needs. Tyler and the Client will reasonably set the priority of the incident per the chart below. This chart is not intended to address every type of support incident, and certain "characteristics" may or may not apply depending on whether the Tyler software has been deployed on customer infrastructure or the Tyler cloud. The goal is to help guide the Client towards clearly understanding and communicating the importance of the issue and to describe generally expected response and resolution targets in the production environment only.

References to a "confirmed support incident" mean that Tyler and the Client have successfully validated the reported Defect/support incident.

Priority Level	Characteristics of Support Incident	Resolution Targets*
1 Critical	Support incident that causes (a) complete application failure or application unavailability; (b) application failure or unavailability in one or more of the client's remote location; or (c) systemic loss of multiple essential system functions.	Tyler shall provide an initial response to Priority Level 1 incidents within one (1) business hour of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within one (1) business day. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the Client in restoring its last available database.

Priority Level	Characteristics of Support Incident	Resolution Targets*
2 High	Support incident that causes (a) repeated, consistent failure of essential functionality affecting more than one user or (b) loss or corruption of data.	Tyler shall provide an initial response to Priority Level 2 incidents within four (4) business hours of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents or provide a circumvention procedure within ten (10) business days. For non-hosted customers, Tyler's responsibility for loss or corrupted data is limited to assisting the Client in restoring its last available database.
3 Medium	Priority Level 1 incident with an existing circumvention procedure, or a Priority Level 2 incident that affects only one user or for which there is an existing circumvention procedure.	Tyler shall provide an initial response to Priority Level 3 incidents within one (1) business day of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents without the need for a circumvention procedure with the next published maintenance update or service pack, which shall occur at least quarterly. For non-hosted customers, Tyler's responsibility for lost or corrupted data is limited to assisting the Client in restoring its last available database.
4 Non-critical	Support incident that causes failure of non-essential functionality or a cosmetic or other issue that does not qualify as any other Priority Level.	Tyler shall provide an initial response to Priority Level 4 incidents within two (2) business days of receipt of the incident. Once the incident has been confirmed, Tyler shall use commercially reasonable efforts to resolve such support incidents, as well as cosmetic issues, with a future version release.

**Response and Resolution Targets may differ by product or business need*

Incident Escalation

If Tyler is unable to resolve any priority level 1 or 2 defect as listed above or the priority of an issue has elevated since initiation, you may escalate the incident to the appropriate resource, as outlined by each product support team. The corresponding resource will meet with you and any Tyler staff to establish a mutually agreeable plan for addressing the defect.

Remote Support Tool

Some support calls may require further analysis of the Client's database, processes or setup to diagnose a problem or to assist with a question. Tyler will, at its discretion, use an industry-standard remote support tool. Tyler's support team must have the ability to quickly connect to the Client's system and view the site's setup, diagnose problems, or assist with screen navigation. More information about the remote support tool Tyler uses is available upon request.

Sales Quotation For:
City of Elkins
401 Davis Ave
Elkins WV 26241-3874

Quoted BY	Tyler Richardson
Quote Expiration	8/12/24
Quote Name	

Services		
Description	Hours/Units	Extended Price
Other Services		
Project Management	1	$ 250
Expedited Cloud Migration	1	$ 5,000
TOTAL:		**$ 5,250**

Summary	One Time Fees	Recurring Fees
Total Tyler Services	$ 5,250	
Summary Total	**$ 5,250**	**$ 0**
Contract Total	**$ 5,250**	

Comments

Work will be delivered remotely unless otherwise noted in this agreement.

Expenses associated with onsite services are invoiced as incurred according to Tyler's standard business travel policy.

SaaS is considered a term of one year unless otherwise indicated.

The Expedited Cloud Migration fee includes the services described here: https://www.tylertech.com/portals/0/Expedited-Migration-for-ERP-Pro-and-School-ERP-Pro.pdf. Services otherwise are subject to the terms of the agreement between you and us. SaaS Services are subject to the terms found here: https://www.tylertech.com/terms/tyler-saas-services. A long-term SaaS agreement with Tyler requires execution of a separate contract.

Client agrees that items in this sales quotation are, upon Client's signature or approval of same, hereby added to the existing agreement ("Agreement") between the parties and subject to its terms. Additionally, payment for said items, as applicable but subject to any listed assumptions herein, shall conform to the following terms, subject to payment terms in an agreement, amendment, or similar document in which this sales quotation is included:

- License fees for Tyler and third-party software are invoiced upon the earlier of (i) delivery of the license key or (ii) when Tyler makes such software available accessible.
- Fees for hardware are invoiced upon delivery.
- Fees for year one of hardware maintenance are invoiced upon delivery of the hardware.
- Annual Maintenance and Support fees, SaaS fees, Hosting fees, and Subscription fees are first payable when Tyler makes the software accessible to the Client (for Maintenance) or on the first day of the month following the date this quotation was signed (for SaaS, Hosting, and Subscription), and any such fees are prorated to align with the applicable term under the agreement, with renewals invoiced annually thereafter in accord with the Agreement.

Fees for services included in this sales quotation shall be invoiced as indicated below.

- Implementation and other professional services fees shall be invoiced as delivered.
- Fixed-fee Business Process Consulting services shall be invoiced 50% upon delivery of the Best Practice Recommendations, by module, and 50% upon delivery of custom desktop procedures, by module.
- Fixed-fee conversions are invoiced 50% upon initial delivery of the converted data, by conversion option, and 50% upon Client acceptance to load the converted data into Live/Production environment, by conversion option. Where conversions are quoted as estimated, Tyler will invoice Client the actual services delivered on a time and materials basis.
- Except as otherwise provided, other fixed price services are invoiced upon complete delivery of the service. For the avoidance of doubt, where "Project Planning Services" are provided, payment shall be invoiced upon delivery of the Implementation Planning document. Dedicated Project Management services, if any, will be invoiced monthly in arrears, beginning on the first day of the month immediately following initiation of project planning.
- If Client has purchased any change management services, those services will be invoiced in accordance with the Agreement.
- Notwithstanding anything to the contrary stated above, the following payment terms shall apply to fees specifically for migrations: Tyler will invoice Client 50% of any Migration Services Fees listed above upon Client approval of the product suite migration schedule. The remaining 50%, by line item, will be billed upon the go-live of the applicable product

suite. Tyler will invoice Client for any Project Management Fees listed above upon the go-live of the first product suite. Annual SaaS Fees will be invoiced upon availability of the hosted environment.

Any SaaS or hosted solutions added to an agreement containing Client-hosted Tyler solutions are subject to Tyler's SaaS Services terms found here: https://www.tylertech.com/terms/tyler-saas-services.

Unless otherwise indicated in the contract or amendment thereto, pricing for optional items will be held
For six (6) months from the Quote date or the Effective Date of the Contract, whichever is later.

Customer Approval: ______________________ Date: ______________________

Print Name: ______________________ P.O.#: ______________________