

ORDINANCE NO. 321

**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;

**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.

**CITY OF ELKINS**

First Reading: February 15, 2024


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

CITY OF ELKINS

By: Jeremy A. Mann  
Its Mayor

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 3/16/24 2024.

By:   
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City Clerk, City of Elkins