



Regular Council Meeting

A G E N D A

November 23, 2021

7:00 p.m.

Administrative

Approval of Minutes
Report of Town Manager
Appearance before Council
Council Comments
Report of Council Committees
Revisions to Agenda

Public Hearings

Consent Agenda (roll call)

Old Business

New Business

- 1-FIN-2-40-11-23 Resolution – Authorizing Use of ARPA Funds (roll call)
2-CC-15-1-11-23 Town Council Awarding of Employee Bonuses (roll call)

Closed session pursuant to Section 2.2-3711 (a) (3) of the Code of Virginia of 1950, as amended, for the acquisition or disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position

Closed Session pursuant to Section 2.2-3711 (a) (29) of the Code of Virginia of 1950, as amended, for discussion of the award of a public contract and the terms or scope of the contract where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body

Citizens may watch the meeting in real time via the Town of Bedford Live Stream website: <https://www.bedfordva.gov/1356/Live-Stream>

**TOWN OF BEDFORD, VIRGINIA
TOWN COUNCIL
ACTION FORM**

ITEM: Resolution – Authorizing Use of ARPA Funds

DATE OF COUNCIL MEETING: November 23, 2021

DATE: November 17, 2021

PRESENTATION:

On September 28, 2021, Town Council approved appropriation of funds from the American Rescue Plan Act (ARPA) for certain water and sewer projects to be executed by the Bedford Regional Water Authority (BRWA). Staffs and legal counsel of the two parties have worked together to produce the necessary enabling documents to proceed with these projects. Attached are both the Grant Subrecipient Agreement and Resolution that both staffs are recommending for pursuit of this activity.

ACTION REQUESTED:

Town Council is requested to adopt the attached Resolution authorizing the use of ARPA funds as previously discussed with BRWA and as captured in the proposed Agreement.

		YES	NO	OTHER	ROUTING	
DATE: _____	BLACK	()	()	()	TOWN ATTY. ()	I.T. ()
	HAILEY	()	()	()	COMM. DEV. ()	POLICE ()
APPROVED ()	HARTWICK	()	()	()	ELECTRIC ()	PUBLIC SERV. ()
DENIED ()	JOHANNESSEN	()	()	()	ENGINEERING ()	OTHER _____ ()
DEFERRED TO:	RUSH	()	()	()	FINANCE ()	
_____	SHOEN	()	()	()	FIRE DEPT. ()	
	STANLEY	()	()	()	H.R. ()	

RESOLUTION

**THE TOWN OF BEDFORD
AUTHORIZING AGREEMENT BETWEEN TOWN AND
BEDFORD REGIONAL WATER AUTHORITY FOR USE OF
AMERICAN RESCUE PLAN ACT FUNDS**

WHEREAS, The Town of Bedford, Virginia (“Town”) has received American Rescue Plan Act (“ARPA”) funding from the federal government and the Town Council has approved of allocating a portion of these funds to the Bedford Regional Water Authority (“BRWA”) for water and sewer projects; and

WHEREAS, a Grant Subrecipient Agreement (“Agreement”) has been drafted for execution between the Town and the Authority and said Agreement has been reviewed by the legal counsel of both parties;

NOW THEREFORE, BE IT RESOLVED, that the Town Council does hereby authorize the Town Manager to execute the attached Agreement with BRWA.

GRANT SUBRECIPIENT AGREEMENT
AMERICAN RESCUE PLAN ACT

THIS AGREEMENT is made and entered into this ____ day of _____, 2021 by and between the **Town of Bedford, Virginia**, a Virginia municipal corporation located at 215 East Main Street, Bedford, Virginia 24523 (the “Town”) as Grantor and the **Bedford Regional Water Authority**, a body politic and corporate and a political subdivision of the Commonwealth of Virginia, located at 1723 Falling Creek Road, Bedford, Virginia 24523 (the “Authority”), as Subrecipient.

Recitals

WHEREAS, the Town has been awarded certain funds, in the total amount of \$6,844,498, pursuant to the provisions of the American Rescue Plan Act of 2021 (ARPA), P.L. No. 117-2 (the “ARPA funds”), which may, under federal regulation, be used for purposes related to the construction, reconstruction, and rehabilitation of water and sewer utilities; and,

WHEREAS, the Authority is the provider of public water and sewer service in the Town, and has reported that it has had several capital improvement programs either planned or under consideration, which may be eligible for funding using ARPA funds; and,

WHEREAS, on September 28, 2021, following presentations by the Authority, the Town Council adopted Resolution No. _____, which indicated the Town’s intent to award certain funds to the Authority for the purpose of construction, reconstruction, and rehabilitation of certain water and sewer improvements.

Witnesseth

NOW THEREFORE, in consideration of the foregoing premises, which are expressly incorporated herein, the mutual promises and undertakings set forth below, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Town and the Authority agree as follows:

1. **The Sub Award.** The Town will award and release to the Authority a sum of up to Four Million, Five Hundred Thousand dollars (\$4,500,000.00) (the “Grant”) pursuant to the payment terms herein.

2. **Use of Funds.** Grant funds will be used by the Authority for the sole purposes of all work related to the construction, reconstruction, and rehabilitation of water and sewer facilities as described in the proposal submitted by the Authority (“Approved Services”), attached hereto as **Exhibit A** and incorporated herein by reference (the “Projects”).

3. **Term.** The Projects must be performed and all expenditures made by December 31, 2026. All ARPA funds must be committed, as that term is used in federal regulations and generally accepted local government accounting principles, not later than December 31, 2024.

4. **Development of Budget for Projects.**

a. The Town and the Authority mutually recognize that the scope of the Projects will include in the definition of “Approved Services” the planning, design, contract administration, permits, construction, and inspection for the Projects. All work described in this Section 4 is eligible for reimbursement under this Agreement.

b. The Authority shall not later than December 31, 2021 retain a licensed professional engineer or engineers competent to design, provide cost estimates, and provide construction oversight services as necessary to the Authority on the Projects (whether one or more, the “Consulting Engineer”). The Authority shall deliver designs and cost estimates for the Projects and Project Costs, as defined herein, to the Town when the project design is approximately 60% complete; this shall take place for all Projects no later than December 31, 2022.

c. The Town shall act to give final approval or disapproval to Projects proposed by the Authority not later than two months after the 60% designs and cost estimates are received from the Authority. The total cost of all Projects approved, as determined by the Consulting Engineer, shall not exceed the amount of Grant Funds set forth in Section 1.

5. **Payment of Funds.**

a. The Town agrees to reimburse the Authority for costs actually incurred and paid by the Authority for the performance of the Approved Services under this Agreement in an amount not to exceed the Grant.

b. Costs incurred shall only be as necessary and allowable to carry out the purposes and activities of the Approved Services and may not exceed the maximum limits set in the Grant.

c. Expenses charged against the Grant shall be incurred in accordance with the American Rescue Plan and the Federal Treasury’s guidance, Office of Budget and Management Guidance, and Authority purchasing policies.

d. **Invoices.** On or before the twentieth (20th) day of each month and in any event no later than October 31, 2026, the Authority shall submit invoices, in a form supplied by Town, for the most recent month ended, to Town, setting forth actual expenditures of Authority in accordance with this Agreement. Within fourteen (14) calendar days from the date it receives such invoice, the Town shall approve or disapprove the requested compensation. If the compensation is disapproved, the Town shall notify the Authority of the disapproval including a detailed

explanation of why the compensation was not approved. If payment is approved, no notice will be given and payment will be submitted to the Authority. Acceptable forms of proof of payment shall be as determined in the sole discretion of the Town's Director of Finance. Payment will be made to the Authority by the Town within thirty (30) calendar days from the date it receives such invoice.

6. Representations.

a. The Authority has familiarized itself with the nature and extent of this Agreement and with all local conditions and federal, state, and local laws, ordinances, rules, and regulations that in any manner may affect the Authority's performance under this Agreement, including but not limited to the American Rescue Plan Act Treasury Interim Final Rule, 86 Fed. Reg. 26786–26824 (the "Rule"), U.S. Department of the Treasury Frequently Asked Questions (FAQs) and interpretations regarding the Rule, and the regulations contained in 2 C.F.R. Part 200.

b. The Authority shall maintain a financial management system and financial records and shall administer funds received pursuant to this Agreement in accordance with all applicable federal and state requirements. The Authority shall adopt such additional financial management procedures as may from time to time be prescribed by Town if required by applicable laws, regulations or guidelines from its federal and state government funding sources. The Authority shall maintain detailed, itemized documentation and records of all income received and expenses incurred pursuant to this Agreement.

c. Any item of expenditure by the Authority under the terms of this Agreement which is found by auditors, investigators, and other authorized representatives of Town, the Town's Independent Auditor, the U.S. Government Accountability Office or the Comptroller General of the United States to be improper, unallowable, in violation of federal or state law or the terms of this Agreement, or involving any fraudulent, deceptive, or misleading representations or activities of the Authority, shall become the Authority's liability, to be paid by the Authority from funds other than those provided by Town under this Agreement or any other agreements between Town and the Authority. This provision shall survive the expiration or termination of this Agreement.

d. In any fiscal year in which Authority expends \$750,000 or more in federal awards during such fiscal year, including awards received as a subrecipient, the Authority must comply with the federal audit requirements contained in the Uniform Guidance, 45 C.F.R. Part 75, including the preparation of an audit by an independent Certified Public Accountant in accordance with the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501–7507, and with Generally Accepted Accounting Principles. If the Authority expends less than \$750,000 in federal awards in any fiscal year, it is exempt from federal audit requirements, but its records must be available for review by Town and appropriate officials. The Authority shall provide Town with a copy of the Authority's most recent audited financial statements, federal Single Audit report, if applicable (including financial statements, schedule of expenditures of federal awards, schedule of findings

and questioned costs, summary of prior audit findings, and corrective action plan, if applicable), and management letter within thirty (30) days after execution of this Agreement and thereafter within six (6) months following the end of Authority's most recently ended fiscal year.

e. Final payment request(s) under this Agreement must be received by Town no later than October 31, 2026. No payment request will be accepted by Town after this date without authorization from Town. In consideration of the execution of this Agreement by Town, the Authority agrees that acceptance of final payment from Town will constitute an agreement by the Authority to release and forever discharge Town, its agents, employees, representatives, affiliates, successors and assigns from any and all claims, demands, damages, liabilities, actions, causes of action or suits of any nature whatsoever, which the Authority has at the time of acceptance of final payment or may thereafter have, arising out of or in any way relating to any and all injuries and damages of any kind as a result of or in any way relating to this Agreement. The Authority's obligations to Town under this Agreement shall not terminate until all closeout requirements are completed to the satisfaction of Town. Such requirements shall include, without limitation, submitting final reports to Town and providing any closeout-related information requested by Town by the deadlines specified by Town.

7. Application of Grant Funds.

a. The Authority agrees to apply the Grant Funds solely and exclusively to the payment, or the reimbursement of the Authority for the payment, of Approved Services for the Projects and further agrees to exhibit to the Town the receipts, vouchers, statements, bills of sale or other evidence of the actual payment of the same ("Project Costs:").

b. The Authority is responsible for compliance with the applicable provisions of federal, state, and local labor relations guidelines and requirements applicable to ARPA Funds.

c. The Authority agrees to cause the Projects to be acquired, constructed, reconstructed, expanded, renovated or equipped as designed by the Consulting Engineer and approved by the Town.

d. The Authority shall comply with, and shall obtain all permits, consents, and approvals required by local, state or federal laws, ordinances, rules, regulations or requirements in connection with the acquisition, construction, reconstruction, expansion, renovation, or equipping of the Projects.

e. Each construction contractor employed in the accomplishment of any of the Projects shall be required in the construction contract to furnish a performance bond and a payment bond each in an amount equal to one hundred percent (100%) of the particular contract price. Each contractor shall be required to maintain during the construction period covered by the particular construction contract builder's risk insurance, workers' compensation insurance, public liability

insurance, property damage insurance, and vehicle liability insurance in accordance with the Authority's policies and procedures for projects it funds.

f. If the Grant Funds are not sufficient to pay in full the cost of the total of all the Projects, the Authority will complete the Projects with the balance of the costs not covered by the Grant being at its own expense and these additional funds above and beyond the Grant will not be entitled to any reimbursement from the Town.

8. Cooperation in Monitoring and Evaluation.

a. **Town Responsibilities.** Town shall monitor, evaluate, and provide guidance and direction to the Authority in the conduct of Approved Services performed under this Agreement. The Town has the responsibility to determine whether the Authority has spent funds in accordance with applicable laws, regulations, including the federal audit requirements and agreements and shall monitor the activities of the Authority to ensure that the Authority has met such requirements. Town may require the Authority to take corrective action if deficiencies are found.

b. Authority Responsibilities.

i. The Authority shall permit the Town to carry out monitoring and evaluation activities, including any performance measurement system required by applicable law, regulation, funding sources guidelines, or by the terms and conditions of this Agreement, and the Authority agrees to ensure, to the greatest extent possible, the cooperation of its agents, employees and board members in such monitoring and evaluation efforts. This provision shall survive the expiration or termination of this Agreement.

ii. The Authority shall cooperate fully with any reviews or audits of the activities under this Agreement by authorized representatives of Town, the U.S. Government Accountability Office or the Comptroller General of the United States and Authority agrees to ensure to the extent possible the cooperation of its agents, employees and board members in any such reviews and audits. This provision shall survive the expiration or termination of this Agreement.

9. Reports/Accountability/Public Information. The Authority must allow the Town, its auditors, and other persons authorized by the Town to inspect and copy its books and records for the purpose of verifying that monies provided to the Authority pursuant to this Agreement were used in compliance with this Agreement and all applicable provisions of federal, state, and local law. The Authority will retain such records in accordance with the current retention schedules as published by the Library of Virginia . . . Except for requests which are required to conform with the Freedom of Information Act ("FOIA"), the Authority shall not issue any statements, releases, or information for public dissemination without prior approval of the Town.

10. **Permits and Compliance With Laws.** The Authority will obtain, in a timely manner, all required permits, licenses, and approvals, and will meet all requirements of all local, state and federal laws, rules and regulations which must be obtained or met in connection with construction of the Projects.

11. **Independent Contractor Status.** The parties agree that the Authority, its agents, employees, contractors, or subcontractors, are independent contractors for purposes of this Agreement and are not to be considered employees or agents of the Town for any purpose. The Authority and its agents, employees, contractors, or subcontractors, are not subject to the terms and provisions of the Town's personnel policies handbook and may not be considered a Town employee for workers' compensation or any other purpose. The Authority, its agents, employees, contractors, or subcontractors, are not authorized to represent the Town or otherwise bind the Town in any way. Likewise, the Town, its agents, employees, contractors, or subcontractors, are not authorized to represent the Authority or otherwise bind the Authority in any way.

12. **Default and Termination.** If the Authority fails to comply with any condition of this Agreement at the time or in the manner provided for, the Town may terminate this Agreement if the default is not cured within fifteen (15) days after written notice is provided to the Authority. The notice will set forth the items to be cured. If this Agreement is terminated pursuant to this Section, Authority will repay to the Town any Grant funds already delivered to Authority for the particular Project on which the breach occurred. If the Town fails to comply with any condition of this Agreement at the time or in the manner provided for, the Authority may terminate this Agreement if the default is not cured within fifteen (15) days after written notice is provided the Town.

13. **Limitation on Damages; Time for Asserting Claim**

a. In the event of a claim for damages by the Authority under this Agreement, the Authority's damages shall be limited to contract damages and associated legal costs and the Authority hereby expressly waives any right to claim or recover consequential, special, punitive, lost business opportunity, lost productivity, field office overhead, general conditions costs, or lost profits damages of any nature or kind.

b. Prior to asserting any claim for damages of any kind or nature, the Authority must first provide Town with written notice of its claim, the facts and circumstances surrounding and giving rise to the claim, and the total amount of damages sought by the claim, within ninety (90) calendar days of the facts and circumstances giving rise to the claim. In the event the Authority fails to provide such notice, Authority shall waive all rights to assert such claim.

14. **Indemnity/Waiver of Claims/Insurance.** To the fullest extent permitted by law and without waiving sovereign immunity, the Authority agrees to defend, indemnify, and hold the Town and its agents, representatives, employees, and officers (collectively referred to for purposes of this Section as the Town) harmless against all third party claims, demands, suits, damages,

losses, and expenses, including reasonable defense attorney fees, which arise out of, relate to or result from Authority's (i) negligence, or (ii) willful or reckless misconduct.

Such obligations shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist. The indemnification obligations of this Section must not be construed to negate, abridge, or reduce any common-law or statutory rights of the indemnitee(s) which would otherwise exist as to such indemnitee(s). Authority's indemnification obligations under this Section shall be without regard to and without any right to contribution from any insurance maintained by Town.

Should any indemnitee described herein be required to bring an action against Authority to assert its right to defense or indemnification under this Agreement or under Authority's applicable insurance policies required below the indemnitee shall be entitled to recover reasonable costs and attorney fees incurred in asserting its right to indemnification or defense but only if a court of competent jurisdiction determines Authority was obligated to defend the claim(s) or was obligated to indemnify the indemnitee for a claim(s) or any portion(s) thereof.

In the event of an action filed against Town resulting from the Town's performance under this Agreement, the Town may elect to represent itself and incur all costs and expenses of suit.

Authority also waives any and all claims and recourse against the Town or its officers, agents or employees, including the right of contribution for loss or damage to person or property arising from, growing out of, or in any way connected with or incident to the performance of this Agreement except responsibility for fraud, for willful injury to the person or property of another, or for violation of law, whether willful or negligent.

These obligations shall survive termination of this Agreement.

In addition to and independent from the foregoing, Authority shall at Authority's expense secure insurance coverage through an insurance company or companies duly licensed and authorized to conduct insurance business in Virginia which insures the liabilities and obligations specifically assumed by Authority in this Section. The insurance coverage shall not contain any exclusion for liabilities specifically assumed by Authority in this Section unless and to the extent coverage for such liability is not reasonably available.

The insurance shall cover and apply to all claims, demands, suits, damages, losses, and expenses that may be asserted or claimed against, recovered from, or suffered by the Town without limit and without regard to the cause therefore and which is acceptable to the Town and the Authority shall furnish to the Town an accompanying certificate of insurance and accompanying endorsements in amounts not less than as follows:

- **Employers Liability Limits**
 - Bodily Injury by Accident: \$1,000,000
 - Bodily Injury by Disease: \$1,000,000 each employee
 - Bodily Injury by Disease: \$1,000,000 policy limit
- **General Liability - \$1,000,000 per occurrence**

15. **Attorney's Fees and Costs.** In the event it becomes necessary for a party to this Agreement to retain an attorney to enforce any of the terms or conditions of this Agreement or to give any notice required herein, then the prevailing party shall be entitled to reasonable attorney's fees and costs, including fees, salary, and costs of the Town Attorney and/or the Authority's Legal Counsel.

16. **Integration and Modification.** This document contains the entire agreement between the parties and no statements, promises or inducements made by either party or agents of either party not contained in this written Agreement may be considered valid or binding. This Agreement may not be modified except by written agreement signed by both parties.

17. **Dispute Resolution.**

a. Any claim, controversy, or dispute between the parties, their agents, employees, or representatives shall be resolved first by negotiation between senior-level personnel from each party duly authorized to execute settlement agreements. Upon mutual agreement of the parties, the parties may invite an independent, disinterested mediator to assist in the negotiated settlement discussions.

b. If the parties are unable to resolve the dispute within thirty (30) days from the date the dispute was first raised, then such dispute may only be resolved in a court of competent jurisdiction in compliance with the Applicable Law provisions of this Agreement.

18. **No Assignment.** The Authority may not subcontract or assign Authority's rights, including the right to Grant payments, or any other rights or duties arising hereunder, without the prior written consent of Town.

19. **No Third Party Beneficiary.** The terms and provisions of this Agreement are intended solely for the benefit of each party and their respective successors and assigns. It is not the parties' intent to confer third party beneficiary rights upon any other person or entity.

20. **Choice of Law.** This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Virginia without regard to conflict of law provisions. The Parties agree to submit to the exclusive jurisdiction of the courts located within Bedford County, Virginia.

21. **Non-Waiver.** Failure to insist on strict compliance with any of the terms or conditions of this Agreement shall not be construed to be a waiver thereof, and does not limit the other party's right to enforce such term or conditions or to pursue any available legal or equitable rights in the event of any subsequent default or breach.

22. **Severability.** If any portion of this Agreement is held to be void or unenforceable, the balance of the Agreement shall continue in effect.

23. **Counterparts.** This Agreement may be executed in counterparts, which together constitute one instrument.

IN WITNESS WHEREOF, the parties hereto have executed this instrument the day and year indicated below.

Town of Bedford, Virginia:

By: _____

Name: Barrett F. Warner

Its: Town Manager

Approved as to legal form:

By: _____

Name: Michael Lockaby

Its: Town Attorney

Bedford Regional Water Authority:

By: _____

Name: Brian Key

Its: Executive Director

Approved as to legal form:

By: _____

Name: Harwell M. Darby, Jr.

Its: Authority Legal Counsel

Exhibit A
Project List

Bell Town Road Waterline:\$500,000.00

The Bell Town Road Waterline project is the extension of a waterline approximately 1800 feet along Bell Town Road, with the approximate alignment being shown with the red line in the image below. This project will provide public potable water to a community where there have been concerns about the quality of the groundwater that is supplying the private wells in the area.



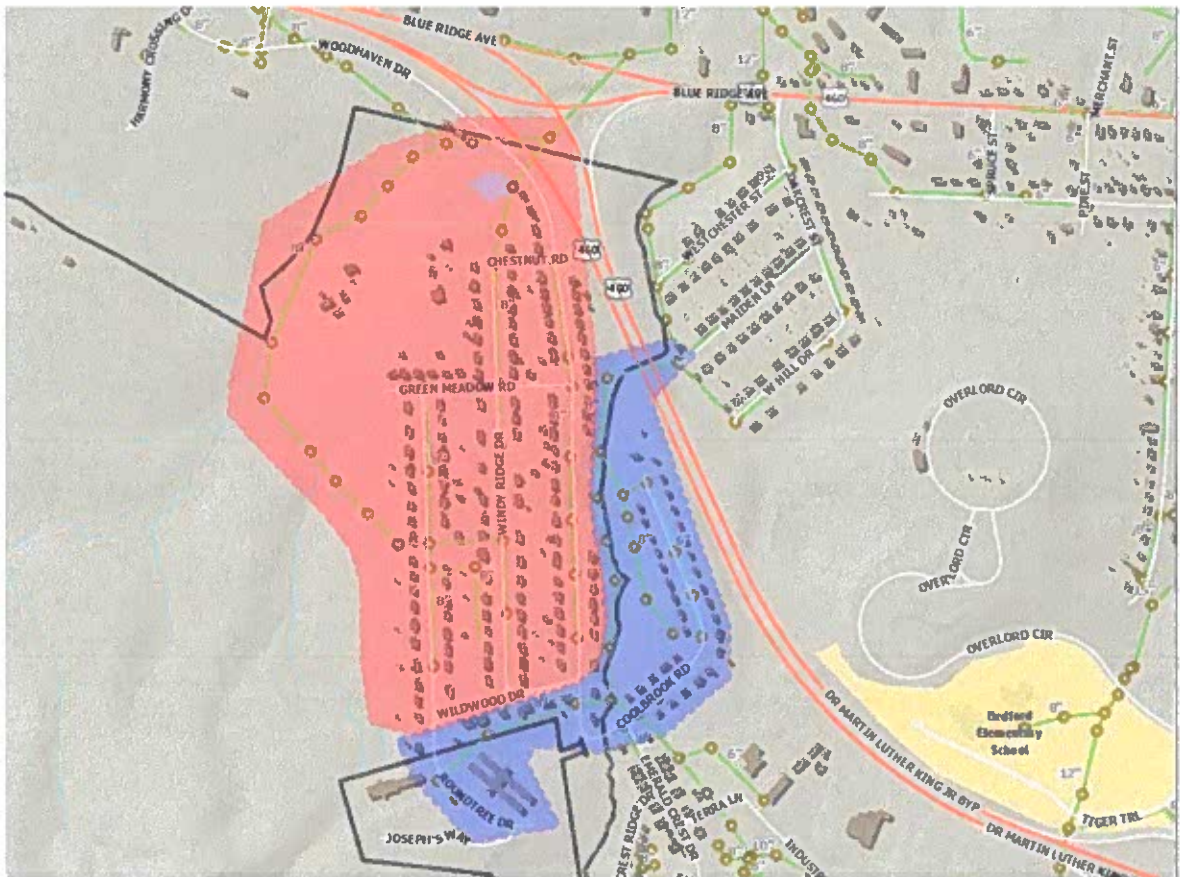
Helm Street Tank Replacement:\$2,000,000.00

The Helm Street Tank Replacement is to remove the existing 1.5million gallon round tank as shown in the red area of the image below and to replace it with a new water storage tank. The existing tank has failed, and therefore is out of service. The new tank would provide additional storage for the water system, to ensure that the Authority can continue to provide both domestic flow and fire suppression flow.



Town and Country Sewerline Repairs, Rehabilitation, and Replacements:\$2,000,000.00

Phase 1 of the Town and Country Sewerline project involves the repair, rehabilitation, and replacement of gravity sewer lines and manholes in the community as shown in red shaded area in the image below. After the work is completed for Phase 1, if there are funds remaining in the Grant, the scope of the work may be expanded into the Phase 2 area shown as shown in the blue shaded area in the image below. Both of these areas have failing sewer systems that have caused routine overflows and sewer backups which have led to disrupted sewer service to the customers in this community; this project would help eliminate the service disruptions to these customers as well as helping to protect the environment by reducing the sewer overflows.



**TOWN OF BEDFORD, VIRGINIA
TOWN COUNCIL
ACTION FORM**

ITEM: Town Council Awarding of Employee Bonuses

DATE OF COUNCIL MEETING: November 23, 2021

DATE: November 19, 2021

PRESENTATION:

Town Council has requested that staff provide a cost estimate for awarding a bonus to each Town of Bedford employee as an appreciation for excellent performance in their respective job areas. The cost associated with awarding the bonuses are as follows:

<u>Employee Type</u>	<u>Employer Cost</u>	<u>Employee Net Bonus</u>	<u>Total Employer Cost</u>
Full-Time	\$863.28	\$500.00	\$72,515.52
Part-Time	\$863.28	\$500.00	\$3,453.12

ACTION REQUESTED:

Staff recommends awarding of a bonus to each Town of Bedford employee.

		YES	NO	OTHER	ROUTING	
DATE: _____	BLACK	()	()	()	TOWN ATTY. ()	I.T. ()
	HAILEY	()	()	()	COMM. DEV. ()	POLICE ()
APPROVED ()	HARTWICK	()	()	()	ELECTRIC ()	PUBLIC SERV. ()
DENIED ()	JOHANNESSEN	()	()	()	ENGINEERING ()	OTHER _____ ()
DEFERRED TO:	RUSH	()	()	()	FINANCE ()	
_____	SHOEN	()	()	()	FIRE DEPT. ()	
	STANLEY	()	()	()	H.R. ()	