



Office of the City Clerk

# The City of Morgantown

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**AGENDA  
MORGANTOWN CITY COUNCIL  
REGULAR MEETING  
DECEMBER 17, 2013  
7:00 p.m.**

1. CALL TO ORDER
2. ROLL CALL
3. PLEDGE TO THE FLAG
4. APPROVAL OF MINUTES: Regular Meeting – December 3, 2013
5. CORRESPONDENCE
6. PUBLIC HEARING:
  - A. PUBLIC HEARING on AN ORDINANCE BY THE CITY OF MORGANTOWN ADDING A NEW SECTION 941.08 TO ITS MUNICIPAL CODE, AS THE SAME APPLIES TO THE USE OF TOBACCO PRODUCTS AND ELECTRONIC CIGARETTES ON OR IN PROPERTIES AND FACILITIES CONTROLLED BY OR UNDER THE JURISDICTION OF THE MORGANTOWN BOARD OF PARK AND RECREATION COMMISSIONERS.
  - B. PUBLIC HEARING on AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.
  - C. PUBLIC HEARING on AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 905.02 OF ITS STREETS, UTILITIES AND PUBLIC SERVICES CODE BY ADDRESSING THE SALE OF PRODUCE, FOOD, GOODS, WARES AND OTHER MERCHANDISE UPON SIDEWALKS OF THE CITY.

- D. PUBLIC HEARING on AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 361.09 OF ITS TRAFFIC CODE, AS THE SAME APPLIES TO PUBLIC PARKING SPACES AND THE SALE OF PRODUCE, FOOD, GOODS, WARES OR OTHER MERCHANDISE IN THE DOWNTOWN BUSINESS DISTRICT OF THE CITY.
- E. PUBLIC HEARING on AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING IT, AS LESSOR, TO LEASE SPACE AT THE FORMER WOODBURN SCHOOL, NOW OWNED BY THE CITY, TO "GIRLS ON THE RUN", LESSEE.

7. UNFINISHED BUSINESS:

- A. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE BY THE CITY OF MORGANTOWN ADDING A NEW SECTION 941.08 TO ITS MUNICIPAL CODE, AS THE SAME APPLIES TO THE USE OF TOBACCO PRODUCTS AND ELECTRONIC CIGARETTES ON OR IN PROPERTIES AND FACILITIES CONTROLLED BY OR UNDER THE JURISDICTION OF THE MORGANTOWN BOARD OF PARK AND RECREATION COMMISSIONERS. (First Reading on 12/3/13)
- B. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND. (First Reading on 12/3/13)
- C. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 905.02 OF ITS STREETS, UTILITIES AND PUBLIC SERVICES CODE BY ADDRESSING THE SALE OF PRODUCE, FOOD, GOODS, WARES AND OTHER MERCHANDISE UPON SIDEWALKS OF THE CITY. (First Reading on 12/3/13)
- D. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 361.09 OF ITS TRAFFIC CODE, AS THE SAME APPLIES TO PUBLIC PARKING SPACES AND THE SALE OF PRODUCE, FOOD, GOODS, WARES OR OTHER MERCHANDISE IN THE DOWNTOWN BUSINESS DISTRICT OF THE CITY. (First Reading on 12/3/13)

- E. Consideration of APPROVAL of SECOND READING (ADOPTION) of AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING IT, AS LESSOR, TO LEASE SPACE AT THE FORMER WOODBURN SCHOOL, NOW OWNED BY THE CITY, TO "GIRLS ON THE RUN", LESSEE. (First Reading on 12/3/13)
  
- F. BOARDS AND COMMISSIONS
  
- 8. PUBLIC PORTION WHICH SHALL BE SUBJECT TO RULES ESTABLISHED BY COUNCIL AND ADOPTED BY RESOLUTION
  
- 9. SPECIAL COMMITTEE REPORTS
  
- 10. NEW BUSINESS:
  - A. Consideration of APPROVAL of A RESOLUTION TO APPLY FOR AND ADMINISTER A COMMUNITY PARTICIPATION GRANT, FUNDS FOR USE FOR THE ZACKQUILL MORGAN STATUE PROJECT.
  
- 11. CITY MANAGER'S REPORT:  
  
NEW BUSINESS:
  - 1. Engineering Services for Sunnyside TIF Phase 2
  
- 12. REPORT FROM CITY CLERK
  
- 13. REPORT FROM CITY ATTORNEY
  
- 14. REPORT FROM COUNCIL MEMBERS
  
- 15. ADJOURNMENT

\*If you need an accommodation contact us at (304) 284-7439\*

**REGULAR MEETING, DECEMBER 3, 2013:** The regular meeting of the Common Council of the City of Morgantown was held in the Council Chambers of City Hall on Tuesday, December 3, 2013 at 7:00 P.M.

**PRESENT:** City Manager Jeff Mikorski, Assistant City Manager of Operations Glen Kelly, City Attorney Steve Fanok, City Clerk Linda Little, Mayor Jenny Selin and Council Members: Ron Bane, Bill Kaweckı, Wes Nugent, Martı Shamberger, Mike Fıke and Nancy Ganz.

**APPROVAL OF MINUTES:** By acclamation, the minutes of the November 19, 2013 Regular Meeting were approved as presented. The minutes of the November 19, 2013 Special Meeting were approved with a minor amendment.

**CORRESPONDENCE:** None.

**PUBLIC HEARING – AN ORDINANCE TO APPROVE CURRENT REPLACEMENT PAGES TO THE CITY CODE:**

There being no appearances, Mayor Selin declared the Public Hearing closed.

**UNFINISHED BUSINESS:**

**AN ORDINANCE TO APPROVE CURRENT REPLACEMENT PAGES TO THE CITY CODE:** The below entitled Ordinance was presented for second reading:

AN ORDINANCE TO APPROVE CURRENT REPLACEMENT PAGES TO THE CITY CODE.

Motion by Nugent, second by Kaweckı to adopt the above entitled Ordinance. Motion carried 7-0.

**BOARDS AND COMMISSIONS:**

**PUBLIC PORTION:**

Randy Jones, WVU SGA Liaison, commented that downtown is one of the safest places for students to be when they are drinking. He noted that he heard that the bars were going to be closed early per some Home Rule Law. He stated that no one should be afraid to come downtown and enjoy the Met Theatre shows or shop, students are out much later than that. Also, by having students in one area the City Police Department has more control over incidents that do happen.

Jayson Nicewarner, IAFF Union Representative, spoke in support of changing the requirements for Fire Fighters Residency from 15 to 30. He stated that by changing the radius would increase options for new hires. Mr. Nicewarner noted that just because the City changes the radius to 30 doesn't mean Fire Fighters will move, some will also take advantage of the Cities Down Payment Assistant Program (if there is money in the budget) and stay within the radius. He also referred to the table that was presented to Council; referencing that a lot of the municipalities do not even have a requirement or radius 20 miles or greater.

There being no other appearances, Mayor Selin declared the public portion closed.

**SPECIAL COMMITTEE REPORTS:** No Reports.

**NEW BUSINESS:**

**AN ORDINANCE TO PROHIBIT TOBACCO USE AT BOPARC PROPERTIES AND FACILITIES:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN ADDING A NEW SECTION 941.08 TO ITS MUNICIPAL CODE, AS THE SAME APPLIES TO THE USE OF TOBACCO PRODUCTS AND ELECTRONIC CIGARETTES ON OR IN PROPERTIES AND FACILITIES CONTROLLED OR UNDER THE JURISDICTION OF THE MORGANTOWN BOARD OF PARK AND RECREATION COMMISSIONERS.

Motion by Ganz, second by Shamberger to pass the above entitled Ordinance to second reading. After discussion, motion carried 7-0.

**AN ORDINANCE AMENDING THE ANNUAL BUDGET, GENERAL FUND:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE AMENDING THE FY2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN ON THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.

After explanation from the City Manager, motion by Nugent, second by Bane to pass the above entitled Ordinance to second reading. After discussion, motion carried 7-0.

**AN ORDINANCE AMENDING SECTION 905.02, SALES UPON CITY SIDEWALKS:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 905.02 OF ITS STREETS, UTILITIES AND PUBLIC SERVICES CODE, BY ADDRESSING THE SALE OF PRODUCE, FOOD, GOODS, WARES AND OTHER MERCHANDISE UPON SIDEWALKS OF THE CITY.

Motion by Nugent, second by Bane to rescind the previous motion of 9/17/13 to reconsider the Ordinance, and allow for first reading of the amended version as entitled above. Motion carried by acclamation. After explanation from the City Manager, and discussion from Council, motion by Nugent, second by Kawecky to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE AMEND SECTION 361.09, PARKING SPACES AND SALES IN THE DOWNTOWN BUSINESS DISTRICT:** The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 361.09 OF ITS TRAFFIC CODE, AS THE SAME APPLIES TO PUBLIC PARKING SPACES AND THE SAME OF PRODUCE, FOOD, GOODS, WARES OR OTHER MERCHANDISE IN THE DOWNTOWN BUSINESS DISTRICT OF THE CITY.

Motion by Bane, second by Nugent to remove the above entitled Ordinance from the Table. Motion carried by acclamation. After discussion, motion by Bane second by Nugent to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**AN ORDINANCE LEASING SPACE AT WOODBURN SCHOOL TO 'GIRLS ON THE RUN':** The below entitled Ordinance was presented for first reading:

AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING IT, AS LESSOR, TO LEASE SPACE AT THE FORMER WOODBURN SCHOOL, NOW OWNED BY THE CITY, TO "GIRLS ON THE RUN", LESSEE.

After explanation from the City Manager, motion by Shamberger, second by Ganz to pass the above entitled Ordinance to second reading. Motion carried 7-0.

**A RESOLUTION TO ADMINISTER A GRAND FROM THE WEST VIRGINIA DIVISION OF CULTURAL HISTORY, FUNDS FOR USE FOR THE PRESERVATION ALLIANCE OF WEST VIRGINIA:** The above entitled Resolution was presented for approval.

After explanation from the City Manager, motion by Shamberger, second by Ganz to approve the above entitled Resolution. Motion carried 7-0.

**CITY MANAGERS REPORT:**

NEW BUSINESS:

1. Capital Escrow Revision #4

After explanation from the City Manager, motion by Bane, second by Shamberger, to approve the budget revision as presented. Motion carried 7-0.

2. Fire Department Residency Requirement Request for Modification

After explanation from the City Manager, the rules were suspended to allow discussion with Chief Caravasos. After discussion, motion by Bane, second by Fike to deny the request for extension of the Fire Department's residency requirements. Motion carried 7-0.

**REPORT FROM CITY CLERK:** City Clerk Linda Little thanked Marchetta Maupin, William Breiding and Carol Allen for the beautiful Christmas decorations. She also thanked Kenny Holloway for making sure the Elevator was working for tonight's meeting.

**REPORT FROM CITY ATTORNEY:** No Report.

**REPORT FROM COUNCIL MEMBERS: (Roll Reversal)**

Councilor Ganz:

Councilor Ganz thanked the City Attorney for clarification during the Legislation Session. She noted also Councilor Nugent's concerns about the State's decision of re-naming of the High Street Bridge pointing out that they are asking for our nod we have no input; we should be spending our time on budget, serving homeless, DUI and issues that concern us. She gave an update on Operation Christmas Child. She reported that Suncrest Neighborhood Association will not meet in December, but reported that the BOE was at the November meeting discussing the future of a new Elementary School in Suncrest. Councilor Ganz she then stated we have a lot to be thankful for this time of the year.

Councilor Fike:

Councilor Fike noted his pleasure of John Sonnenday's detailed report on Homelessness and that it will be handed off to The Coordinating Council. He also commented on Council's Conference Session with Management Partners on December 2, 2013, which helped us to begin with realistic and measurable goals for the future.

Councilor Shamberger:

Councilor Shamberger thanked the Legislatures for meeting with Council earlier this evening to address our legislative issues for 2013. She also encouraged members of Council to build a relationship with the Delegates as well as the West Virginia Municipal League to address concerns. She announced anyone wanting to make a leaf for the mural at the River Front can attend a workshop at Wiles Hill from 6pm to 8pm on December 4, 2013. She reported that she will be flying on Silver Airways on December 5, 2013 to Clarksburg for lunch with the Mayor and Glen Kelly, Asst. CM of Operations. She then noted that from 4:30pm to 6:30pm, Rivertown will be meeting at the Bus Depot. She informed everyone that the BOPARC meeting has been changed to Thursday, December 5, 2013 at 6pm.

Councilor Nugent:

Councilor Nugent stated in reference to earlier remarks, that he will not respond to comments which degrade decorum. He then commented that Council should be focused on issues that matter to the residents, and hoped this would be kept in mind when placing items on upcoming agendas. He then announced the play "The Manger in Bethlehem", at the MAC at 8pm on December 7, 2013.

Councilor Kawecki

Councilor Kawecki thanked Council and the City Attorney for updates and input on issues during the Legislative Session. He announced the South Park Neighborhood Association Meeting is at 6:30pm and the guest speaker is Chief Ed Preston.

Councilor Bane:

Councilor Bane stated that he disapproves of defamatory remarks about colleagues, referring to earlier comments. He noted that Councilor Nugent had every right to place on the record what he felt about the bridge renaming issue. Further, he suggested that such comments wrongly infer the Councilor is not concerned about homelessness or DUI's; stating Mr. Nugent is one of the most loyal and concerned members on the Council.

Mayor Selin:

Mayor Selin announced a Rivertown meeting on December 5; Christmas Parade, Arts Mon Book Reading on December 6; Holiday Book Reading at the Library on December 7; Met Theatre Presents Wizard of Oz, December 7-8-13-14-15-21; Nutcracker Ballet will be performed on December 12. She also commented how thankful she is for Council and all the Volunteers on Boards and Commissions and also the City Employees.

**ADJOURNMENT:** There being no further items of business or discussion, the meeting adjourned by unanimous consent at 8:30 p.m.

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

\*A FULL TRANSCRIPT OF ALL COUNCIL MEETINGS IS AVAILABLE ON DVD AT THE MORGANTOWN CITY LIBRARY.



**Office of the City Manager**

# The City of Morgantown

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## **City Manager's Report for City Council December 17, 2013**

New Business:

### **1. Engineering Services for Sunnyside TIF phase 2**

As a part of the next phase of infrastructure improvements in the Sunnyside area utilizing the Tax Increment Financing District funding, we have advertised for an engineering firm to develop the necessary cost estimates and construction documents for approved projects. A selection committee, including a representative of Campus Neighborhoods Redevelopment Corporation, selected AECOM to provide the engineering services for phase II projects. Similar to the first phase of projects, Campus Neighborhoods Revitalization Corporation will be the developer to recommend projects to be completed in the district. Engineering services will be identified as separate tasks in this contract. Task costs will be developed based on unit costs established in appendix B of the contract. The first three tasks have been identified for engineering analysis of sidewalks, allies, and a specific intersection. Once total project costs are determined and prioritized, the project list will be approved for construction. I recommend that City Council approve the contract between the City of Morgantown and AECOM to include the compensation fee schedule to determine contract costs.



Jeff Mikorski ICMA-CM,  
Morgantown City Manager

## **PROFESSIONAL SERVICES AGREEMENT**

THIS AGREEMENT made as of \_\_\_\_\_, 2013, by and between City of Morgantown, 389 Spruce Street, Morgantown, West Virginia 26505 (hereinafter referred to as "Client"), and AECOM Technical Services, Inc., a corporation organized under the laws of the State of California (hereinafter referred to as "AECOM").

WHEREAS, Client plans to undertake a project known as Infrastructure Improvement Project for the Sunnyside TIF District (hereinafter referred to as the "Project") requiring professional services and desires AECOM to perform such services associated therewith (hereinafter referred to as the "Services"); and

WHEREAS, AECOM is desirous of performing the Services required; and

WHEREAS, Client and AECOM desire to enter into a basic Agreement to cover the Services required as more particularly described hereinafter.

NOW THEREFORE THIS AGREEMENT WITNESSETH that the parties hereto agree as follows:

### **ARTICLE 1** **Scope of Services**

- 1.1 A written definition of the Services to be performed by AECOM is set forth in Appendix A, Scope of Services, attached hereto and made a part hereof.
- 1.2 AECOM shall perform or cause to be performed those Services described in Appendix A in accordance with applicable laws, regulations and codes, and with the provisions of this Agreement. Changes to any such laws, regulations or codes, or the enactment of new laws, regulations or codes applicable to the Services after the effective date of this Agreement may be the basis for modifications to Client's responsibilities or to AECOM's scope of services, times of performance, and/or compensation. If, during AECOM's review of applicable laws, regulations, and codes, AECOM identifies any conflict between such laws, regulations, and codes, AECOM shall notify Client of the nature and impact of such conflict. Client agrees to cooperate and work with AECOM in an effort to resolve any such conflict.
- 1.3 AECOM acknowledges the importance to Client of Client's Project schedule and agrees to put forth reasonable efforts in performing the services with due diligence under this Agreement in a manner consistent with that schedule. Client understands, however, that AECOM's performance must be governed by sound professional practices.
- 1.4 Client and AECOM shall meet prior to the commencement of Services, with a view to agreeing generally upon Project premises, schedules, number and kinds of employees to be used by AECOM for the purpose of facilitating performance of the Services, general agreement on accounting and other procedures, the time of acceptance by Client of the completed Project and other related matters. It is understood that AECOM will not proceed with Services until receipt of authorization to do so from Client.

### **ARTICLE 2** **Client Responsibilities**

Unless otherwise indicated in Appendix A, Client shall do or provide the following in a timely manner so as not to delay the Services:

- 2.1 Designate in writing a person to act as Client's representative with respect to the Services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define Client's policies and decisions with respect to AECOM's Services for the Project.
- 2.2 Provide all criteria and full instructions as to Client's requirements for the Project, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations; and furnish copies of all design and construction standards which Client will require to be included in the Drawings and Specifications.
- 2.3 Assist AECOM by placing at AECOM's disposal all available information pertinent to the Project including previous reports and any other data relative to design or constructions of the Project such as the following:
  - 2.3.1 data prepared by or services of others, including without limitation borings, probings and subsurface explorations, hydrographic surveys, laboratory tests and inspections of samples, materials and equipment;
  - 2.3.2 appropriate professional interpretations of all of the foregoing;
  - 2.3.3 environmental assessment and impact statements;
  - 2.3.4 property, boundary, easement, right-of-way, topographic and utility surveys;
  - 2.3.5 property descriptions; and
  - 2.3.6 zoning, deed and other land use restrictions;all of which AECOM may use and fully rely upon in performing Services under this Agreement.
- 2.4 Arrange for access and to make all provisions for AECOM to enter upon public and private property as required for AECOM to perform Services under this Agreement.
- 2.5 Furnish approvals and permits from all governmental authorities having jurisdiction over the Project and such approvals and consents from others and Client as may be necessary for completion of the Project.
- 2.6 Examine all studies, reports, sketches, estimates, specifications, drawings, proposals and other documents presented by AECOM and shall render in writing decisions pertaining thereto within a reasonable time so as not to delay the work of AECOM.
- 2.7 Give prompt written notice to AECOM whenever Client observes or otherwise becomes aware of any defect in the project.

**ARTICLE 3**  
**Compensation and Terms of Payment**

- 3.1 Client shall compensate AECOM for the Services performed under this Agreement in accordance with Appendix B, Compensation, attached hereto and made a part hereof.
- 3.2 Invoices shall be submitted monthly by AECOM, are due upon presentation, and shall be considered past due if not paid within 30 days after Client receipt of the invoice. If payment is not received by AECOM after 45 days after Client receipt of the invoice, Client shall pay as interest an additional charge of one percent (1.0%) or the maximum allowable by law, whichever is lower,

of the past due amount per month. Payment thereafter shall first be applied to accrued interest and then to the unpaid principal.

- 3.3 If Client objects to any portion of an invoice, Client shall so notify AECOM in writing within 10 days of receipt of the invoice. Client shall identify the specific cause of the disagreement and shall pay when due that portion of the invoice not in dispute. Interest as stated above shall be paid by Client on all disputed invoiced amounts resolved in AECOM's favor and unpaid for more than 45 days after date of submission.
- 3.4 In the event legal action is necessary to enforce the payment provisions of this Agreement, the prevailing party shall be awarded its reasonable attorney fees, and costs and expenses incurred as determined by the Court. If both parties receive judgment in any dollar amount, the court will determine the prevailing party, taking into consideration the merits of the claims asserted by each party, the amount of the judgment received by each party, and the relative equities between the parties.
- 3.5 **Payments Upon Termination.**
- 3.5.1 In the event of any termination under the terms of this Agreement, AECOM will be entitled to invoice Client for all services performed or furnished and all expenses incurred through the effective date of termination
- 3.5.2 In the event of termination by AECOM for cause, in addition to invoicing for those items identified in paragraph 3.7.1, above, AECOM shall be entitled to invoice Client and shall be paid a reasonable amount for services and expenses directly attributable to termination, both before and after the effective date of termination, such as reassignment of personnel, costs of terminating contracts with AECOM's consultants, and other related close-out costs.
- 3.6 If any payment provided for hereunder is to be made on some basis other than a lump sum price, AECOM shall not provide, nor be obligated to provide any services, the charges for which would exceed the amount of compensation authorized by Client without the written authorization of Client.

**ARTICLE 4**  
**Termination; Suspension**

- 4.1 This Agreement may be terminated by either party upon 30 days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party.

**ARTICLE 5**  
**Force Majeure**

- 5.1 Neither party shall be liable for any delay in, or failure of, its performance of any of its obligations under this Agreement if such delay or failure is caused by events beyond the reasonable control of the affected party, including, but not limited to, any acts of God, governmental embargoes, restrictions, quarantines, strikes, riots, wars or other military action, civil disorder, acts of terrorism, fires, floods, vandalism, sabotage or the acts of third parties (a "Force Majeure Event").
- 5.2 Upon completion of the Force Majeure Event the party affected must as soon as reasonably practicable recommence the performance of its obligations under this Agreement.

- 5.3 A Force Majeure Event does not relieve a party from liability for an obligation that arose before the occurrence of that event, nor does that event affect the obligation to pay money in a timely manner that matured prior to the occurrence of that event.

**ARTICLE 6**  
**Ownership of Documents**

- 6.1 Client shall be considered to be the owner of all documents, drawings, plans, and specifications prepared by AECOM pursuant hereto, except those documents comprising procedures and calculations proprietary to AECOM. From time to time when no longer needed by AECOM, and at the request of Client, AECOM shall turn over all files and records containing information not proprietary to AECOM and accumulated by AECOM in the performance of its duties hereunder, except that AECOM may keep copies of all of same for its permanent files and records. Nothing contained in this paragraph shall be construed as limiting or depriving AECOM of its rights to use its basic know-how and skills to design or carry out other projects or work for itself or others, whether or not such other projects or work are similar to the SERVICES to be performed pursuant to this Agreement.
- 6.2 Any reuse of AECOM prepared documents without the written verification or adaptation by AECOM for the specific purpose intended will be at Client's sole risk and without liability or legal exposure to AECOM or its consultants. Any such verification or adaptation will entitle AECOM to further compensation at rates to be agreed upon by Client and AECOM.

**ARTICLE 7**  
**Indemnity**

- 7.1 AECOM agrees, to the fullest extent permitted by law, to indemnify and hold harmless Client, its officers and employees acting within the scope of their official duties, from damages, costs, and expenses, including reasonable attorneys' fees, to extent caused by AECOM's negligent acts, errors, or omissions in the performance of, or failure to perform, any task or duty required to be performed by AECOM in this Agreement. AECOM is not obligated to indemnify Client, its officers or employees, for their own negligence.

**ARTICLE 8**  
**Responsibility**

- 8.1 The standard of care for all professional engineering and related services performed or furnished by AECOM under this Agreement will be the care and skill ordinarily used by members of the subject profession practicing under similar circumstances at the same time and in the same locality. AECOM makes no warranties, express or implied, under this Agreement or otherwise, in connection with AECOM's services. Client acknowledges and agrees that AECOM's services require decisions that are not always based upon science, but include judgmental considerations.
- 8.2 Client shall not be responsible for discovering deficiencies in the technical accuracy of AECOM's services. However, Client shall promptly report to AECOM any defects or suspected defects in AECOM's services of which Client becomes aware, so that AECOM may take measures to minimize the consequences of such a defect. AECOM shall correct any deficiencies in technical accuracy without additional compensation except to the extent such corrective action is directly attributable to deficiencies in Client-furnished information. Failure by Client to notify AECOM of any known or suspected defects shall relieve AECOM of the costs of remedying such defects above the sum such remedy would have cost had prompt notification been given.

- 8.3 Notwithstanding anything in this Agreement, AECOM shall not be responsible for, nor have control or charge of construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Project, and shall not be responsible for any construction contractor's failure to carry out the work in accordance with the contract documents. AECOM shall not be responsible for, nor have control over, the acts or omissions of any construction contractors, their subcontractors, any of their agents or employees or any other person performing any work related to the Project.
- 8.4 Since AECOM has no control over the cost of labor, materials, equipment or services furnished by others, or over any contractor's methods of determining prices, or over competitive bidding or market conditions, AECOM's opinion of probable Project Cost and Construction Cost provided for herein are to be made on the basis of its experience and qualifications and represent its best judgment as an experienced and qualified professional familiar with the construction industry; but AECOM cannot and does not guarantee that proposals, bids or actual Project or construction cost will not vary from opinion of probable cost prepared by AECOM.
- 8.5 Notwithstanding anything contained in this Agreement, AECOM shall have no responsibility for the discovery, presence, handling, removal or disposal of, or exposure of persons to hazardous materials in any form at the Project site.

**ARTICLE 9**  
**Insurance**

- 9.1 AECOM shall provide, pay for, and maintain in force at all times during the Services to be performed, the following insurance:
- 9.1.1 Workers' Compensation Insurance as may be required by all state and federal workers' compensation acts, the Federal Longshoremen's and Harbor Workers' Compensation Act, the Outer Continental Shelf Act and such other acts as may be applicable to the Services performed hereunder.
  - 9.1.2 Employer's Liability Insurance with a minimum of Five Hundred Thousand (\$500,000) each accident, Five Hundred Thousand (\$500,000) disease policy limit, Five Hundred Thousand (\$500,000) disease each employee.
  - 9.1.3 Commercial General Liability insurance covering liabilities for death and personal injury and liabilities for loss of or damage to property with combined single limit of not less than One Million Dollars (\$1,000,000.00) per occurrence and general aggregate.
  - 9.1.4 Automobile Liability Insurance with a minimum of One Million Dollars (\$1,000,000.00) per occurrence coverage for both bodily injury and property damage, combined single limit.
  - 9.1.4 Professional Liability Insurance with limits of liability not less than One Million Dollars (\$1,000,000.00) per claim and aggregate.
- 9.2 AECOM shall provide to Client within 30 days of signing of this Agreement certificates evidencing such policies. Client shall be given 30 days notice prior to cancellation of any such policy. AECOM shall name Client as an additional insured on the policies described in paragraphs 9.1.3 and 9.1.4.
- 9.3 Client shall require each contractor, subcontractor and other consultants contracted by Client to provide appropriate insurance and to name AECOM as an additional insured on said parties' general and automobile liability insurance policies and to include AECOM as an indemnified party in its indemnification provision to Client.

**ARTICLE 10**  
**Allocation of Risks; Limitation of Remedies**

- 10.1 AECOM shall perform its duties hereunder on a professional efforts basis, consistent with generally accepted industry standards. AECOM shall correct any defects to the extent arising out of its negligence without additional cost to the Client; provided, however, the Client agrees AECOM's total liability for corrective work shall not exceed One Million (\$1,000,000.00) Dollars. AECOM's liability under this Article is conditioned upon receipt of written notice of any defect promptly upon discovery and an opportunity to inspect the defect to verify the cause thereto.
- 10.2 Notwithstanding any other provision in this Agreement, neither AECOM nor Client shall be liable to the other party for any special, incidental, indirect or consequential damages whatsoever arising out of, resulting from, or in any way related to the Project or performance of this Agreement.

**ARTICLE 11**  
**Miscellaneous**

11.1 **Record Keeping and Audit**

If any payment provided for hereunder is to be made on some basis other than a lump sum price, Client shall have the right to inspect and audit AECOM's books, records and all associated documents relating to such costs (excluding, however, the basis for agreed upon fixed rates). AECOM agrees to maintain records and associated documents for a period of two (2) years from the end of the calendar year in which such costs were incurred and to make such books and records available to Client at all reasonable times within the two (2) year period and for so long thereafter as any dispute remains unresolved. Client may photocopy or reproduce any such books and records at its own expense.

11.2 **Changes**

11.2.1 Client shall have the right to make changes, additions, and required substitution. However, any difference in cost to AECOM resulting from these changes shall be added or deducted from the price. If these changes result in delays in design or construction, the time for performance will be extended a period equal to the delay.

11.2.2. Client shall furnish AECOM with written instructions, signed by a duly authorized person, covering any deviations which Client may require.

11.3 **Third Party Beneficiaries**

Nothing contained in this Agreement shall create a contractual relationship with or cause of action in favor of a third party against either Client or AECOM. AECOM's services under this Agreement are being performed solely for Client's benefit, and no other entity shall have any claim against AECOM because of this Agreement or the performance or nonperformance of services hereunder.

11.4. **Dispute Resolution**

AECOM and Client will attempt in good faith to resolve through negotiation any dispute, claim, counterclaim, or controversy arising out of or relating to this Agreement (hereafter collectively referred to as "Dispute"). If the Dispute is not resolved by these negotiations, the parties agree to submit any such unresolved Dispute as a civil action to the Circuit Court of Monongalia County,

West Virginia.

#### 11.5 Assignment

11.5.1 Neither party to this Agreement may assign, sublet, or transfer any rights or obligations under or interest (including, without limitation, moneys that are due or may become due) in this Agreement, or any claims, causes of action or rights against the other party arising from or under this Agreement; or any proceeds from claims arising from or under this Agreement as security, collateral or the source of payment for any notes or liabilities to the Contractor or any other third party; or any control of any claims or causes of action arising from or under this Agreement without the written consent of the other party, except to the extent that any assignment, subletting, or transfer is mandated or restricted by law. Unless specifically stated to the contrary in any written consent to an assignment, no assignment will release or discharge the assignor from any duty or responsibility under this Agreement. This section shall not, however, apply to any subrogation rights of any insurer of either party. The provisions of this paragraph shall survive the completion or termination of this Agreement for any reason and shall remain enforceable between the parties.

11.5.2 Notwithstanding the provisions of paragraph 11.7.1, above, or any other provision of this Agreement, AECOM may assign or otherwise transfer its rights and obligations under this Agreement to any parent, subsidiary, or affiliated company of AECOM or to any purchaser of the business of AECOM that agrees to assume the obligations of AECOM under this Agreement if AECOM first provides to the Client evidence of the fact that such entity is qualified to assume AECOM's obligations under this Agreement.

#### 11.6 Approvals, Authorizations, Notices

All notices authorized or required between the parties, or required by any of the provisions herein shall be given in writing and shall be sent by certified mail, return receipt requested, and deposited with an accepted postal service, postage prepaid, and addressed to the party intended to receive it. Notices may also be given by personal delivery or may be sent by telex to the party intended to receive it with the sending party confirming the message by certified mail in the same manner as provided above within ten (10) calendar days thereafter, but said notice shall be deemed given on the date the telex is sent. Notice shall be addressed, mailed and delivered or telexed to the party to whom the notice is given at the address shown herein, to wit:

Client                      City of Morgantown  
Attention: Jeff Mikorski ICMA-CM, City Manager  
389 Spruce Street  
Morgantown, WV 26505

AECOM                      AECOM Technical Services, Inc.  
Attention: Keith R. Sala, P.E., Pittsburgh/WV Operations Manager  
150 Clay Street, Suite 430  
Morgantown, WV 26501

#### 11.6 Governing Law

All matters arising under this Agreement shall be governed by the laws of the State of West Virginia, and the West Virginia Court having jurisdiction over all matters arising under this Agreement shall be the Circuit Court of Monongalia County.

11.7 Interpretation

The parties expressly agree that this Agreement shall be construed neither against nor in favor of either party, but shall be construed in a neutral manner.

11.8 Integration, Severability and Survival

11.8.1 This Agreement comprises the final and complete agreement between Client and AECOM. It supersedes all prior or contemporaneous communications, representations or agreements, whether oral or written, relating to the subject matter of this Agreement. Amendments to this Agreement shall not be binding unless made in writing and signed by both Client and AECOM. Any provision of this Agreement later held to be unenforceable for any reason shall be deemed void, and all remaining provisions shall continue in full force and effect, if the essential provisions of this Agreement for each party remain valid, binding, and enforceable.

11.8.2 All provisions of this Agreement related to assignment, indemnification, limitation of remedies, and limitations on actions, or otherwise allocating responsibility or liability between the parties, shall survive the completion of the services hereunder and the termination of this Agreement and shall remain enforceable between the parties.

11.9 Counterparts

This Agreement may be executed in counterparts, each of which when executed and delivered shall be deemed an original and all of which, taken together, shall constitute the same agreement. This Agreement may be executed by facsimile signature, which shall be considered legally binding for all purposes.

[ Signature Page Follows ]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

City of Morgantown \_\_\_\_\_

AECOM Technical Services, Inc. \_\_\_\_\_

By: \_\_\_\_\_  
(Signature)

By: \_\_\_\_\_  
(Signature)

Name: \_\_\_\_\_  
(Typed or Printed Name)

Name: \_\_\_\_\_  
(Typed or Printed Name)

Title: \_\_\_\_\_  
(Typed or Printed Title)

Title: \_\_\_\_\_  
(Typed or Printed Title)

Date Signed: \_\_\_\_\_  
(Typed or Printed Date)

Date Signed: \_\_\_\_\_  
(Typed or Printed Date)

## **APPENDIX A** **SCOPE OF Services**

The City of Morgantown (Client, City) has selected AECOM to perform engineering, design, and architectural services for the design and planning of an Infrastructure Improvement Project for the Sunnyside TIF District. This Scope of Services is for initial evaluation in support of the City's determination of proposed projects.

The Scope of Services for the following tasks will be developed at a future date, under a "Task Order" basis, as described below: 1) additional, as-needed evaluation of the areas as they relate to the proposed projects; 2) preparation of conceptual designs accompanied by design and construction estimates; 3) preparation of all bidding and contract documents; 4) participation in the evaluation of bids; and 5) monitoring and inspection of construction activities.

This proposal is limited to the Services as described in this Scope of Services section. Tasks not described shall be considered Additional Services that will be negotiated at a later date, if required. AECOM proposes to perform the Services that are described as follows.

AECOM proposes to conduct a kickoff meeting with the Client and other stakeholders to discuss lessons learned from the previous phase of the Infrastructure Improvement Project for the Sunnyside TIF District and to identify special needs and programmatic elements for the current phase of the project, including the following tasks. The objective of the initial phase is to evaluate proposed projects, prepare conceptual design alternatives, and develop estimates to enable planning of future design and construction phases. Details of the schedule will be discussed at the kickoff meeting.

*Deliverables:*

- *Meeting minutes in PDF.*

### **Task 1 – Development of Estimates for Sidewalk Construction**

The objective of this task is to:

- Develop a unit cost estimate for sidewalk with and without lighting per LF assuming the following:
  - Sidewalk is 6' wide
  - Sidewalk is constructed of 4000 psi concrete, 6" depth, reinforced with welded wire fabric
  - Sidewalk is constructed on a 6" depth aggregate base
  - Includes 6" wide by 18" deep concrete curb reinforced with rebar
  - Unit cost will include all items necessary to fully construct the sidewalk
    - Maintenance of Traffic
    - Drainage
    - Demolition
    -

AECOM proposes to attend one meeting with stakeholders including the City and Sunnyside representatives to discuss and to identify special needs and programmatic elements for the sidewalk connection.

*Deliverables:*

- *Meeting minutes in PDF*
- *Schematic details as required to define design intent*
- *Preliminary opinion of probable cost*

## **Task 2 – Development of Estimates for Alley Construction**

The objectives of this task are to:

- Develop a unit cost estimate for alley construction per LF assuming the following:
  - AECOM will work with the City to determine the proposed typical sections for the Model Alley and will estimate the cost accordingly
  - All work will occur within the 15' right-of-way (ROW)
  - Unit cost will include all items necessary to fully construct the alley
    - Maintenance of Traffic
    - Drainage
    - Demolition
    - ROW Survey
- Inventory and visually assess existing alleys in the Sunnyside District within the limits of Beechurst Avenue, University Avenue, Campus Drive, and 6<sup>th</sup> Street. Existing surface paving materials, alley condition, and utilization will be documented and categorized.

AECOM proposes to attend one meeting with stakeholders including the City and Sunnyside representatives to discuss and to identify special needs and programmatic elements for the sidewalk connection.

### *Deliverables:*

- *Meeting minutes in PDF*
- *Schematic typical concept plan*
- *Schematic details as required to define design intent*
- *Preliminary opinion of probable cost*

## **Task 3 – Beverly Avenue and 6th Street Intersection Improvements**

The objectives of this task are development of a concept design and opinion of probable cost for improvements to the intersection of Beverly Avenue and 6<sup>th</sup> Street, including the approaches of each roadway.

AECOM will coordinate with the City to develop project design criteria that will influence improvements to the roadway and pedestrian zones. AECOM will assume that improvements will occur within the existing right of way; however, will incorporate other potential right of way acquisition into the evaluation as identified by the City or Sunnyside representatives.

AECOM proposes to utilize existing county mapping for this work.

AECOM proposes to attend one meeting with stakeholders including the City and Sunnyside representatives to discuss and to identify special needs and programmatic elements for the sidewalk connection.

### *Deliverables:*

- *Meeting minutes in PDF*
- *Schematic concept plan (2 Alternatives)*
- *Schematic details as required to define design intent*
- *Preliminary opinion of probable cost*

## **Future Task Orders**

Consultant will submit, upon Client's request, a technical and cost proposal for each additional task assigned to Consultant by Client. After Consultant submits the proposal, Client and Consultant will negotiate and execute a task order ("Task Order") covering such services. Each Task Order shall have a

specific scope of work, schedule, and a detailed breakdown of the compensation for such services. Client must issue the negotiated Task Order and Consultant must execute such Task Order prior to Consultant's commencement of any work pursuant to such Task Order.

**Schedule**

AECOM will provide the scope of services in accordance with an overall project schedule coordinated with and approved by the Client, assuming AECOM task durations as proposed in the following table. An overall project schedule and critical path will be developed by combining the AECOM tasks with review and coordination tasks by the Client and other stakeholders.

Schedule

Item	Schedule (Work Days)
Task 1 – Development of Estimates for Sidewalk Construction	20
Task 2 – Development of Estimates for Alley Construction	20
Task 3 – Beverly Avenue and 6th Street Intersection Improvements	25

AECOM will start work upon executed agreement and Notice to Proceed from the Client.

**APPENDIX B**  
**COMPENSATION**

Client shall compensate AECOM for Services in accordance with Article 3, Compensation and Terms of Payment, and other terms and conditions of this Agreement, as follows:

Fees for Consultant's services will be invoiced on a Lump Sum basis developed in accordance with the following fee schedule.

Fee Schedule

Item	Unit Price
Project Manager	\$190.00/hr
Senior Landscape Architect	\$160.00/hr
Senior Engineer	\$145.00/hr
Senior Designer / Project Engineer	\$120.00/hr
Staff Engineer/Landscape Architect	\$90.00/hr
CADD Operator / Technician	\$75.00/hr
Project Assistant	\$57.00/hr
Expenses (Travel, reproductions, etc.)	Cost plus 10%
Travel Time	Portal to portal

The following is a cost estimate for the work as described in the Scope of Services Section of this Agreement. Changed conditions or additional requirements may result in an adjustment to estimated fees and/or schedules. Consultant will provide professional services to Owner for the **Lump Sum Fee and Reimbursable Expenses** as follows. Lump Sum Fee includes Consultant's payroll costs and indirect expenses. Reimbursable Expenses include travel expenses (mileage, lodging, meals, etc.), reproductions, and other approved expenses. The fees listed in this section do not cover any Additional Work (defined below), or any other services that are not specifically described as part of the Work listed in the Scope of Services above.

**Task 1 – Development of Estimates for Sidewalk Construction**

Lump Sum Fee	\$ 4,000
Reimbursable Expenses	\$ 500

**Task 2 – Development of Estimates for Alley Construction**

Lump Sum Fee	\$ 5,000
Reimbursable Expenses	\$ 500

**Task 3 – Beverly Avenue and 6th Street Intersection Improvements**

Lump Sum Fee	\$ 8,500
Reimbursable Expenses	\$ 500

**Grand Total**

Lump Sum Fee	<b>\$ 17,500</b>
Reimbursable Expenses	<b>\$ 1,500</b>
Lump Sum Fee plus Reimbursable Expenses	<b>\$ 19,000</b>

#### ADDITIONAL SERVICES

Experience indicates that certain additional items of work may be required or necessary which we cannot presently determine or estimate. For this reason, the fee for these items is not included in the provisions above on Estimated Fees for the performance of the Services. Further, the performance of these items is not included in the Services unless the item is expressly described in the preceding Scope of Services section. These additional items of work (Additional Services) are caused by many factors, usually at the discretion of Owner and/or his contractors. Reviewing agency or Owner variance/deviation from present policies and standards of reviewing governmental agencies may also cause them. Additional Services may sometimes be referred to as extras, change orders, or add-ons, but for purposes of this Agreement all such descriptions are intended to be encompassed within the term Additional Services.

#### FEEES AND PAYMENTS FOR ADDITIONAL SERVICES

Fees and payments for Additional Services shall be in addition to any fees and payments for the Services described in the Scope of Services and shall be billed and paid for in accordance with the Fee Schedule above.

## BOARDS AND COMMISSIONS - TERMS EXPIRED AND CURRENT VACANCIES

### **BOARD OF ZONING APPEALS:**

**Thomas Shamberger does not wish to continue to serve on this board. Council will appoint after Special Meeting.**  
Residents appointed by City Council-5members.

### **HUMAN RIGHTS COMMISSION:**

**Attached is a letter from Warren Harger resigning from the Human Rights Commission. With Council's permission Clerk will start the process to seek applicants. Appt. by City Council. Resident of City.**

### **TRAFFIC COMMISSION:**

**The 5<sup>th</sup> ward member has resigned.** Residents appointed by Council, must represent specific categories.

### **URBAN LANDSCAPE COMMISSION:**

**Judy Kierig resigned this is a Second Ward representative, our Second Ward Councilor (Bill Kawecki) is searching to find a replacement.** Residents appointed by Council, must represent specific categories.

### **WOODBURN SCHOOL REDEVELOPMENT COMMISSION:**

**7 members shall be appointed by Council. Council will interview candidates at two separate Special Meetings. Council will appoint commission on December 17, 2013.**

**\*POLICE & FIRE CIVIL SERVICE COMMISSIONS: NEW PRESIDENTS APPOINTED IN JANUARY.**

***\*Information for Boards and Commissions vacancies are placed in the Dominion Post, are advertised on the City's Government Station Channel 15, and are posted at the Library and also information is on the City's Web Page.***

***\*Council decided on 3-21-06 by unanimous consent that if there is only one candidate for Boards & Commissions, that they will not interview; the City Clerk will check with Council before scheduling a Special Meeting.***

***\*BZA and Planning Commission term expirations are advertised in October and interviews must be completed by December per State Law.***

*Boards and Commission interview structure will be reviewed at a Committee of the Whole.12/10/13*

Warren Harger  
3180 Collins Ferry Rd, Apt 108  
Morgantown, WV 26505

November 21, 2013

Human Rights Commission  
City of Morgantown

### Resignation

I have accepted a position as Manager of Eastview Unity Apartments in Fairmont, West Virginia. I understand that living in a different county disqualifies me for my position on the board of the Human Rights Commission.

I hereby tender my resignation regretfully. I have enjoyed my participation as a board member of the Human Rights Commission.

Sincerely,

  
Warren G Harger

**AN ORDINANCE BY THE CITY OF MORGANTOWN ADDING A NEW SECTION 941.08 TO ITS MUNICIPAL CODE, AS THE SAME APPLIES TO THE USE OF TOBACCO PRODUCTS AND ELECTRONIC CIGARETTES ON OR IN PROPERTIES AND FACILITIES CONTROLLED BY OR UNDER THE JURISDICTION OF THE MORGANTOWN BOARD OF PARK AND RECREATION COMMISSIONERS.**

**WHEREAS,** Section 149.10 of the Morgantown City Code states that the Morgantown Board of Park and Recreation Commissioners (hereinafter "BOPARC") is empowered to promulgate rules and regulations in its administration of BOPARC affairs;

**WHEREAS,** Section 149.10 further states, in part, that upon codification of such rules and regulations, by ordinance of Council which may provide for penalties thereof, the BOPARC Board shall enforce the same by appropriate proceedings in any proper tribunal of this State.

**WHEREAS,** Article 941 of the Morgantown City Code contains rules and regulations adopted by BOPARC and codified by Council ordinance, which pertain to properties and facilities controlled by or under the jurisdiction of the BOPARC Board;

**WHEREAS,** on September 26, 2013, the BOPARC Board voted to adopt rules and regulations prohibiting the use of tobacco products and electronic cigarettes on properties or in facilities controlled by BOPARC;

**WHEREAS,** the BOPARC Board has requested that Morgantown City Council amend Article 941 of the City Code to incorporate the new BOPARC Rule; and

**NOW THEREFORE,** the City of Morgantown hereby ordains that a new Section 941.08 is added to its Municipal Code which reads as follows (new matter underlined, deleted matter struck through.):

**941.08**            **Use of Tobacco Products and Electronic Cigarettes.**

It shall be unlawful for any person to use tobacco in any form, or to use an electronic cigarette, in or on any property controlled by or under jurisdiction of the Morgantown Board of Park and Recreation Commissioners (BOPARC). For purposes of this section, property controlled by or under the jurisdiction of the Morgantown Board of Park and Recreation Commissioners is: White Park, Marilla Park, Krepps Park, Dorsey's Knob Park, Wiles Hill Park, Hazel Ruby McQuain Park, King Street Park, Suncrest Lake Park, Paul Preserve Park, Aspen Street Park, Jack Roberts Park, Woodburn Park, Whitmore Park, MEA Fishing Pier, Stanley's Spot Dog Park, South U Park.

Whoever violates this section shall be guilty of a misdemeanor, and upon conviction thereof, shall be subject to a fine of not more than one hundred dollars (\$100.00).

This Ordinance shall be effective upon date of adoption.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

**AN ORDINANCE AMENDING THE FY 2013-2014 ANNUAL BUDGET OF THE CITY OF MORGANTOWN AS SHOWN IN THE REVISED BUDGET ATTACHED HERETO AND MADE A PART OF THIS ORDINANCE AS THE SAME APPLIES TO THE GENERAL FUND.**

The City of Morgantown hereby ordains:

That the FY 2013-2014 Annual Budget of the General Fund of the City of Morgantown is amended as shown in the revised budget (Revision 02) attached hereto and made a part of this ordinance.

First Reading:

Adopted:

\_\_\_\_\_  
Mayor

Filed:

Recorded:

\_\_\_\_\_  
City Clerk

Ora Ash, Director  
 West Virginia State Auditor's Office  
 200 West Main Street  
 Clarksburg, WV 26301  
 Phone: 627-2415 ext. 5114  
 Fax: 627-2417

Person To Contact Regarding  
 Budget Revision: **J.R. Sabatelli**  
 Phone: **304-284-7407**  
 Fax: **304-284-7418**

**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)

City of Morgantown  
 GOVERNMENT ENTITY  
 389 Spruce Street  
 STREET OR PO BOX  
 Morgantown CITY 26505 ZIP CODE

CONTROL NUMBER  
**2013-2014**  
 FY  
**General Fund**  
 FUND  
**2**  
 REV. NO.  
**1 of 3**  
 PG. OF NO.  
 Municipality  
 Government Type

**REVENUES: (net each acct.)**

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	PREVIOUSLY APPROVED AMOUNT	(INCREASE)	(DECREASE)	REVISED AMOUNT
299	Unassigned Fund Balance	200,000	320,000		520,000
305	Business and Occupation Tax	12,100,000	1,100,000		13,200,000
301-02-05	Prior Year Taxes	172,000	53,000		225,000
320	Fines, Fees & Court Costs	620,000		90,000	530,000
304	Excise Tax on Utilities	1,005,000		23,000	982,000
330	IRP Fees (Interstate Registration Plan)	11,000	25,000		36,000
<b>NET INCREASE/(DECREASE) Revenues (ALL PAGES)</b>			<b>1,364,000</b>		

**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
412	City Manager's Office	514,457	3,878		518,335
414	Finance Office	764,019	4,836		768,855
415	City Clerk	160,386	605		160,991
416	Police Judge's Office	228,986	1,814		230,800
417	City Attorney	289,272	1,512		290,784
420	Engineering	464,345	3,023		467,368
422	Personnel Office	47,013	303		47,316
436	Building Inspection	931,954	8,161		940,115
437	Planning & Zoning	213,706	1,814		215,520
439	Data Processing	191,148	605		191,753
440	City Hall	529,084	2,418		531,502
<b>NET INCREASE/(DECREASE) Expenditures</b>			<b>1,364,000</b>		

**APPROVED BY THE STATE AUDITOR**  
 BY: \_\_\_\_\_ Date \_\_\_\_\_  
 Director, Local Government Services Division

AUTHORIZED SIGNATURE  
 OF ENTITY

APPROVAL  
 DATE



**EXPENDITURES (CONT'D)**

LGSD: BR City of Morgantown

City of Morgantown  
CONTROL NUMBER

2013-2014

General Fund

2

BUDGET REVISION REQUEST-SUPPLEMENT

FY

FUND

REV#

ACCOUNT NUMBER	ACCOUNT CATEGORY	PREVIOUSLY APPROVED AMOUNT	FY INCREASE	FUND DECREASE	REVISED AMOUNT
700	Police Department	6,517,229	95,492		6,612,721
706	Fire Department	4,305,263	91,566		4,396,829
750	Streets and Highways	2,360,291	22,926		2,383,217
752	Signs and Signals	598,788	2,418		601,206
754	Central Garage	763,653	4,232		767,885
950	Beautification Programs	127,486	605		128,091
699	Contingencies*	42,646	17,792		60,438
444	Contributions / Transfers to Other Funds	500,000	1,100,000		1,600,000
	#N/A				

**NET INCREASE/(DECREASE) Expenditures (this page)**

**1,335,031**

City of Morgantown  
 General Fund  
 Budget Revision #2  
 Fiscal Year 2014

Wage related adjustments:  
 Department 412

City Manager:	Current	New	Revision
Wages	320,073.00	321,423.00	1,350.00
Social Security	19,876.00	19,960.00	84.00
Medicare	4,648.00	4,668.00	20.00
Health & Life Ins.	61,260.00	63,678.00	2,418.00
WC	1,344.00	1,350.00	6.00
			<u>3,878.00</u>

Department 414

Finance:	Current	New	Revision
Health & Life Ins.	122,520.00	127,356.00	4,836.00
			<u>4,836.00</u>

Department 415

City Clerk:	Current	New	Revision
Health & Life Ins.	15,315.00	15,920.00	605.00
			<u>605.00</u>

Department 416

Municipal Court:	Current	New	Revision
Health & Life Ins.	45,945.00	47,759.00	1,814.00
			<u>1,814.00</u>

Department 417

City Attorney:	Current	New	Revision
Health & Life Ins.	38,288.00	39,800.00	1,512.00
			<u>1,512.00</u>

Department 420

Engineering:	Current	New	Revision
Health & Life Ins.	76,575.00	79,598.00	3,023.00
			<u>3,023.00</u>

Department 422

Personnel:	Current	New	Revision
Health & Life Ins.	7,657.00	7,960.00	303.00
			<u>303.00</u>

Department 436			
Code Enforcement:	Current	New	Revision
Health & Life Ins.	206,753.00	214,914.00	8,161.00
			<hr/>
			8,161.00

Department 437			
Planning:	Current	New	Revision
Health & Life Ins.	45,945.00	47,759.00	1,814.00
			<hr/>
			1,814.00

Department 439			
Info. Technology:	Current	New	Revision
Health & Life Ins.	15,315.00	15,920.00	605.00
			<hr/>
			605.00

Department 440			
City Hall:	Current	New	Revision
Health & Life Ins.	61,260.00	63,678.00	2,418.00
			<hr/>
			2,418.00

Department 700			
Police:	Current	New	Revision
Wages	3,456,823.00	3,472,012.00	15,189.00
Medicare	56,352.00	56,573.00	221.00
Health & Life Ins.	1,179,255.00	1,225,802.00	46,547.00
WC	136,346.00	136,881.00	535.00
			<hr/>
			62,492.00

Department 706			
Fire:	Current	New	Revision
Wages	2,340,278.00	2,347,908.00	7,630.00
Overtime	110,000.00	160,000.00	50,000.00
Social Security	3,288.00	3,762.00	474.00
Medicare	35,529.00	36,365.00	836.00
Retire	6,263.00	7,280.00	1,017.00
Health & Life Ins.	742,777.00	772,096.00	29,319.00
WC	116,683.00	118,973.00	2,290.00
			<hr/>
			91,566.00

Department 750			
Streets:	Current	New	Revision
Health & Life Ins.	428,820.00	445,746.00	16,926.00
	-	-	-
			<u>16,926.00</u>

Department 752			
Signs and Signals:	Current	New	Revision
Health & Life Ins.	61,260.00	63,678.00	2,418.00
	-	-	-
			<u>2,418.00</u>

Department 754			
Equipment Maintenance:	Current	New	Revision
Health & Life Ins.	107,205.00	111,437.00	4,232.00
	-	-	-
			<u>4,232.00</u>

Department 952			
Urban Landscape:	Current	New	Revision
Health & Life Ins.	15,315.00	15,920.00	605.00
	-	-	-
			<u>605.00</u>

Total wage related items			207,208.00
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Non-wage items requiring adjustment:

	Current	New	Revision
Dept 700 Police Department			
Vehicle Maintenance	40,000.00	70,000.00	30,000.00
Firearm Supplies	14,000.00	17,000.00	3,000.00
Dept 750 Street Department			
Uniform Costs	18,000.00	24,000.00	6,000.00
Dept 70 Operating Transfers			
Contrib to Capital Escrow	500,000.00	1,600,000.00	1,100,000.00
Total nonwage	572,000.00	1,711,000.00	1,139,000.00
Total Increase overall			1,346,208.00
Totals by Department			
Dept 412 City Manager			3,878.00
Dept 414 Finance			4,836.00
Dept 415 City Clerk			605.00
Dept 416 Municipal Court			1,814.00
Dept 417 City Attorney			1,512.00
Dept 420 Engineering			3,023.00
Dept 422 Personnel			303.00
Dept 436 Code Enforcment			8,161.00
Dept 437 Planning			1,814.00
Dept 439 Information Technology			605.00
Dept 440 City Hall			2,418.00
Dept 700 Police			95,492.00
Dept 706 Fire			91,566.00
Dept 750 Street			22,926.00
Dept 752 Signs and Signals			2,418.00
Dept 754 Equipment Maintenance			4,232.00
Dept 952 Urban Landscape			605.00
Dept 70 Operating Transfers			1,100,000.00
Contingencies			<u>17,792.00</u>
			1,364,000.00

Revenue Adjustment

	Current	New	Revision
Telephone Utility Tax	216,000.00	193,000.00	(23,000.00)
B&O Taxes - Construction	1,400,000.00	2,400,000.00	1,000,000.00
Fines & Forfeitures	620,000.00	530,000.00	(90,000.00)
Credit Card Service Fee	21,000.00	-	(21,000.00)
B&O Taxes	10,700,000.00	10,800,000.00	100,000.00
Prior Year Taxes	172,000.00	225,000.00	53,000.00
IRP Truck Fees	11,000.00	36,000.00	25,000.00
Prior Year Carryover	<u>200,000.00</u>	<u>520,000.00</u>	<u>320,000.00</u>
	13,340,000.00	14,704,000.00	1,364,000.00

# *City of Morgantown*

## *Finance Department*

*389 Spruce Street*

*Morgantown, WV 26505*

*Phone (304) 284-7407/Fax 7418*

*jsabatelli@cityofmorgantown.org*

# MEMO

**DATE:** November 27, 2013

**TO:** Jeff Mikorski, ICMA-CM, City Manager

**FROM:** J.R. Sabatelli, CPA, Finance Director 

**RE:** General Fund Budget Revision 2

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Included herewith you will find the proposed ordinance and "Request for Revision to Approved Budget" for the FY2014 General Fund Budget. An explanation of the proposed changes follows:

The adjustments to revenue reflect an increase from the projected and approved carryover from the previous fiscal year (FY13) to the current carryover based on actual figures, coupled with projected increases to IRP Fees and B&O taxes and projected decreases to fines & forfeitures, telephone excise taxes and charges for credit card services. IRP Fees are based on road mileage in the City and due to updates from at the state, these fees are expected to increase. B&O taxes are expected to increase mainly due to additional onetime revenues from major projects. The decreases to fines & forfeitures and telephone excise taxes are based on receipts through the first 5 months of the year and the charges for credit card services is being delayed while other avenues are being explored to cut down on these fees.

The adjustments to expenditures include the increase in health insurance as presented during the recent renewal process as well as adjustments in the Police and Fire departments due to retirements and overtime. The wage adjustment in the City Manager department reflects the transfer of videographers from contracted services to contracted employees for the remainder of the fiscal year. Additional funding is included for the police department for firearm supplies and vehicle maintenance due to an aging fleet, and uniform costs in the street department. The contribution to the Capital Escrow Fund has been increased due to the expected increase in the onetime B&O revenues. A slightly more detailed breakdown of individual lines affected in each department is included as supplementary information.

Revised

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 905.02 OF ITS STREETS, UTILITIES AND PUBLIC SERVICES CODE BY ADDRESSING THE SALE OF PRODUCE, FOOD, GOODS, WARES AND OTHER MERCHANDISE UPON SIDEWALKS OF THE CITY.**

**The City of Morgantown hereby ordains that subsection 905.02 of its Streets, Utilities, and Public Services Code is amended as follows (new matter underlined, deleted matter struck through):**

- 905.02 (d) No person shall be allowed to display or sell any produce, food, goods, wares or other merchandise between the hours of 11:00 p.m. and 6:00 a.m. on any public sidewalk within the Downtown Business District of the City, as shown on the map contained herein, without allowing a minimum of four feet of width of accessible sidewalk for pedestrian movement. No such vendor shall be allowed to locate on any public sidewalk within the 300 Block of High Street, as shown on the map contained herein, within the hours of 11:00 p.m. to 6:00 a.m. The sidewalk vendor shall be required to remove all litter or garbage within the public right-of-way and resulting from the vendor's sales, for a distance of fifty (50) feet of its vending location. The vendor shall remove all such litter or garbage from the public right-of-way before moving from the vending location on such night.

All such vendors shall be required to comply with all applicable State, Federal and City Codes, including the West Virginia State Fire Code. Violators of this subsection shall be subject to a fine of five hundred dollars (\$500.00). Persons regulated by this code section shall be allowed to apply for the assignment of a vendor parking space pursuant to Section 361.09 of the Morgantown Traffic Code.



This Ordinance shall be effective January 1, 2014.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

ORIGINAL

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 905.02 OF ITS STREETS, UTILITIES AND PUBLIC SERVICES CODE BY ADDRESSING THE SALE OF PRODUCE, FOOD, GOODS, WARES AND OTHER MERCHANDISE UPON SIDEWALKS OF THE CITY.**

The City of Morgantown hereby ordains that subsection 905.02 of its Streets, Utilities, and Public Services Code is amended as follows (new matter underlined, deleted matter struck through):

- 905.02 (d) No person shall be allowed to display or sell any produce, food, goods, wares or other merchandise between the hours of 11:00 p.m. and 6:00 a.m. on any public sidewalk within the Downtown Business District of the City, as shown on the map contained herein, without allowing a minimum of four feet of width of accessible sidewalk for pedestrian movement. Additional rules and restrictions between 11:00 pm and 6:00 am will be promulgated by the City Manager. Violators of this subsection shall be subject to a fine of five hundred dollars (\$500.00). ~~Persons regulated by this code section shall be allowed to apply for the assignment of a vendor parking space pursuant to Section 361.09 of the Morgantown Traffic Code.~~



This Ordinance shall be effective January 1, 2014.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

Revised

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 361.09 OF ITS TRAFFIC CODE, AS THE SAME APPLIES TO PUBLIC PARKING SPACES AND THE SALE OF PRODUCE, FOOD, GOODS, WARES OR OTHER MERCHANDISE IN THE DOWNTOWN BUSINESS DISTRICT OF THE CITY.**

The City of Morgantown hereby ordains that Section 361.09 of its Traffic Code is amended as follows (new matter underlined, deleted matter struck through):

361.09     PARKING TO DISPLAY OR SELL PRODUCE, FOOD, GOODS, WARES OR OTHER MERCHANDISE.

No vehicle shall be parked in the ~~\_business or congested district~~ Downtown Business District of the City, as shown on the map contained herein, for the purpose of displaying or selling therefrom any produce, food, goods, wares or other merchandise of any kind, except between the hours of 11:00 p.m. and 6:00 a.m., and only within the parking space assigned to such vendor by the City Manager, or his/her designee, which may include the Morgantown Parking Authority; or as a part of an authorized special event permit. The City Manager, or his/her designee, shall promulgate rules governing the assignment of parking spaces regulated by this Section, to vendors. Individual vendors shall be required to remove all litter or garbage within the public right-of-way and resulting from the vendor's sales, for a distance of fifty (50) feet of their assigned parking space. The vendor shall remove all such litter or garbage from the public right-of-way before removing its vehicle used for the transportation and sale of produce, food, goods, wares or other merchandise from the assigned vendor parking space. Violators of this section shall be subject to a fine of five hundred dollars (\$500.00).

The prohibitions contained within this code section shall not prohibit the City Manager from issuing permits to vehicle vendors, allowing such vendors to set up in parking spaces from the hours of 6:00 a.m. to 11:00 p.m. while special events are being held by and/or authorized by the City of Morgantown.



This Ordinance shall become effective on January 1, 2014.

FIRST READING:

\_\_\_\_\_

MAYOR

ADOPTED:

FILED:

\_\_\_\_\_

CITY CLERK

RECORDED:

ORIGINAL

**AN ORDINANCE BY THE CITY OF MORGANTOWN AMENDING SECTION 361.09 OF ITS TRAFFIC CODE, AS THE SAME APPLIES TO PUBLIC PARKING SPACES AND THE SALE OF PRODUCE, FOOD, GOODS, WARES OR OTHER MERCHANDISE IN THE DOWNTOWN BUSINESS DISTRICT OF THE CITY.**

The City of Morgantown hereby ordains that Section 361.09 of its Traffic Code is amended as follows (new matter underlined, deleted matter struck through):

**361.09 PARKING TO DISPLAY OR SELL PRODUCE, FOOD, GOODS, WARES OR OTHER MERCHANDISE.**

No vehicle, wagon, cart, or other similar device used for the transportation and/or sale of produce, food, goods, wares or other merchandise, shall be parked in the business or congested district Downtown Business District of the City, as shown on the map contained herein, for the purpose of displaying or selling therefrom any produce, food, goods, wares or other merchandise of any kind, except between the hours of 11:00 p.m. and 6:00 a.m., and only within the parking space assigned to such vendor by the City Manager, or his/her designee, which may include the Morgantown Parking Authority; or as a part of an authorized special event permit. The City Manager, or his/her designee, shall promulgate rules governing the assignment of parking spaces regulated by this Section, to vendors. Individual vendors shall be required to remove all litter or garbage within the public right-of-way and resulting from the vendor's sales, for a distance of fifty (50) feet of their assigned parking space. The vendor shall remove all such litter or garbage from the public right-of-way before removing its vehicle, wagon, cart, or other similar device used for the transportation and sale of produce, food, goods, wares or other merchandise from the assigned vendor parking space. Violators of this section shall be subject to a fine of five hundred dollars (\$500.00).



This Ordinance shall become effective on January 1, 2014.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:

# Downtown Truck Vending - Commercial Assistance Memo

The City of Morgantown has established the rules and



regulations for registering truck vendors in the downtown district to help reduce pedestrian congestion and increase safety on downtown sidewalks between the hours of 11:00 pm and 6:00 am.

## What are the rules?

City of Morgantown Code 361.09 has been created to manage truck vending in the downtown between the hours of 11:00 pm and 6:00 am. Truck vendors will be allowed to register for an allowable parking space that is located 50 feet from an open business and is not located within the 300 block of High Street (from Fayette Street to Walnut Street) or along the Courthouse Plaza on High Street when meters are bagged, or any parking space that has a bagged meter. Parking spaces that are allowable can be seen in the attached Downtown Nighttime Mobile Vending maps (parking spaces located in red are not allowed). Maps will be updated annually in November to determine allowable parking spaces for the upcoming year. Registration will be through the Morgantown Parking Authority, which will be responsible for the bagging of the meter 2-hours before vendors can locate into the parking space. Parking spaces will be available on February 1 of each year for registration on a first come, first serve basis. Each space can be registered on a weekly schedule.

## What are my responsibilities?

As a truck vendor, your responsibilities include:

1. Obtain a Hawker Peddler License through the Morgantown Finance Department
2. Register and pay for a requested parking space at least one week in advance.
3. Remove all litter or garbage within the public right-of-way and resulting from the vendor's sales, for a distance of fifty (50) feet of their assigned parking space.

It is the responsibility of the truck vendor or owner to have their vehicle inspected by the Morgantown Fire Marshall's office prior to locating at the registered parking space.

## Cost

Parking spaces can be registered for \$14 each day (11:00 pm to 6:00 am). If three consecutive days (11:00 pm to 6:00 am) are registered, the cost will be \$13 each day.

## Who enforces these rules?

The Morgantown Police Department will enforce laws regarding Code 361.09 for truck vendor that are not in a registered parking space in downtown Morgantown, or if the truck vendor is not correctly licensed with the City Finance Department. The Finance Department will enforce the payment of Business and Occupation Taxes to be collected on gross sales.

## What happens if I don't follow these laws/rules/regulations?

Violators of this section shall be subject to a fine of five hundred dollars (\$500.00).

## Who do I contact if I have questions?

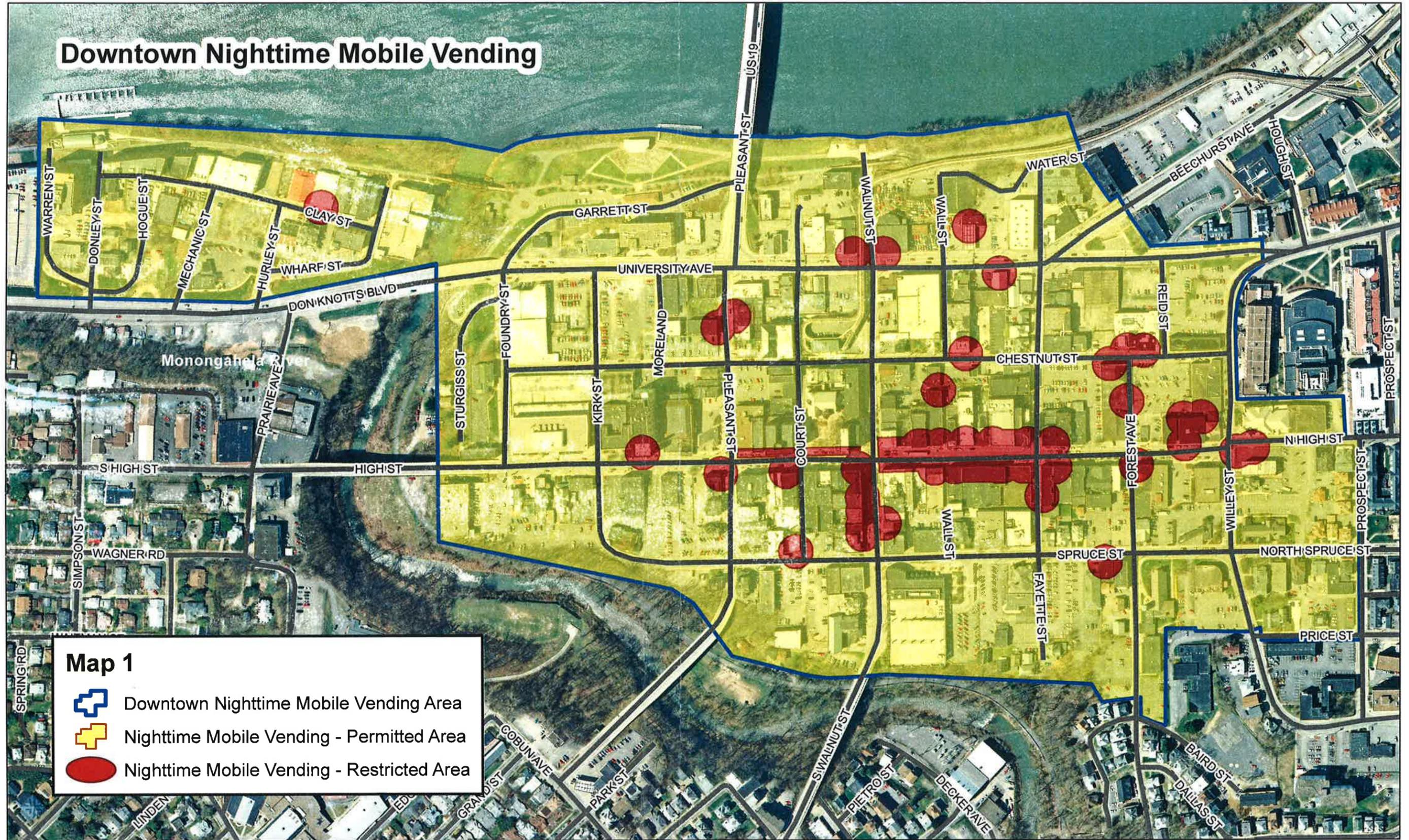
Contact the Morgantown Parking Authority for questions on registering for vendor parking spaces at 304-284-7435.

Contact the Morgantown Finance Department on business licensing for truck vending at 304-284-7417.

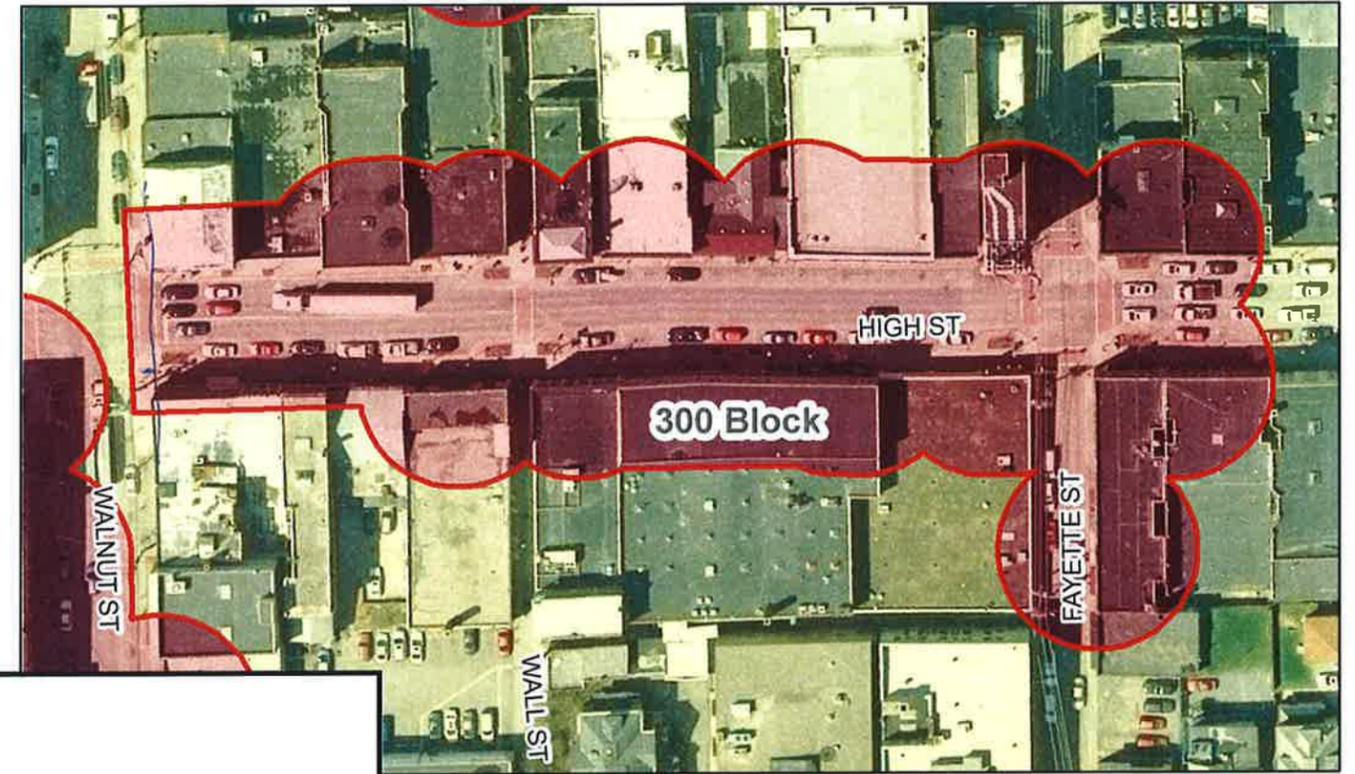
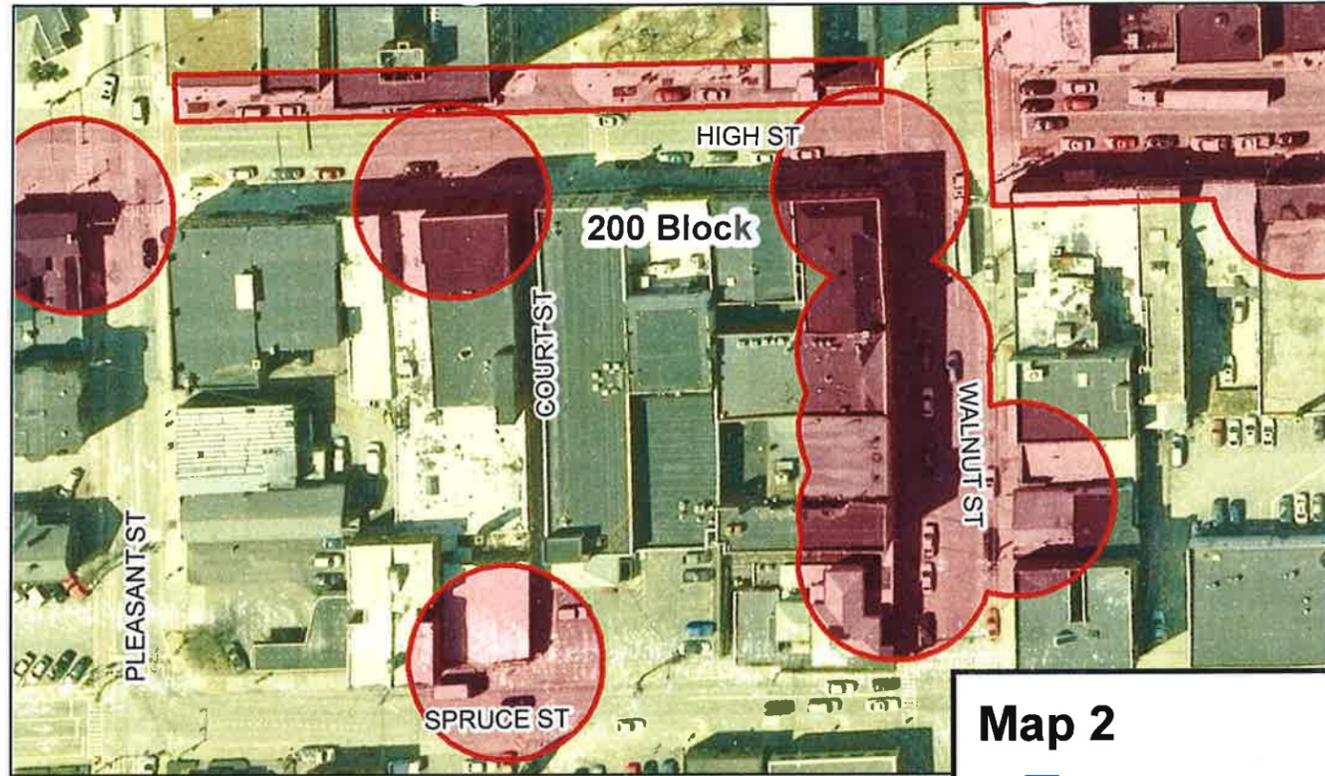
Contact the Morgantown Fire Marshall's Office for vending truck inspections at 304-284-7480.

Authorization:

# Downtown Nighttime Mobile Vending

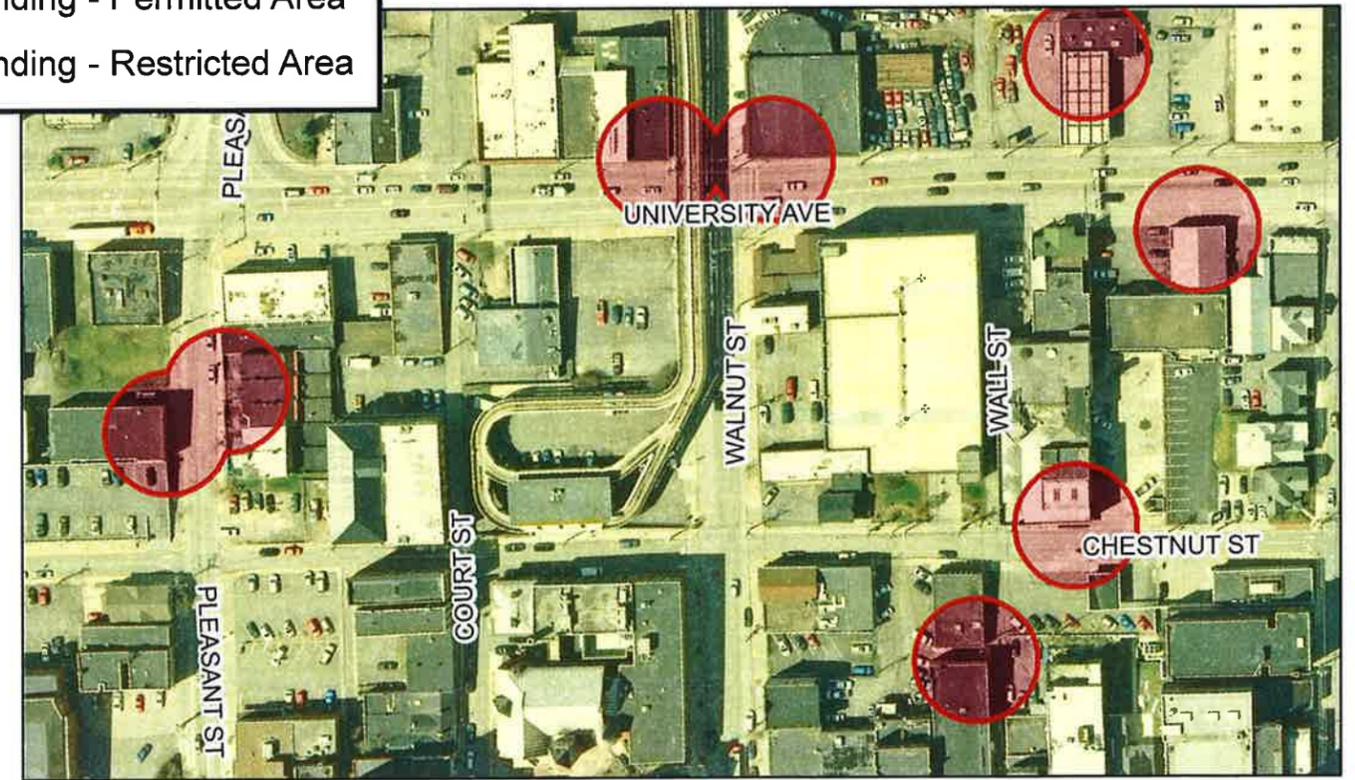
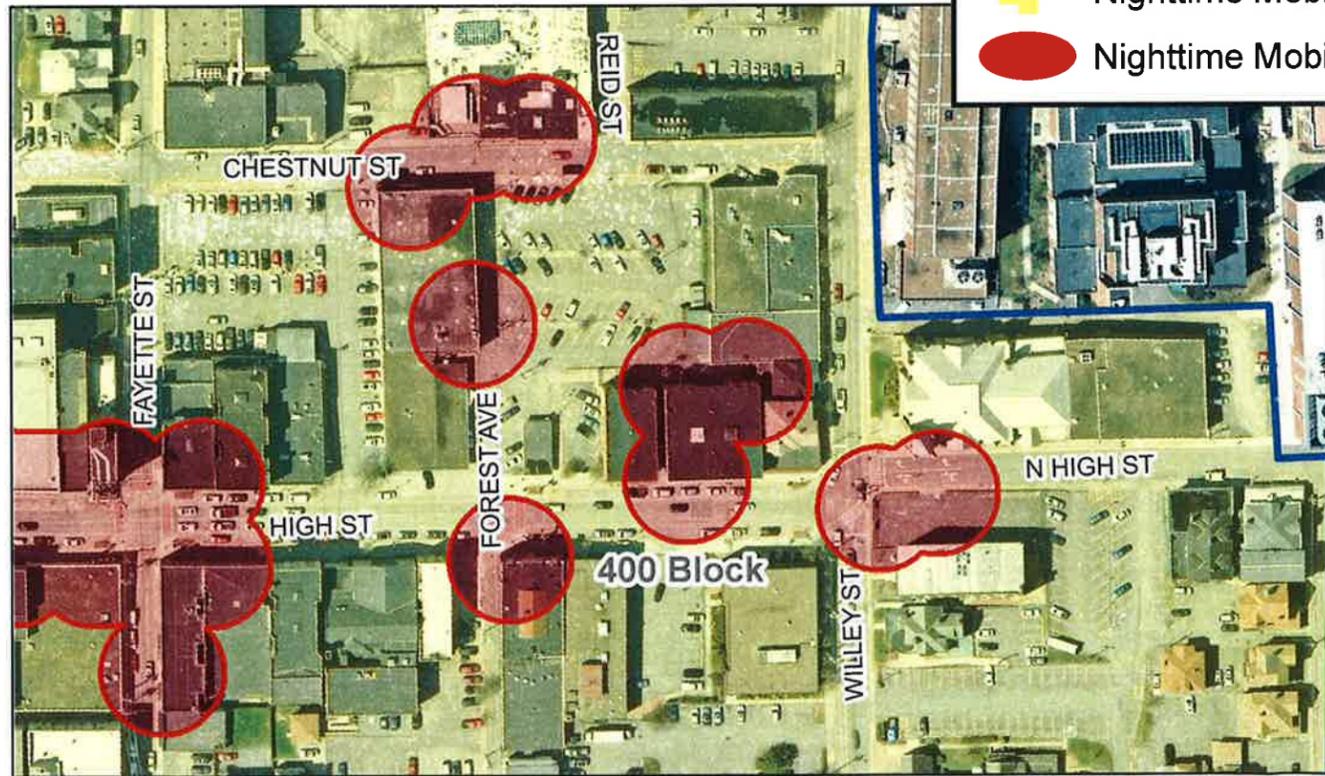


# Downtown Nighttime Mobile Vending



**Map 2**

-  Downtown Nighttime Vendor Area
-  Nighttime Mobile Vending - Permitted Area
-  Nighttime Mobile Vending - Restricted Area



AN ORDINANCE BY THE CITY OF MORGANTOWN AUTHORIZING IT, AS LESSOR, TO LEASE SPACE AT THE FORMER WOODBURN SCHOOL, NOW OWNED BY THE CITY, TO "GIRLS ON THE RUN", LESSEE.

The City of Morgantown hereby ordains that its City Manager is authorized to execute the attached lease agreement by and on behalf of the City of Morgantown.

FIRST READING:

\_\_\_\_\_  
MAYOR

ADOPTED:

FILED:

\_\_\_\_\_  
CITY CLERK

RECORDED:



Portions of a 9,108 square foot former elementary school, being the basement floor rooms containing approximately 345 square feet, located at 918 Fortney Street, Morgantown, Monongalia County, West Virginia, as illustrated in Exhibit A. The leased premise shall also include the "shared use" of the basement lunchroom.

In addition, the Lessee, its employees, representatives, agents, customers, guests and invitees shall have the right to use all driveways, parking areas, sidewalks, lobbies, elevators, hallways, restrooms, and other common facilities and areas (collectively, "Common Areas"), if any, in or about the building containing said Premises, jointly with other tenants and their respective representatives, agents, customers, guests and invitees. The Lessor will maintain the Common Areas in a clean, safe and sanitary condition and provide all necessary janitorial service, snow removal, maintenance and repair, and utilities to all Common Areas.

### 3. TERM

The initial term of this Lease, subject to the provisions hereof, shall begin on December 18, 2013 and end at midnight on June 30, 2015. PROVIDED HOWEVER, this Lease may be canceled by the Lessee as hereinafter provided in Sections 8, 10 and 21, before the end of the term. This Lease shall be considered renewed for each succeeding City fiscal year during the Term of the Lease unless this Lease is canceled by the Lessee before the end of the then current fiscal year pursuant to Section 21 hereunder.

### 4. RENT

The Lessee covenants that the Lessee shall pay rent unto the Lessor, as rent for the Premises herein leased and all Common Areas, the sum of fifty seven and 00/100 dollars (\$57.50) per month, payable in arrears, upon receipt of invoice from the Lessor to the Lessee.. Invoices shall be prepared by the Lessor and provided to the Lessee for payment processing. Lessor shall also be provided reimbursement for a prorated share of certain expenses as further described in Section 8 a ("Additional Rent").

### 5. FIRST RIGHT OF REFUSAL FOR ADDITIONAL SPACE – NONE

### 6. RENEWAL OPTION

After the initial Term, the Lease will automatically renew from year to year, for the months of July through June; provided, however, that either party may, at its option, cancel an upcoming renewal period by giving written notice unto the other 120 days prior to any June 30<sup>th</sup> of their desire for the expiration. Rent for subsequent renewal years shall increase by percentage of difference in the Consumer Price Index, as published by the Bureau of Labor Statistics of the U.S. Department of Labor, based on US City Average, All Items, with comparison of the term start date to the month of April

of the expiring year. The new rental rate shall be officiated by correspondence and, unless there other changes to the Lease, shall not require an addendum to officiate.

## 7. UTILITIES AND OTHER RELATED SERVICES

- a. The Lessor shall furnish and timely pay when due and payable, at no additional cost to the Lessee, the following utilities and/or services:
  - (i) Utilities which are not separately metered, to be paid by the Lessor, who shall seek a five percent (5%) reimbursement as Additional Rent from the Lessee by separate invoice, providing evidence of payment made.
  - (ii) Custodial services in the common areas used by other tenants.
  - (iii) Ground maintenance, including mowing, landscaping, and parking lot maintenance.
  - (iv) Snow removal, to be paid by the Lessor, who shall seek a fifty percent (50%) reimbursement as Additional Rent from the Lessee by separate invoice, providing evidence of payment made.
- b. The Lessee, at its expense, shall furnish and provide payment to the applicable company or vendor for the following utilities and/or services:
  - (i) Custodial Services in the Premises.
  - (ii) Trash services, for which the Lessee may choose to partner with the neighboring tenants.
  - (iii) Telephone and internet connectivity services.
  - (iv) The Lessee shall have the right to rekey, install a key card access system, or any other security system for the Premises, using such security services provider as the Lessee and Tenant may choose in its sole discretion. The Lessee at its sole discretion, can elect to remove said system at any time, provided that Lessee, at its sole expense, shall repair any damage resulting from such removal.
  - (v) Lessee shall be permitted to use the Community Room and agrees to schedule the use of the Community Room through the Mountaineer Boys & Girls Club.
- c. Interruption. In the event that any utilities or services being provided by the Lessor are interrupted for reasons within the Lessor's control and as a result, suitability of the Premises is interrupted, the Lessee shall have the

option to (i) cause the utilities or services to be reinstated and deduct the costs and expense thereof from the rents which may become due and payable thereafter to the Lessor until the Lessee is fully reimbursed for such expenditures; or (ii) immediately terminate this Lease.

## 8. MAINTENANCE

The Lessor binds itself to maintain the Premises, including the structure of the Premises, both interior and exterior; the electrical, HVAC and plumbing fixtures and equipment; and the interior and exterior painting and flooring in a good and tenantable condition equal to that of the Premises as at the time possession thereof is delivered to the Lessee; included in the aforementioned obligation is the duty to replace HVAC filters and light bulbs on a regular schedule or upon request by the Lessee.

If the Lessor fails to maintain the interior and exterior structure of the Premises, and the electrical, HVAC and plumbing fixtures and equipment owned by the Lessor in a good and tenantable condition of repair, the Lessee shall request the Lessor, in writing, to correct any deficiency which may have occurred since possession of the Premises by the Lessee, provided, however, such deficiency was not caused by the neglect or acts of the Lessee. Upon refusal or neglect of the Lessor to comply with the Lessee's request for the repair or reinstatement of previously-existing conditions, the Lessee may, ten (10) days after receipt of such request by the Lessor, cause the repairs to be made and deduct the costs and expense thereof from the rents which may become due and payable thereafter to the Lessor until the Lessee is fully reimbursed for such expenditures. Provided however, any such repairs related to life and safety issues, including without limitation, broken windows, hot water heater, smoke detectors, carbon monoxide detectors shall be repaired immediately, or the Lessee may (i) cause the repairs to be made and deduct the costs and expense thereof from the rents which may become due and payable thereafter to the Lessor until the Lessee is fully reimbursed for such expenditures; or (ii) immediately terminate this Lease.

Notwithstanding the foregoing, the Lessor is not responsible for maintenance of such fixtures and equipment as may be owned by the Lessee.

## 9. DAMAGE TO PREMISES BY FIRE, ETC.

It is agreed by and between the parties hereto that in the event the Premises are destroyed or damaged by fire, natural elements, or other cause to such an extent that continued occupancy by the Lessee would be impractical, the Lessee shall give immediate notice thereof to the Lessor, in writing, and this lease shall terminate. If only a part of the Premises shall be rendered untenable, leaving the remainder suitable for occupancy, the rental shall be proportionately abated until the Premises have been repaired. The Lessor shall have five (5) days from receipt of such notice to decide whether or not to repair the Premises. Any repairs undertaken must be completed within a reasonable length of time after the Lessor's decision. Should the Lessor decide

not to repair the Premises, this Lease shall terminate, and the Lessee shall deliver possession of the Premises to the Lessor and thereupon be relieved of any and all liability hereunder or concerning the Premises except for any unpaid rent through the final day of occupancy.

## 10. INDEMNIFICATION AND INSURANCE

Section 10.1 Lessee shall protect, defend, indemnify, and hold the Lessor and its representatives and employees completely harmless from and against any and all liabilities, demands, suits, claims, losses, fines, or judgments arising by reason of the injury or death of any person or damage to or loss of any property, including all reasonable costs for investigation and defense thereof, (including, but not limited to, attorney fees, court costs, and expert fees), of any nature whatsoever arising out of, or incidental to this Lease Agreement or Lessee's use or occupancy of the leased premises, or the acts or omissions of the Lessee, its officers, employees, agents, representatives, contractors, sub-contractors, licensees or invitees, regardless of where the injury, death, loss, or damage may occur unless such injury, death, loss, or damage is caused by the negligence of the Lessor, its employees, agents, officers, or representatives. The Lessor shall give Lessee reasonable notice of any such claims or actions. The provisions of this Article shall survive the expiration or earlier termination of this Lease Agreement.

Section 10.2 Without limiting its liability as aforesaid, the Lessee shall carry insurance in the following minimum amounts during the term hereof, naming the Lessor as co-insured:

<u>Public Liability</u>	Bodily Injury .....	\$500,000 per occurrence
	Property Damage.....	\$50,000 per occurrence

Section 10.3 Lessee shall provide the Lessor with certification of insurance through the term of this Agreement, evidencing such coverage to be in force.

Section 10.4 The Lessor agrees to notify the Lessee in writing, as soon as practicable, of any claims, demands, or action arising out of an occurrence covered hereunder of which the Lessor has knowledge, and to cooperate with the Lessee in the investigation and defense thereof.

## 11. SUITABILITY OF PREMISES

The Lessor warrants the Premises to be suitable for use for the conduct of Lessee's business., and that there shall be no liability on the part of Girls on the Run of North Central West Virginia, its officers, agents or employees for any loss or damage to the Premises, nor any liability on any individual by virtue of any of the provisions of this Lease, whether caused by overloading the floors with equipment or otherwise installing fixtures and equipment commonly used in an office facility. Further, the Lessor warrants

that the Premise compliant according to all local, state, and federal code requirements and all zoning ordinances.

- a. Fire and Health Hazards. The Lessor will remove and correct any fire or health hazards not caused by the neglect or acts of the Lessee, its agents, employees or servants which any authorized public authority may order corrected or removed during the term of this lease. Upon refusal or neglect of the Lessor to comply with any such order, the Lessee may comply therewith and deduct the costs from monthly rentals payable thereafter to the Lessor until the Tenant is fully reimbursed therefore.
- b. Environmental. The Lessor represents and warrants to the Lessee that there are no hazardous or unsafe substances in, on or under the Premises, building or Common Areas or the underlying real property, and agrees to indemnify, defend and hold harmless the Lessee, its affiliates, and their respective officers, agents and employees, against any and all claims, damages, costs, liabilities and expenses, including attorneys' fees, resulting from a breach of the Lessor's representations and warranties or from the presence of any hazardous or unsafe substances in, on or under the Premises, building, Common Areas or the underlying real property, as of the Start Date.

## 12. NEGLECT OF PREMISES

The Lessee covenants that it shall not commit waste on the Premises herein leased, and the Premises will be returned to the Lessor at the termination of this Lease in substantially as good condition as at the commencement thereof, damages from reasonable wear and tear, natural elements, normal depreciation and decay excepted.

## 13. TRANSFER OR ASSIGNMENT OF LEASE

The Lessee shall have the right to assign, reassign, or transfer this Lease contingent upon the prior written approval of the Lessor.

## 14. DEFAULT

In the event any party defaults in any of the covenants contained herein, the requesting party shall notify the other, in writing, of such default and if such default is not corrected within fifteen (15) days after receipt of notification, unless a shorter correction period is required elsewhere in this Lease, the requesting party may notify the other party that the Lease is terminated, without further obligation, and reenter/vacate the Premises herein leased.

## 15. TAXES AND ASSESSMENTS

The Lessor will pay taxes and assessments levied on the Premises during the term of this lease.

## 16. PARKING

The Lessor agrees to provide, at no additional cost to the Lessee, free employee and visitor parking spaces adjacent to the Premises.

## 17. PROVISIONS FOR IMMEDIATE TERMINATION

In addition to the other events set forth herein which permit the immediate termination of this Lease, the Lessee shall have the right to cancel this lease, without further obligation on the part of the Lessee, upon giving thirty (30) days' written notice to the Lessor, such notice being given at least thirty (30) days prior to the last day of the succeeding month,

## 18. MISCELLANEOUS

- a. Notices. Notices may be given by personal service upon the party(s) entitled to such notice, or by certified mail, duly stamped and directed to the last-known address of the party to be notified, and deposited in the post office. The proper mailing of such notice and not the receipt thereof shall constitute the giving of such notice by either party to the other. Notices shall be directed as follows:

### Lessor

City of Morgantown

Attn: City Manager  
389 Spruce Street  
Morgantown, WV 26505  
Phone: 304-284-7405

Fax: 304.284.7430  
Email:  
jmikorski@cityofmorgantown.org

After Hours Emergency Phone:  
304.288.6717

### Lessee

Girls on the Run of North Central  
West Virginia,  
c/o Mon General Hospital  
Address:  
Attn: Brenda Hawkins  
1200 JD Anderson Drive,  
Morgantown, WV 26505  
Phone: 304-685-4140  
Fax:  
Email  
laurie.abildso@girlsontherun.org

- b. Holding Over. The Lessee shall have the right to hold over for up to three (3) months after the expiration of the Term upon the same terms and conditions, including Rent, as were applicable during the just expired Term. If the Lessee shall continue in possession of the Premises beyond said three (3) month holdover period, such continued possession shall be considered an extension of this Lease from month to month until terminated by either party as of the end of any calendar month on not less than thirty (30) days prior written notice, and during such month to month tenancy, all terms and conditions of this Lease shall remain in full force and effect.

- c. Vacating Responsibilities. The Lessee has the right to remove all owned fixtures, furniture, and equipment and shall leave the facility free of all trash and debris, in broom clean condition, with all keys labeled and provided to the Lessor. The Premises will be returned to Lessor by Lessee in equal condition to that as originally occupied.
- d. Quiet Enjoyment. The Lessor covenants that at the Start Date of this Lease, the Lessor was seized of said Premises as the sole owner(s) thereof, in fee simple, free of all liens, encumbrances and any outstanding interests whatsoever and that upon payment of the rentals as herein set forth, the Lessor will warrant and defend the title of the Lessee against any and all claims whatsoever, not arising hereunder, during the term of this Lease; that the Lessee shall, at all times during the term of this Lease, peaceably and quietly have, hold, and enjoy the Premises.
- e. Force Majeure. If either party shall be delayed in the performance of any act required hereunder by reason of strikes, lockouts, inability to procure labor or materials, riots, insurrections, wars, catastrophic events or other reasons beyond the reasonable control of such party, then performance of such act shall be extended for a period equivalent to the period of such delay.
- f. Authority. The Lessor hereby represents and warrants that it owns the building and underlying real property in fee simple. Each party represents and warrants that it is fully authorized to execute this Lease without obtaining the consent of any third party.
- g. Binding Effect. All the terms and conditions of this Lease shall be binding upon and inure to the benefit of legal representatives, successors, and assigns of the parties.
- h. Modification. This Lease shall not be amended or modified in any respect except by a writing which is duly executed by all parties.
- i. Construction. The language used in this Lease was mutually negotiated by the parties and shall not be construed for or against either party. The headings in this Lease are for convenience only and are not to be construed as a part of this Lease or in any way defining, limiting, modifying or amplifying the provisions hereof. Time is of the essence of this Lease and of every term, covenant, and condition hereof.
- j. Severability. If any provision of this Lease is rendered void or invalid by the decision of any court or by the enactment of any Law, such provision will be deemed to have never been included herein and the remainder of the Lease shall continue in full force and effect.

- k. Entire Agreement. This Lease constitutes the entire understanding between the parties. Any representation, obligation, term or condition not contained herein is not binding on the parties.
- l. Multiple Counterparts. This Lease may be executed in multiple counterparts, each of which shall constitute an original and which taken together, shall constitute one and the same Lease.

IN WITNESS WHEREOF, the parties hereto have caused their names to be affixed to this contract of lease.

LESSOR:

City of Morgantown

By \_\_\_\_\_  
 Jeff Mikorski  
 City Manager

STATE OF WEST VIRGINIA  
 COUNTY OF MONONGALIA, TO-WIT:

I \_\_\_\_\_, notary public in and for said county and state, do hereby certify that Jeff Mikorski, who as City Manager signed the foregoing lease for City of Morgantown, Lessor, has this day acknowledged the same before me in my said county and declared the same to be the act and deed of said corporation.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

My commission will expire \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
 NOTARY PUBLIC

LESSEE:

Girls on the Run of North Central West Virginia

\_\_\_\_\_  
 Board Chair

\_\_\_\_\_  
Council Director

STATE OF WEST VIRGINIA  
COUNTY OF MONONGALIA, TO-WIT:

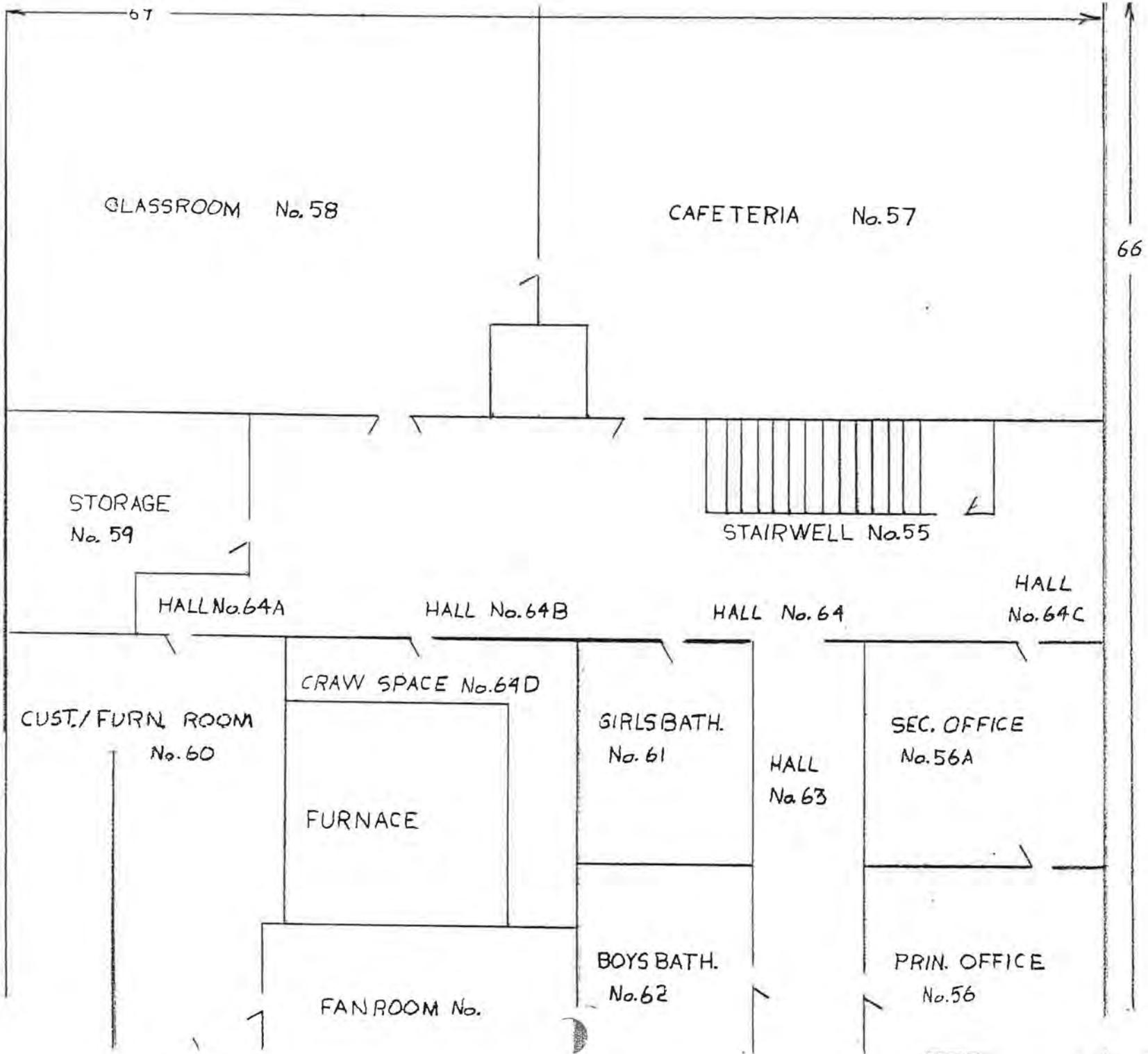
I \_\_\_\_\_, notary public in and for said county and state, do hereby certify that \_\_\_\_\_ and \_\_\_\_\_, who, are Board Chair and Council Director of the Girls on the Run of North Central West Virginia signed the foregoing lease for the Girls on the Run of North Central West Virginia, Lessee, has this day acknowledged the same before me in my said county and declared the same to be the act and deed of said agency.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

My commission will expire \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

WOODBURN ELEMENTARY BASEMENT  
BASEMENT



**RESOLUTION**

*WHEREAS, the City of Morgantown must submit the necessary paperwork to obtain \$5,000 for the construction of a Zackquill Morgan Statue which has been listed as a project for a Community Participation Program Grant; and*

*WHEREAS, the grant would help to fund the construction and installation of the Zackquill Morgan Statue ;and*

*WHEREAS, Morgantown City Council is of the opinion that this project is of great benefit to the residents of Morgantown.*

*NOW, THEREFORE, BE IT RESOLVED by the City of Morgantown this 17th day of December, 2013, that the City agrees to apply for and administer the Community Participation Grant Program, Project Number 14LEDAO173, funds for use for the Zackquill Morgan Statue.*

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*Mayor*

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*City Clerk*