

**AGREEMENT TO PROVIDE PROFESSIONAL SERVICES
OF MUNICIPAL COURT JUDGE**

This Agreement by and between the City of Morgantown, hereinafter referred to as the “City,” and Stephen Higgins, hereinafter referred to as “Higgins,” is as follows:

WHEREAS, West Virginia Code § 8-10-2(a) allows the City to: create and maintain a Municipal Court; appoint an officer to be known as Municipal Court Judge; and compensate the Municipal Court Judge for providing judicial services;

WHEREAS, Morgantown City Council has appointed Stephen Higgins, Esquire, to serve as Municipal Court Judge;

WHEREAS, Stephen Higgins has accepted the appointment;

WHEREAS, in order to provide for the professional services of the Municipal Court Judge and to establish compensation for such services, it is appropriate for the City to enter into this Agreement with the Municipal Court Judge.

NOW, THEREFORE, in consideration of the mutual covenants, conditions, and terms contained herein, the City and Higgins agree as follows:

I. QUALIFICATIONS

- a. Higgins is currently, and shall remain at all times while providing professional services under this Agreement, a lawyer admitted to practice law in the State of West Virginia and in good standing with the West Virginia State Bar. Higgins shall immediately report to the Morgantown City Council any issue or event affecting his license to practice law in the State of West Virginia or his good standing with the West Virginia State Bar.
- b. Higgins is currently, and shall remain at all times while providing professional services under this Agreement, a citizen of the State of West Virginia with his primary residence in Monongalia County. Higgins shall immediately report to the Morgantown City Council if he moves his primary residency outside of Monongalia County, West Virginia.
- c. Higgins has submitted to a criminal background check performed by the West Virginia State Police and complies with the standards set forth in W.Va. Code § 8-10-2(b). Higgins shall immediately report to the Morgantown City Council any charge or conviction of a felony or any misdemeanor set forth in Chapter sixty-one, Articles eight, eight-a, eight-b, eight-c, or eight-d of the West Virginia Code.
- d. Higgins has previously taken the oath and complies with the standards set forth in Section 181.06 of Chapter 9 of the Code of Ordinances of the City of Morgantown.
- e. As long as he remains a lawyer admitted to practice in the State of West Virginia, Higgins is exempt from the initial training and the annual education and training required by W.Va. Code § 8-10-2(c).

II. SCOPE OF SERVICES, JUDICIAL INDEPENDENCE, AND ADMINISTRATION

a. W.Va. Code § 8-10-2(a) authorizes the Municipal Court with jurisdiction and the Municipal Court Judge with the judicial powers, authority and duties set forth in W.Va. Code § 8-10-1 which are further explained and provided by Part 1, Chapter 9, Article 181 of the Code of Ordinances for the City of Morgantown. Higgins shall provide all Municipal Court Judge services contemplated by W.Va. Code 8-10-1 *et al*, Part 1, Chapter 9, Article 181 of the Code of Ordinances for the City of Morgantown as well as any other professional services typical for a Municipal Court Judge in the State of West Virginia and necessary for the operation of the Municipal Court.

b. In providing the professional services of the Municipal Court Judge, Higgins is an independent contractor and not an employee of the City. The City has no right or responsibility to control or interfere with the manner and means by which Higgins provides the professional services of the Municipal Court Judge, except Higgins agrees to provide the judicial services of the Municipal Court Judge in a timely, consistent, professional, and impartial manner. Higgins, or any Judge Pro Tempore serving in Higgins' absence, is solely responsible for judicial decisions made by the Municipal Court for the City of Morgantown. Judicial decisions include, but are not limited to, establishment of a standard bail schedule if the judge deems appropriate, establishment of a standard fine schedule for use with violations that do not require court appearances, determination of fines and punishment in individual cases, determination of bail in individual cases, establishment of standing orders regarding offenses for which cash bail is not required, determination of conditions of probation, determination of guilt or innocence, and determination of financial ability for bail or, for alternatives to monetary penalties including but not limited to community service as well as penalty or fine reductions.

c. Higgins acknowledges and agrees that the City Manager, or the City Manager's designee, shall supervise the Municipal Court Clerk and any other administrative staff supporting the Municipal Court as they are City employees and that the Municipal Court Judge does not supervise or train any City employee. Should he have any concerns with the work performance of the Municipal Court staff while performing the professional services of the Municipal Court Judge or the daily operations of the Municipal Court, Higgins should report his concerns to the City Manager. This provision does not prohibit Higgins from working with the Municipal Court Clerk and any other administrative staff supporting the Municipal Court to be able to provide professional services of the Municipal Court Judge.

d. In accordance with Section 181.017 of Chapter 9 of the Code of Ordinances of the City of Morgantown, the Municipal Court shall schedule public session for trials, hearings and pleadings as determined by the City Manager. Higgins shall be available to provide services at the following days and times on which proceedings for the Municipal Court are held:

- Every first Monday of each month 3:00 p.m. to 6:00 p.m.
- Every Tuesday of each month 8:00 a.m. to 10:00 a.m.
- Every Second Wednesday of each month Arraignment 8:00 a.m. to 11:00 a.m.
- Every Thursday of each month 3:00 p.m. to 6:00 p.m.

- Every Second Thursday of each month 5:00 p.m. may exceed past 6:00 p.m.

The Municipal Court schedule may be revised in the sole discretion of the City based on current caseload and business needs.

e. Higgins is an independent contractor and may maintain other contracts for services or employment while providing professional services under this Agreement, except he cannot represent any individual before the Municipal Court for the City of Morgantown. It is anticipated that ethical conflicts, scheduling conflicts, vacations, illness, etc., will occasionally require the City to use a Judge Pro Tempore. It is understood that it is in the interest of both parties for the City to engage a Judge Pro Tempore under a separate independent contractor agreement so that the work for the Municipal Court for the City of Morgantown will not be interrupted when Higgins is unavailable. Higgins agrees to promptly notify the Municipal Court Clerk of any known scheduling conflicts that will prevent him from attending a scheduled docket for the Municipal Court for the City of Morgantown.

f. It is recognized that the hours devoted by Higgins in the performance of the professional services of the Municipal Court Judge may vary with the caseload of the Municipal Court of Morgantown. Higgins shall provide a monthly account of time spent providing professional services for the Municipal Court to the Morgantown City Council.

III. TERM OF CONTRACT; TERMINATION

a. Higgins accepts the appointment to provide the professional services of the Municipal Court Judge for a one-year term commencing on January 1, 2023, unless terminated earlier as provided below.

b. The one (1) year term shall automatically renew for successive one-year periods thereafter unless either party provides a written notice of non-renewal to the other party. Any non-renewal notice shall be provided in writing to the other party no later than sixty (60) days prior to the last day of the one-year contract period.

c. Notwithstanding the provisions of this paragraph regarding the one (1) year term of the Agreement, this Agreement may be terminated as follows:

- (1) Upon the mutual written agreement of the Parties, on the terms and date stipulated therein;
- (2) Upon thirty (30) day written notice by the City or Higgins;
- (3) Upon five (5) day written notice of breach or failure to perform any material obligation under this Agreement, if the breaching party does not cure the breach or failure within such five (5) day notice period;
- (4) Immediately upon Higgins being convicted of a felony or any misdemeanor set forth in Chapter sixty-one, Articles eight, eight-a, eight-b, eight-c, or eight-d of the West Virginia Code;

- (5) Immediately upon termination, suspension, or restriction of Higgins' license to practice law in the State of West Virginia;
- (6) Immediately upon Higgins moving his primary residence outside of Monongalia County, West Virginia;
- (7) Immediately upon the death of Higgins; and
- (8) Immediately upon Higgins' permanent disability as determined in the City's sole discretion.

d. This Agreement supersedes any prior agreements between the City and Higgins concerning the appointment of Municipal Court Judge and services provided to the Municipal Court.

IV. COMPENSATION

a. In consideration for the professional services being provided by Higgins, the City shall compensate Higgins in the amount of three thousand, three hundred seventy-five dollars (\$3,375.00) per month for the services provided under this Agreement. The monthly amount shall be paid by no later than the 15th of each month.

b. The Municipal Court Judge's compensation shall be reviewed and approved through the City's budget process annually.

c. As an independent contractor, Higgins expressly understands and agrees that the City will not deduct Federal and State taxes, Social Security, or Medicare/Medicaid from the compensation paid to him. The City will issue a Form 1099 to Higgins at year end and the Judge shall be solely responsible for any taxes or other deductions on compensation paid to him under this Agreement.

d. As an independent contractor, Higgins expressly understands and agrees that he is not eligible for any benefits from the City including but not limited to health insurance, educational reimbursement, workers' compensation, holiday leave, paid time off, disability leave, and retirement or pension benefits.

V. CONTRACT ADMINISTRATION

This Agreement shall be administered by the City Manager or the City Manager's designee on behalf of the City and by Stephen Higgins. Any written notices to be served on either party shall be served personally or mailed to the following addresses:

CITY MANAGER – 430 Spruce Street, Morgantown WV 26505

STEPHEN HIGGINS – 861 Vandalia Road, Morgantown, WV 26501

VI. MERGER AND AMENDMENT; GOVERNING LAW

- a. This Agreement contains the entire understanding of the City and Higgins with respect to the matters set forth herein, and any prior or contemporaneous understandings are merged herein. This Agreement shall not be modified except by written instrument executed by the City and the Municipal Court Judge.
- b. This Agreement shall be governed under the laws of the State of West Virginia.

VII. SEVERABILITY

If any provision of this Agreement or their application to any circumstance is held invalid, the remainder of this Agreement and their application to other circumstances is not affected.

STEPHEN HIGGINS

CITY OF MORGANTOWN

By _____

Title _____