



Nathan Deal
Governor

Department of Community Supervision

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Michael W. Nail
Commissioner

January 2, 2018

TO: Alison Earles, Associate General Counsel, Georgia Municipal Association

FROM: John Coar, Compliance Monitor
Misdemeanor Probation Oversight Unit

REF.: Court Service Agreement

A thorough review of the Sample service agreement was conducted and it was found to be:

☒ Aligned with Service Agreements Standards for 2018 (rule 102-2-.08)

☐ Not aligned with Service Agreements Standards for 2018 (rule 102-2-.08) (Please see below)

These requirements must be met as of Jan 31, 2018

Missing items and/or specific areas of noncompliance: This service agreement is in full compliance with the DCS Board Rule 102-2-.08 and service agreement standards for 2018.

Cc: Barbara Neville, Director
Shevondah Leslie, Staff Director

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In accordance with O.C.G.A. Section 42-8-101(b)(1), this Agreement shall be attached as an exhibit to documentation of the Governing Authority's approval to privatize probation services and the judge's express written consent to privatize probation services.

Sample Probation Services Agreement

This Agreement is made by and between _____, a [insert corporation, LLC, etc.] organized under the laws of the State of _____, with its principal place of business at _____ hereinafter called "Contractor" and the City of _____, Georgia hereinafter called the "City" on behalf of its municipal court hereinafter called the "Court".

This Agreement is governed by Article 6 of Chapter 8 of Title 42 of the Official Code of Georgia, Annotated. The parties enter into the Agreement under the specific authority of 42-8-101.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, the parties agree as follows:

SCOPE OF SERVICES AND RESPONSIBILITIES OF CONTRACTOR

In consideration of the obligations of the Court or the City, Contractor shall provide the following services.

A. Responsibilities of Probation Services Contractor

1. Compliance with Statutes and Rules. Contractor shall be registered with the Department of Community Supervision and shall comply with all laws that apply to probation companies in Georgia and all standards, rules and regulations promulgated by the Department of Community Supervision. Any and all probation management activities and/or reporting activities performed by Contractor pursuant to this Agreement must be accomplished in strict compliance with any and all applicable Federal and Georgia laws and Department of Community Supervision Rules, as are now in effect or hereafter may be amended. If a contradiction or conflict exists between any and all applicable Federal or Georgia laws or the Department of Community Supervision Rules and any terms, conditions, stipulations, etc., listed herein, Contractor shall provide written notification to the City of the conflict and shall act in accordance with the law unless the City provides alternative written direction. In addition, Contractor shall prepare an amendment to bring the term, condition, stipulation, etc., into compliance with the law and forward that amendment to the City for consideration.

2. Records and Confidentiality. Contractor shall keep all reports, files, records and papers in a centralized location convenient to the City. Such reports, files, records and

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papers are and shall remain the property of the City, and shall be maintained in accordance with the Open Records Act. Contractor shall create and maintain individual files for each offender receiving services from Contractor in accordance with this Agreement. Contractor shall maintain the confidentiality of all files, records and papers relative to supervision of probationers under this Agreement in accordance with applicable law. These records, files and papers shall be available only to the City, an auditor appointed by the City, the judge handling the case, the Department of Audits and Accounts, the Department of Corrections, the Department of Community Supervision, the State Board of Pardons and Paroles, or the Board of Community Supervision, and to the probationer as provided in O.C.G.A. Section 42-8-109.2 and upon transfer of probation supervision to the State, to the Georgia Department of Corrections.

3. Financial Records. Contractor shall maintain financial records according to generally accepted accounting practices.

4. Qualifications and Training.

Officers: Contractor shall employ competent and able personnel to provide the services to be rendered hereunder and to appropriately administer the caseload. Contractor shall have at least one supervisor with five years' experience in corrections, parole, or probation services. Any person employed as and using the title of a private probation officer or probation officer must undergo a background check by the Department of Community Supervision. In accordance with O.C.G.A 42-8-107, any such person shall be at least 21 years of age at the time of appointment to the position of private probation officer or probation officer and shall have completed a standard two-year college course or have four years of law enforcement experience; provided, however, that any person employed as a private probation officer as of July 1, 1996, and who had at least six months of experience as a private probation officer or any person employed as a probation officer by a county, municipality, or consolidated government as of March 1, 2006, shall be exempt from such college requirements. Every private probation officer shall receive an initial 40 hours of orientation upon employment and shall receive 20 hours of continuing education per annum as approved by the board, provided that the 40 hour initial orientation shall not be required of any person who has successfully completed a basic course of training for supervision of probationers or parolees certified by the Peace Officer Standards and Training Council or any private probation officer who has been employed by a private probation corporation, enterprise, or agency for at least six months as of July 1, 1996, or any person employed as a probation officer by a county, municipality, or consolidated government as of March 1, 2006. In no event shall any person convicted of a felony be employed as a probation officer or private probation officer. Nor shall any person convicted within the past ten years of a misdemeanor that involved elements of violence, dishonesty or making a false statement be employed as a probation officer or private probation officer. Contractor shall ensure that officer personnel continue to meet all probation officer employment requirements set forth in the Department of Community Supervision Rules, as amended from time to time.

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Administrative Employees and Others Performing Services who are not Officers: Contractor shall employ competent and able personnel to provide services and shall ensure that such individuals meet the following minimum requirements:

- a. Be at least 18 years of age at the time of employment or start of service in the position
- b. Have a high school diploma or equivalent
- c. Complete a 16 hour initial orientation program within 6 months of appointment and 8 hours annually of in-service continuing education training consisting of a curriculum approved by the Misdemeanor Probation Oversight Unit of the Department of Community Supervision.

Contractor shall ensure that non-officer personnel continue to meet all employment or volunteer service requirements set forth in the Department of Community Supervision Rules, as amended from time to time.

5. Criminal History and Background Check. Contractor represents and warrants that all employees have had or shall have criminal history and background checks by the Department of Community Supervision and have given or shall give the Department of Community Supervision written consent to conduct periodic criminal history checks.

6. Officer per Probationer Ratio and Standards of Supervision . Contractor shall manage caseload limits so as not to exceed _____probationers per probation officer for basic supervision and _____probationers per probation officer for intensive supervision. Probation Officers shall make _____ (contact type-i.e. field/office/collateral) contacts per _____.

7. Location Place of Business. Contractor shall maintain an office in _____ (County or Municipality) for meeting with and the provision of services to probationers.

B. Reports

Contractor shall provide to the judge who approved this contract or his or her designee and the Board of Community Supervision (the "Board") a quarterly report summarizing the number of offenders under supervision; the amount of fines, statutory surcharges, and restitution collected; the amount of fees collected and the nature of such fees, including probation supervision fees, rehabilitation programming fees, electronic monitoring fees, drug or alcohol detection device fees, substance abuse or mental health evaluation or treatment fees, and drug testing fees; the number of community service hours performed by probationers under supervision; a listing of any other service for which a probationer was required to pay to attend; the number of offenders for whom supervision or rehabilitation has been terminated and the reason for the termination; and the number of warrants issued during the quarter; whether the case was closed successfully or unsuccessfully; the number of warrants issued during the quarter; the number of

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probationers using community service hours to satisfy fine or other financial obligations, and the number of community service hours so converted; amounts of unpaid financial obligations, specifying amounts of Probation Fees, crime victim funds, victim restitution, and fines/other funds to be paid to the court; and number of cases where each of the following types of requirements were incomplete: community service, evaluation/counseling, risk reduction school, defensive driving school. The report shall be delivered by the end of the month following the calendar quarter.

At least annually on _____, Contractor shall provide a report to the Court and the governing authority that includes all information set forth in the preceding four quarterly reports.

Contractor shall provide such other reports as may be requested by the Court during the period of this Agreement which may include but are not limited to statistical reports, caseload data, and other records documenting the identity of the probationer, the status of each probationer's case, the services provided, and the monies collected. Contractor shall provide such reports to the Court or the governing authority within _____ days of the written request of the Court or the governing authority.

C. Procedures.

Collections. Contractor shall follow collection procedures for handling court-ordered fines, fees, and restitution that meet the requirements of applicable law and comply with current rules of the Department of Community Supervision. [Exhibit A includes a copy of Contractor's current collection procedures, including, but not limited to, how and when Contractor delivers funds paid by probationers, which funds are retained by Contractor, how Crime Victim Emergency Fund fees are paid to the Criminal Justice Coordinating Council, how victim restitution funds are paid, limits on charges for pay-only probation, and how Contractor provides proof of payments.] [Contractor shall only charge probation supervision fees authorized by law, and shall ensure that it charges no more than three months of charges for pay-only probation services, regardless of the duration of such services. Contractor shall deliver over to the Clerk of Court at least monthly all funds paid by probationers, except that Contractor shall retain funds due for Probation Fees; shall pay Crime Victim Emergency Fund ("CVEF") fees directly to the Criminal Justice Coordinating Council; and shall pay victim restitution funds to the victim or to the Clerk of Court as provided below. All said sums shall be disbursed at least monthly to the person or entity entitled to such payment, by the 15th day of the month following payment by probationer. Contractor shall provide to the Clerk of Court proof of payment made to victims.]

Contractor shall tender to the Clerk of the Court a report of collections and all fines, fees, and costs collected during the month from probationers by _____ (th) day of the following month. Restitution shall be paid to the victim by the _____ (th) day of the month following collection unless the Court orders payment to the clerk of court, and then it shall be paid as such other collections are paid to the Clerk. In the event Contractor cannot locate the victim, payment shall be made to the Clerk of Court. Contractor shall credit payments of funds to in the following order of priority: 1) restitution 2) Fines, 3) court costs and surcharges, 4) probation fees to include

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GCVEF. Contractor shall not retain or profit from any fines, restitution, fees or cost collected from probationers except the probation fee authorized by this Agreement.]

Significant Financial Hardship or Indigence, Pay-Only Cases, Consecutive Sentences.

Contractor shall follow procedures designed to ensure compliance with applicable laws related to fines and fees imposed on individuals who are indigent, experience significant financial hardship, are on probation solely due to inability to pay the entire amount at once, or who are on consecutive sentences. Contractor agrees to follow the procedures included in Exhibit A, as amended from time to time, and affirms that these procedures and all amendments to these procedures are designed to comply with O.C.G.A. Section 42-8-102, 103, and 103.1, and all other applicable law.

D. Access to Contractor Records.

1. All records shall be open to inspection upon the request of the City, the Court, the Department of Audits and Accounts, an auditor appointed by the City, Department of Corrections, Department of Community Supervision, State Board of Pardons and Paroles, or the Board of Community Supervision. Contractor shall fully cooperate with the inspection of records, and shall provide timely and complete access to such records upon request.

2. Fiscal Audit: Contractor shall employ an independent auditor to annually audit its records and books pertaining to the services rendered to the court. A written copy of this audit shall be provided to the Court and the City's Governing Authority within 90 days of the close of the year audited.

D.1 Conflict of Interest per O.C.G.A 42-8-109

1. Contractor shall not engage in any other employment, business, or activity which interferes or conflicts with its duties and responsibilities as a probation corporation, enterprise or agency under applicable law or which interferes with or conflicts with its duties and responsibilities under this Agreement.
2. Contractor and its employees, agents and officers shall not have personal or business dealings, including the lending of money, with probationers under their supervision.
3. Contractor and its employees, agents and officers shall not own, operate, have any financial interest in, be an instructor at, or be employed by any private entity which provides drug or alcohol education services or offers a DUI Alcohol or Drug Use Risk Reduction Program certified by the Department of Driver Services.
4. Contractor and its employees, agents and officers shall not specify, directly or indirectly, a particular DUI Alcohol or Drug Use Risk Reduction Program which a probationer may or shall attend. This paragraph shall not prohibit furnishing any probationer, upon request, with the names of certified DUI Alcohol or Drug Use Risk Reduction Programs. Any person violating this paragraph shall be guilty of a misdemeanor.

E. Scope of Services to Probationers by Contractor. Contractor shall provide the following services:

1. Court Attendance and Probationer Case History. During all court sessions, Contractor shall have a probation officer attend and interview each offender to complete a case and personal history and to provide orientation and instruction regarding compliance with the Court's ordered conditions of probation. At orientation, the probation officer shall provide a list of all service fees to the probationer.

2. Supervision. The Court shall have the sole responsibility of determining the conditions of probation and the appropriate service(s) for each probationer. In general, Contractor shall monitor and supervise probationers to ensure compliance with the Court's order of probation. Contractor shall make a supervision assessment of the offender and determine the probationer's reporting schedule.

3. Restitution, Fine and Fee Collection. The Court shall have the sole authority to determine monetary amounts required from probationers. Contractor shall collect restitution, fines, court costs and fees, program fees, and probation fees as ordered by the Court. Contractor shall provide an itemized bill prepared in accordance with accepted accounting practices for each month for each probationer. Contractor shall provide probationer a written receipt and balance statement after each payment.

- a. Offenders determined by the Court to have a significant financial hardship. Offenders determined by the Court to have a significant financial hardship in accordance with O.C.G.A. Section 42-8-102 shall be [supervised at no cost to the probationer or the Court or governing body] [supervised at the reduced rate set forth in Exhibit A]. An offender determined by the Court to be indigent shall be supervised [at no cost to the probationer or the Court or governing body] [at the reduced rate set forth in Exhibit A.]
- b. A schedule of allowed Probation Fees shall be attached to the Contract as Exhibit A. Contractor may only charge fees found in Exhibit A.
- c. Probationers shall always be allowed to make greater payments than the minimum required by the payment schedule, and shall always be allowed to prepay fines, costs and restitution in full without penalty. No prepayment shall be allocated to Probation Fees not yet due and payable.
- d. Contractor shall give clear instruction to probationers on how to request from the Court that community service be used to satisfy financial or other obligations of sentence. The Court shall, from time to time, give Contractor direction as to the amount of credit to be given per hour of eligible community service when the Court has ordered that community service is an allowable alternative.
- e. Contractor shall establish and comply with written internal policies giving probation officers standards for managing financial non-compliance:

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establishing minimum and maximum degrees of financial non-compliance that will prompt the officer to require increased reporting or to request a court hearing. Contractor's internal policies shall include scheduling of a hearing to review significant financial hardship when the probationer asserts inability to make required payments.

4. Community Service. Contractor shall coordinate, monitor, and ensure compliance with community service by each probationer as ordered by the Court. The court may convert fines, statutory surcharges, and probation supervision fees to community service on the same basis as it allows a defendant to pay a fine through community service as set forth in subsection (d) of Code Section 17-10-1. Contractor will maintain records of service participation.

- a. Contractor shall not recognize community services hours at any agency that has not been approved by Court. Agencies may apply to be a community service provider by following the procedures articulated in O.C.G.A. § 42-3-51 and, if accepted by the Court, are governed by the restrictions found therein.
- b. Contractor shall ensure that actual and appropriate community service work is performed for the number of hours credited, and properly supervised and certified by a responsible individual at the agency. Probationers shall not be allowed to perform community service under supervision of any relative. Agencies improperly supervising probationers or certifying work not performed or hours not worked shall be removed from the list of approved agencies.
- c. Contractor shall maintain a list of agencies which qualify as community service supervision agencies pursuant to OCGA § 42-3-50-51. Contractor shall investigate each agency to ensure that the agency provides appropriate community service opportunities with appropriate supervision. Contractor shall immediately report to the Court any violations by each agency so that the Court may consider whether to remove any such agency from its list of approved community service providers.
- d. Contractor may require additional reports to probation as a result of delay in beginning or completing community service. If probationer continues to substantially fail to timely perform community service after an initial opportunity to correct the violation, Contractor shall promptly bring the violation to the Court's attention via petition to revoke or other means directed by the Court.
- e. Contractor shall not convert community service to cash or other forms without the express, written approval of the Court, including the specific type and amount of alternative payment or performance.
- f. Community service of offenders determined by the Court to have a significant financial hardship shall be supervised [at no cost to the probationer or the Court or governing body] [at the reduced rate set forth in Exhibit A.] An offender determined by the Court to be indigent shall have his or her community service

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supervised [at no cost to the probationer or the Court or governing body] [at the reduced rate set forth in Exhibit A.]

5. Employment Assistance. Contractor shall prepare referrals and lend reasonable assistance to probationers either to the extent ordered by the Court or to the extent available for probationers desiring employment assistance or counseling.

6. Drug/Alcohol Screening Contractor shall coordinate with local authorities and facilities, evaluation and assessment of probationers for drug/alcohol rehabilitation, mental health or psychological counseling, or educational programs mandated by the Court and shall require probationer's compliance. Contractor shall conduct drug and alcohol screens as determined necessary by the Court. The probationer shall be responsible for the costs of all drug or alcohol testing at the rate found in Exhibit A, which shall be reasonable in relation to the cost of each test and the standard charge in the industry.

- a. Whenever a probationer is required by sentence of the Court to obtain an evaluation for substance abuse, anger or violence issues, or other mental health issues, Contractor shall require prompt proof of such evaluation from the probationer within the time limit set by the Court. If no time limit is set by the sentence, Contractor shall require such evaluation within the first 60 days of probation.
- b. Whenever a probationer is required by sentence of the Court to obtain counseling for substance abuse, anger or violence issues, or other mental health issues, Contractor shall require prompt proof of the beginning of such counseling from the probationer within the time limit set by the Court. If no time limit is set by the sentence, Contractor shall require such evaluation within the first 60 days of probation, or if the counseling is to follow an evaluation, then within 30 days after obtaining an evaluation.
- c. Contractor may require additional reports to probation as a result of delay in beginning or completing evaluation or treatment. If a probationer continues to substantially fail to complete evaluation or obtain treatment after an initial opportunity to correct the violation, Contractor shall promptly bring the violation to the Court's attention via petition to revoke or other means directed by the Court.
- d. Contractor shall deliver no evaluation or treatment services of any kind to probationers except when expressly approved by the Court due to the lack of adequate alternatives in the geographic area; only when the service is expressly required by the Court in the specific case; and only for a fee which is reasonable, taking into consideration the service delivered and the standard charge in the industry. When Contractor delivers evaluation and treatment in-house, the Court shall approve the duration of any class to be attended by the probationer.

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- e. No probationer shall be required to use the evaluation or counseling services of Contractor if able to obtain the same services from another licensed provider of those services.
- f. Contractor shall not require a probationer to undergo drug screens unless probationer's sentence expressly makes probationer subject to drug screens or the probationer's probation officer is able to observe indicia that the probationer is intoxicated by alcohol or drugs.
- g. Contractor shall establish and comply with written internal policies giving probation officers standards for average frequency of drug testing for probationers subject to such testing.

7. Electronic Monitoring. Contractor when so ordered shall provide and operate a system of electronic home detention monitoring as specified in Exhibit A.

8. Reports of Violations Probation and Revocation Procedures. Contractor shall recommend revocation of probation whenever the probationer has failed to substantially comply with the terms and conditions of probation. The Court shall provide Contractor with direction of what constitutes a substantial failure to comply with probation terms and conditions. Contractor shall prepare probation violation warrants and orders for submission to the Court. Contractor shall have probation officers available to testify at probation revocation hearings, sentencing hearings and such other hearings as deemed reasonable and necessary by the Court. Minor violations of probation although not cause for revocation shall be included in the regular reports made to the Court under this Agreement. The Court shall provide Contractor direction as to what curative measures should be taken in the case of minor violations.

9. Pre-sentence Investigations. When directed by the Court, Contractor shall conduct pre-sentence investigations for the Court as requested. A written report shall be prepared and delivered to the Court. A pre-sentence investigation shall include: 1) a report on the circumstances of the offense, 2) a social and family background examination, 3) a criminal history check through Georgia Crime Information Center and the National Crime Information Center, and 4) a report of current circumstances and conditions of the defendant.

10. Pre-hearing Arrest Warrants. Except as expressly directed by the Court in a particular case, or as provided in paragraph a, below, Contractor shall not request issuance of an arrest warrant for a probationer prior to hearing based on the following types of violations: failure to pay fines, fees or other sums; failure to perform community service; failure to attend classes or counseling; failure to obtain mental health evaluations. In these instances, Contractor shall request a pre-warrant revocation hearing before the Court unless other circumstances justify arrest prior to hearing.

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Providers may request issuance of an arrest warrant for a probationer prior to hearing based on the following types of violations: commission of a new criminal offense; threats to public safety or the safety of individual persons or property; threats to the safety of victims or contact with a victim in violation of sentence conditions or other court orders; failure to report to probation; failure to appear for court proceedings after due notice; use of alcohol or drugs, testing positive for alcohol or drugs, or refusing or failing to submit to drug screens in violation of a condition of probation; repeat violation of sentence conditions, where lesser sanctions have proven ineffective and limited remaining sentence time makes immediate arrest necessary; technical violations where less than 60 days remain on the sentence; and as specifically directed by the Court.

OBLIGATIONS OF THE COURT OR GOVERNING AUTHORITY

In consideration for the services of Contractor, the Court shall provide the following:

F. Payment for Contractor's Services.

During the term of this Agreement and Contractor's satisfactory performance, the Court shall refer all offenders ordered to serve time on probation, to Contractor for purposes of probation supervision services. Contractor is authorized to collect authorized Probation Fees set forth in Exhibit A for each month or portion of a month a probationer is under probation supervision.

G. Probation Fee.

The Court shall make payment of the applicable Probation Fee set forth in Exhibit A a term and condition of the order of probation for each probationer assigned for supervision to Contractor unless the Court determines the probationer to be indigent or to have a significant financial hardship that warrants waiver or modification of the fee. Neither the Court nor the City shall be liable for payment of any supervision fee or any program fee of a probationer.

H. (Optional) Pre-sentence Investigations.

When ordered by the Court, Contractor shall provide a pre-sentence investigation report and Court shall pay to Contractor the amount set forth on Exhibit A for the report.

I. Access to Criminal Histories.

The Court shall assist Contractor in obtaining access to criminal histories in the Georgia Crime Information Center and National Crime Information Center through local law enforcement in order for Contractor to conduct pre-sentence or probationer investigations as may be requested

J. Notice of Court Sessions.

The Court shall provide Contractor ____ days advance notice of all court sessions that

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Contractor is required to attend. Notice for purposes of this provision may be given by mail, fax, telephone or email to:

[Contractor Name and mailing Address, email address, Telephone and Fax Numbers]

K. Court Facilities.

The Court shall provide to Contractor an area, as available, for conduct of initial interviews and orientation with the probationer on the day of sentencing.

L. Period of Service.

Contractor shall commence performance on [insert date]. This Agreement shall expire on _____, which is the end of the current fiscal year. Court and/or governing authority may renew this Agreement for the next fiscal year on written notice of at least ____ days, and shall have a similar option to renew for an additional year. Either party may terminate this Agreement upon thirty (30) days written notice. The Court and/or Governing Authority may terminate this Agreement immediately for cause, including without limitation material breach of this Agreement, insolvency of Contractor, filing of a voluntary or involuntary case in bankruptcy. Within _____ () working days of termination, Contractor shall peacefully surrender to the Court all records and documents generated by Contractor in connection with this Agreement and the services thereunder and any equipment or supplies assigned to Contractor by the Court. All electronic records shall be securely transmitted to the Court or to the Court's designee upon written request of the Court or the City. Contractor shall turn over to the Clerk of Court any moneys collected or received less supervision fees validly incurred and duly owing to Contractor through the termination date. Any fines, costs, fees or restitution received by Contractor from probationers of this Court after termination of this Agreement shall be forwarded to the Clerk of Court, other than fees earned by Contractor. The Court shall provide Contractor a receipt for all property surrendered under this provision. Contractor may maintain a copy of records obtained or created as a result of this contract solely for legal and auditing purposes and may not use them for any other purpose. Contractor shall use appropriate safeguards to prevent improper use or access to such records.

INDEMNITY, INSURANCE, AND BONDING OBLIGATIONS OF CONTRACTOR

N. Insurance and Bond.

Upon registration application to operate, a private probation entity must include written evidence of general liability insurance coverage and bonding in at least the amounts required by the Department of Community Supervision Rules, as amended, which are currently \$1 million for general liability insurance coverage and bonding of staff of at least \$25,000. In addition, Contractor shall maintain insurance as follows.

Before commencing work for the term of the Agreement, Contractor will procure and maintain the insurance required below at Contractor's own expense.

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(a) Workers’ Compensation - in accordance with the statutory limits. Proof of insurance or authorized self-insurance, for Contractor and subcontractors, also required.

(b) Commercial General Liability Insurance. The Contractor shall provide Commercial General Liability Insurance with a contract liability endorsement on a form acceptable to the Court and the City, which shall at least include coverage for bodily injury and property damage, personal injury liability, and contractual liability. The Commercial General Liability Insurance shall provide at a minimum the following limits:

| Coverage | Limit |
|----------------------|---------------------------------------|
| 1. General Liability | \$1,000,000 per person per occurrence |
| 2. Contractual | \$1,000,000 per person per occurrence |
| 3. General Aggregate | \$3,000,000 aggregate per occurrence |

The Commercial General Liability must also satisfy the following:

1. The policy shall name as additional insureds the officers, members, and employees of the Owner and the City, but only with respect to claims that arise out of Contractor’s negligence in performing the work or additional insured’s general supervision of such operations.
2. The policy or policies must be on an “occurrence” basis.

(c) Commercial Business Automobile Liability Insurance. The Contractor shall provide Commercial Business Automobile Liability Insurance which shall include coverage for bodily injury and property damage arising from the operation of any owner, non-owned or hired automobile. The Commercial Business Automobile Liability Insurance Policy shall provide not less than \$1,000,000 combined single limits for each occurrence.

(d) An insurer licensed to transact the applicable line of insurance in Georgia must issue the policy. The insurer and the policy must be acceptable to the City in its reasonable discretion. The City may require that the insurers have a Best Policyholders Rating of “A+” and a financial size rating of Class VI or larger. Each policy must contain the following provisions:

1. Insurer agrees not to cancel, change, or lapse the policy or allow it to expire until forty-five days after the City has received written notice or until the City has received a certificate of replacement insurance in compliance with this Agreement. The insurer’s notice must identify this Agreement specifically.

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2. The policy must not be subject to invalidation as to any insured by reason of any act or omission of another insured or any of its officers, employees, agents, or other representatives ("Separation of Insureds").

3. The insurer must agree that counsel selected by the City represents and defends the City and this prerogative is not waived by any policy of insurance. Any settlement of litigation on behalf of the City must be expressly approved by the City. Contractor and its insurers may retain, but are not obligated to retain, counsel to assist with the defense of the City.

4. Contractor may not self-insure or retain, in any policy, more than \$50,000 except for qualified self-insurance for workers' compensation.

(e) Contractor must purchase and maintain the foregoing coverages and limits, not inconsistent with the policies and requirements of O.C.G.A. § 50-21-37. A Georgia resident agent must confirm the coverages and limits by written certificate.

(f) Before commencing work, Contractor must furnish the Court and the governing authority an insurance certificate listing the Court and the governing authority as certificate holders. The insurance certificate must contain the following:

1. Name and address of authorized agent
2. Name and address of insured
3. Name of insurers
4. Description of policies
5. Policy number(s)
6. Policy period(s)
7. Limits of liability
8. Name and address of Owner as certificate holder
9. Signature of authorized agent
10. Telephone number of authorized agent
11. Promise to notify the City before canceling or not-renewing

O. Indemnification.

Neither the Court nor the governing authority shall be liable for any damages, loss, or injury to any person, property, or effects who may claim a right arising out of any relationship of the same with Contractor for any acts of Contractor, its employees, agents, subcontractors, or representatives in performance of services by Contractor under this Agreement.

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Contractor agrees to indemnify the City and to hold it harmless from all Loss or Liability due to bodily injury (including death), personal injury, and property damage in any way caused, in whole or in part, by act or omission of Contractor in connection with this Agreement. Contractor also agrees to indemnify the City from all Loss or Liability from breach of copyright, patent, trademark, license, or other claim based on property of another and arising in connection with Contractor's work.

For purposes of this indemnification section of the Agreement,

"City" means the Court, City of _____, Georgia (the "City"), all departments and units of City government, all City authorities, departments, and boards and all the officers and employees of each of the above, and the insurance and self-insurance programs of the City established for its protection.

"Contractor" includes successors and assigns. In the clause "caused in whole or in part, by act or omission of Contractor," "Contractor" also includes Contractor's subcontractors, all others acting on its behalf, and their officers and employees.

"Loss or Liability" includes as well the cost of legal representation and all other cost and expense of defense.

Upon demand, Contractor will promptly reimburse the following for any payments made by them, which are covered by Contractor's obligation to indemnify: the City, its insurance carrier or carriers, and any interlocal risk management agency or other self-insurance pool or fund participated in by the City.

This indemnification applies even if a tort of the City is partially responsible for the situation giving rise to the claim, but not if the City is wholly responsible. However, this indemnification does not require Contractor to protect the indemnitees for matters beyond the scope of the Agreement. Nor does this indemnification extend to claims by Contractor against the Court or governing authority for breach or default under the Agreement.

Contractor agrees, and must require its insurers to agree, that the City selects counsel for representation, in regard to any Loss or Liability indemnified or insured under this Agreement. Any settlement of litigation on behalf of a City indemnitee must be expressly approved by the City.

This Sample Agreement (published 1/4/2018) does not constitute legal advice. Choices are indicated by brackets and all blanks must be filled. Do NOT use "As-Is."

REPRESENTATIONS AND WARRANTIES OF CONTRACTOR

P. Deficiency in Service by Contractor

In the event that the court and/or governing authority determines that there are deficiencies in the services provided by Contractor hereunder, the Court and/or Governing Authority may terminate this Agreement in accordance with Section L or notify the Contractor in writing as to the exact nature of such deficiency. Within _____ () days of receipt of such notice, the Contractor shall cure or take reasonable steps to cure the deficiencies. In the event the Contractor fails to cure or take reasonable steps to cure the deficiencies either the Court or the governing authority may declare the Contractor in default and may terminate this Agreement.

R. Time is of the Essence of this Agreement.

S. Compliance with the Law.

The Contractor shall comply with all federal, state and local laws statutes, regulations and ordinances arising out of or in connection with the performance of its services pursuant to this Agreement.

T. Independent Contractor

Contractor is an independent contractor and is not an agent, joint venturer or other affiliate of the City or Court in any way. Contractor shall use its own employees and agents to perform this Contract. It is agreed that Contractor is solely responsible for payment of all federal, state, and local income taxes, self-employed Social Security taxes, and any other similar obligations arising from the performance of this Agreement or receipt of compensation therefore. The Contractor agrees to indemnify and hold harmless the Court and the City from and against any and all federal, state, or local tax liability or penalties that may arise from the payments made to the Contractor pursuant to this Agreement. The Contractor acknowledges that neither it nor its employees are eligible for any benefits provided by the Court or the City to their respective employees.

U. Entire Agreement.

This Agreement, including all exhibits attached hereto and incorporated herein by reference, constitutes the entire agreement between the parties hereto and supersedes any and all agreements, whether written or oral, that may exist between the parties regarding the same. No representations, inducements, promises, or agreements between the parties not embodied herein shall be of any force and effect. No amendment or modification to this Agreement or any waiver of any provision hereto shall be effective unless in writing and signed by all parties to include the Court, the City and its governing authority, and Contractor.

This Sample Agreement (published 1/4/2018) does not constitute legal advice. Choices are indicated by brackets and all blanks must be filled. Do NOT use "As-Is."

V. Binding Agreement.

This Agreement shall not be binding upon any successor to the undersigned Judge of the Court and unless ratified by the successor in office. If a successor attains the position of undersigned judge, and this Agreement is not ratified by such successor, then Contractor shall be permitted a reasonable time period, no less than ninety (90) days, in which to wind up its activities. The Court will be deemed not to have ratified the Agreement unless Court gives written notice of ratification within 30 days of taking the oath of office.

The Court has entered into this Agreement in part on the basis of personal reliance in the integrity and qualifications of the staff of Contractor. The same is applicable to change in leadership of the Governing Authority.

Contractor may not delegate, assign or subcontract any obligation of Contractor's performance under the Contract and may not assign any right under this Contract, in either case without Court's written approval. The Court's discretion in this regard shall be absolute. Any notices made in accordance with this Agreement except as otherwise set out in Item J, shall be in writing and shall be made by registered or certified mail, return receipt requested, to:

Contractor's Address:

City's Address:

Court's Address:

This Sample Agreement (published 1/4/2018) does not constitute legal advice. Choices are indicated by brackets and all blanks must be filled. Do NOT use "As-Is."

IN WITNESS WHEREOF, THE PARTIES HERE TO HAVE EXECUTED THIS AGREEMENT
ON THE _____ DAY OF _____, 20____.

PROBATION SERVICES CONTRACTOR: CITY:

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

APPROVED BY JUDGE OF COURT

Signature: _____
Title: _____
Date: _____

APPROVED BY CITY ATTORNEY AS TO
FORM

Signature: _____
Date: _____

This Sample Agreement (published 1/4/2018) does not constitute legal advice. Choices are indicated by brackets and all blanks must be filled. Do NOT use “As-Is.”

Exhibit A

Fees

| Item | Amount |
|---|------------------------------|
| Monthly supervision | |
| Monthly supervision, pay-only cases | |
| Monthly supervision at reduced rate due to Court's determination of significant financial hardship but not indigence (if determined to be "indigent," supervision must be at no cost) | |
| Community Service completion supervision only | |
| Intensive supervision | |
| Drug testing | Indicate amount and provider |
| Alcohol testing | Indicate amount and provider |
| Electronic monitoring | Indicate amount and provider |
| Substance evaluation | Indicate amount and provider |
| Counseling, per session | Indicate amount and provider |
| Pre-sentence investigation report | |
| (List other types and amounts of fees, and if applicable, when they should be collected.) | |

Amounts are exclusive of CVEF and other surcharges. Contractor certifies to the Court that the amounts to be charged for drug testing and screening, electronic monitoring, evaluation and counseling are reasonable in relation to the cost of each test/service/ procedure and the standard charge in the industry.

This Sample Agreement (published 1/4/2018) does not constitute legal advice. Choices are indicated by brackets and all blanks must be filled. Do NOT use “As-Is.”

Collection Procedures

[If procedures in brackets in the Agreement are not included, Contractor’s procedures (amended as necessary) should be inserted here.]

Significant Financial Hardship or Indigence Procedures

Offenders determined by the Court to have a significant financial hardship in accordance with O.C.G.A. Section 42-8-102 shall be [supervised at no cost to the probationer or the Court or governing body] [supervised at the reduced rate set forth in this Exhibit A]. An offender determined by the Court to be indigent shall be supervised [at no cost to the probationer or the Court or governing body] [at the reduced rate set forth in this Exhibit A.] Contractor’s additional procedures are set forth below.

Community service of offenders determined by the Court to have a significant financial hardship shall be supervised [at no cost to the probationer or the Court or governing body] [at the reduced rate set forth in this Exhibit A.] An offender determined by the Court to be indigent shall have his or her community service supervised [at no cost to the probationer or the Court or governing body] [at the reduced rate set forth in this Exhibit A.]

[Contractor’s procedures (amended as necessary) should be inserted here.]

Pay-Only Case Procedures

[Contractor’s procedures (amended as necessary) should be inserted here.]

Consecutive Sentences Procedures

[Contractor’s procedures (amended as necessary) should be inserted here.]

**SAMPLE CONTRACT – INDEPENDENT CONTRACTOR SERVICE AGREEMENT WITH
MUNICIPAL COURT JUDGE**

*This sample agreement for the office of municipal court judge is not and should not be treated as legal advice. **You should consult with your legal counsel before drafting or adopting any municipal court judge agreement or taking any other action based on this model.***

This Agreement by and between the City of _____, a municipal corporation, hereinafter referred to as the “City,” and **(ENTER CANDIDATE NAME)**, hereinafter referred to as the “Municipal Court Judge” or “Judge”, is as follows:

WHEREAS, the **[City Council][City Manager]** has appointed **(ENTER NAME)** to serve as Judge of the City’s Municipal Court through an Independent Contractor Service Agreement and not as a City employee; and

[WHEREAS, the City Council has confirmed that appointment on **(ENTER DATE)**;] and

WHEREAS, **(ENTER NAME)** has accepted the appointment and confirmation and desires to enter into this Agreement with the City to provide services to the City as Judge; and

WHEREAS, **(ENTER NAME)** understands this Agreement involves overseeing **[part time][full time]** court staff, which are employees of the City; and,

NOW, THEREFORE, in consideration of the mutual covenants, conditions and terms contained herein, the City and **(ENTER NAME)** agree as follows:

1. INDEPENDENT CONTRACTOR STATUS:

This Agreement does not create and shall not be construed to create an employee, representative, joint venture, or partnership relationship between the City and Judge. Neither Party is an agent of the other Party for any purpose. Accordingly:

Judge shall provide Services as an independent contractor, and Judge shall not be considered an employee of the City for any purpose;

Judge, and Judge’s agents and subcontractors, including, but not limited to any Judges Pro Tempore, shall not be entitled to, and shall not receive from City in connection with Services any workers’ compensation coverage, insurance coverage, pension, profit sharing, paid vacation, sick leave disability or similar benefit normally provided by City to its employees, except as expressly provided under the Benefits section below;

Judge retains sole and exclusive liability and shall withhold and/or pay all taxes and contributions required to be withheld and/or paid under federal and state income tax laws, unemployment compensation acts, social security acts, and all other legislation requiring employer contributions or withholdings, with respect to all Services provided hereunder, in a timely manner;

Judge is solely responsible for paying **[HIS/HER]** own business expenses, and expenses will only be reimbursed as set forth in this Agreement; and

Judge is free to perform services for any other customer.

At all times during the term of this Agreement, neither party will function as or represent itself to be the other party or its agent, and no officer, employee, or agent of one party shall hold himself or herself out to be an officer, employee, or agent of the other party.

2. **TERM OF APPOINTMENT:**

(ENTER NAME) accepts the appointment of Judge of the Municipal Court of the City [in accordance with the provisions of City Ordinance No. _____ as supplemented by this Agreement] for a _____ year term commencing on _____ and terminating on _____, unless earlier terminated as described below.

The Judge shall be, and remain, an attorney admitted to practice law in the State of Georgia. The Judge must also be a citizen of the United States of America and the State of Georgia. The Judge must comply with all other requirements for service as a municipal court judge, including but not limited to complying with all training requirements. The Judge shall immediately report to the [City Council][City Attorney][City Manager] any change affecting **(HIS/HER)** membership in good standing in the Georgia Bar Association and any training deficiencies.

3. **SCOPE OF SERVICES:**

The Judge shall perform all duties legally prescribed for a judicial officer serving as a Judge of a lawfully constituted Municipal Court according to the requirements of the Georgia Constitution, the Official Code of Georgia, the Code of Judicial Conduct, the Uniform Rules, Municipal Courts of the State of Georgia and such other rules as may be prescribed by the Supreme Court of the State of Georgia. In addition, the Judge shall act in accordance with any published opinions of the Judicial Qualifying Committee and the terms of any applicable Judicial Emergency Order. The Judge shall preside over all pre-trial conferences, cases, trials, and hearings or arrange for a Judge Pro Tempore to do so. The Judge also shall perform the duties described in section 4.

The Judge shall at all times faithfully and to the best of **(HIS/HER)** ability administer activities of the court, assign and hear all cases and fulfill obligations of the Court as established by State or local law, rule, statute, regulation and City ordinance.

The Judge shall appoint Judges Pro Tempore for vacation, affidavits of prejudice, recusal from a pending case, illness and required judicial continuing education and training. **[Before appointing a Judge Pro Tempore, the Judge shall confirm that he or she is an attorney admitted to practice law in the State of Georgia, a member in good standing with the Georgia Bar Association, and current in all training requirements.][The Judge may appoint only Judges Pro Tempore who have been approved by the City Council to serve as Judges Pro Tempore.]**

The Judge shall instruct all Judges Pro Tempore concerning procedures and customary sentences in order to promote uniformity to the greatest extent possible, and shall provide a copy of this Agreement to the Judges Pro Tempore and obtain their agreement to comply with applicable terms during the Judge's absence.

The Judge shall make a reasonable effort to maintain a pool of at least three Judges Pro Tempore and shall endeavor to rotate them evenly so that all will be reasonably familiar with Municipal Court procedures should their service be necessary.

4. **JUDICIAL INDEPENDENCE AND ADMINISTRATION:**

The Judge and all Judges Pro Tempore are independent from the City when performing judicial responsibilities and nothing contained herein shall be construed to interfere with a judge when performing judicial duties. The Judge, or any Judge Pro Tempore serving in the absence of the Judge, is solely responsible for judicial decisions. 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 financial ability, determination of conditions of probation, determination of liability, and determination of eligibility for indigent defense and for alternatives to monetary penalties including community service and penalty or fine reductions.

Furthermore, the Judge is responsible for doing the following:

- **[in coordination with the City Attorney and the Court Clerk]** approving court forms and procedures necessary for the proper exercise of constitutional rights and other compliance with the law, and updating such forms and procedures as necessary
- **[in coordination with the City Attorney and the Court Clerk]** providing proper training of court staff and officials subject to the Judge's direction and control about court procedures and the use of approved court forms, and updating such training as necessary
- ensuring that court staff and officials subject to the Judge's direction and control use approved forms, follow approved procedures and comply with applicable provisions of the Code of Judicial Conduct, court rules, ordinances and statutes
- notifying the **[City Manager][City Council][City Attorney]** of any Judicial Emergency Orders and any actions required to comply with such Orders, including, but not limited to actions that impact remote technology needs, city buildings, and city staff
- notifying the **[City Manager][City Council][City Attorney]** of additional resources necessary to ensure compliance with applicable laws and rules
- notifying the **[City Manager][City Council][City Attorney]** of service provider performance deficiencies
- reviewing quarterly reports and other communications of the Georgia Department of Community Supervision Misdemeanor Probation Oversight program and taking any actions the Judge deems necessary or appropriate
- **[reviewing the Court Self-Assessment attached as Exhibit A and notifying the City Manager of any resources required to adopt best practices]**
- **[completing the Annual Report and Affirmation of Municipal Court Judge attached as Exhibit A and submitting it to the City Manager at least thirty days before the end of each anniversary of this Agreement]**
- **[ensuring the municipal court clerk completes the Annual Report and Affirmation of Municipal Court Clerk attached as Exhibit B and submits it to the City Manager at least thirty days before the end of each anniversary of this Agreement]**
- **[presenting items identified in the annual report and affirmation to the City Council upon the request of the City Manager]**

The Court Clerk shall be appointed by **[The City Manager][The City Council]** and shall serve as an At-Will employee of the City. The Court Clerk and all court staff other than the Judge are City employees subject to City rules and regulations. However, they are subject to the Judge's direction and control when performing duties for the court. Their salaries, benefits, hours of work and working conditions shall be established by the City.

The Judge understands that court staff adhere to the same applicable personnel policies as other City employees. The Parties agree that the Judge will participate in the review and amendment of any such policies to ensure that they recognize the unique nature of court employment and the

Judge's responsibilities with respect to court employees. The Judge acknowledges the Court Clerk may perform other duties for the City that are not in conflict with the separation of powers.

The Judge will confer with the **[City Manager][City Council][Mayor]** to coordinate administrative activities concerning City procedures, policies and the budget in an effort to retain and insure consistency and common practices throughout the City.

5. **COMPENSATION:**

The Judge's compensation for Services is set forth below:

[Enter compensation terms here. Include any requirements related to invoicing, reporting of hours, hourly rates, specific events that have fixed costs rather than hourly charges. Address how compensation of Judges Pro Tempore will be handled.]

All required training and costs for associated travel shall be reimbursed by the City in accordance with the City's reimbursement protocols and applicable law. **[If the City will only reimburse a portion of training and costs due to an arrangement with other cities, describe that here and include the following statement: "The Judge affirms that all training and costs are reimbursed by cities, and allocation of only a portion of the cost to the City is permitted by applicable law.]**

The Judge's compensation may be increased, but not decreased, during the Judge's term of office.

The Judge's compensation shall be determined annually on January 1. This salary shall constitute compensation for all responsibilities and duties in the administration of the Municipal Court.

6. **METHOD OF PAYMENT:**

The Judge, or any Judge Pro Tempore, shall send invoices to **[Enter information here]** and payment will be made **[Enter information here]**.

7. **BENEFITS:**

Choose One - [Consult the terms of the City's employee benefits plans with the City Attorney and employee benefits legal counsel to determine if an independent contractor appointed as a municipal court judge is eligible for any benefits. List any benefits and requirements here.] [The Judge is not eligible for any benefits offered by the City to employees.]

8. **TERM OF AGREEMENT:**

The Judge's term of office and the term of this Agreement shall be for a period of ____ year(s) beginning____, 20__ and ending on _____, 20__.

9. **CONTRACT ADMINISTRATION:**

This Agreement shall be administered by the City Manager and/or designee on behalf of the City and by **(ENTER CANDIDATE NAME)** on behalf of the Municipal Court Judge. Any written notices to be served on either party shall be served or mailed to the following addresses, with a copy by email:

IF TO THE CITY:

City Manager

ADDRESS; EMAIL

IF TO THE JUDGE:

(NAME OF JUDGE)

ADDRESS; EMAIL

10. **TERMINATION OF AGREEMENT:**

This Agreement may be terminated during the Judge's term of office as follows:

- By the Judge if **(HE/SHE)** provides a minimum of ____ days written notice prior to **(HIS/HER)** effective date of termination, unless otherwise mutually agreed by the parties.
- By the City only as provided in O.C.G.A. Section 36-32-2.2.

11. **MERGER AND AMENDMENT:**

This Agreement contains the entire understanding of the City and the Judge 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 instruments executed by the City and Judge hereto.

This Agreement shall be governed under the laws of the State of Georgia, and any dispute regarding this Agreement shall be resolved in _____ Court, State of Georgia.

12. **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.

(Signatures on next page)

IN WITNESS WHEREOF the parties hereto do hereby execute this Agreement.

CITY OF

MUNICIPAL COURT JUDGE

By: _____

By: _____

(ENTER NAME OF JUDGE)

City Manager

Municipal Court Judge

Date: _____

Date: _____

Approved as to Form:

City Attorney

[EXHIBIT A – See current GMA Municipal Court Self-Assessment posted on www.gacities.com under Publications/Municipal Courts for Elected Officials; Review and Revise with City Attorney before attaching]

[EXHIBIT B – See current GMA Sample Annual Report & Affirmation for Municipal Court Judges and Clerks posted on www.gacities.com under Publications/Municipal Courts for Elected Officials; Review and Revise with City Attorney before attaching]

This Sample Municipal Court Judge and Clerk Annual Report & Affirmation was developed by Georgia Municipal Association, Inc. after public presentation at municipal court judges' training and with input from municipal court judges. **It should not be used "as is."** Review this document with the City Attorney before use. Consider including City Attorney in discussions with judge or clerk of any "no" answers.

Chief Judge: _____ Municipal Court Clerk: _____

Annual Report to the Governing Authority for the City of _____

Date: _____ For Year: _____

Caseload Report (same data as reported to the AOC or the GSCCCA)

Ordinance violations _____

Minor Traffic Violations _____

Serious Traffic Violations _____

Non-Traffic State Offenses _____

Narrative (Describe noteworthy activities of the court, accomplishments of court personnel):

| Affirmation | Discussed room for improvement with primary contact for the Governing Authority? Yes/No/Not Needed | Yes/No | Initials |
|---|--|--------|----------|
| Independence and Professionalism | | | |
| I have completed all mandatory training required for the past year. (judge, clerk) (attach proof of training) | | | |
| During the last year, I have requested changes to court operations to align with changes in or clarifications to the law that I learned during training. (judge) | | | |
| During the last year, I have implemented changes to court operations to align with changes in or clarifications to the law that I learned during training, or which were requested by the judge. (clerk) | | | |
| It is conveyed to the public, through signage, seating arrangements, and conduct in the courtroom, that the judicial operations of the court are independent from the executive and legislative functions of the city government. (judge) (clerk) | | | |
| I understand that I may seek guidance directly from the city attorney if I have questions or concerns about court operations, procedures, and matters related to private probation companies. (clerk) | | | |
| The court has a survey, feedback form, or other standard method for those who interact with the court to provide feedback about their experience in court. Feedback collected is promptly provided to [supervisor of clerk] and the judge for review. (clerk) | | | |
| I review all feedback about court operations and determine whether any changes are warranted. (Summary of top areas of feedback attached if appropriate) (judge) | | | |

| | | | |
|--------------------|---|---------------|-----------------|
| Affirmation | Discussed room for improvement with primary contact for the Governing Authority? Yes/No/Not Needed | Yes/No | Initials |
|--------------------|---|---------------|-----------------|

| Approved Forms | | | |
|---|---------------------------|--|--|
| I have approved use of a financial considerations form that gives me sufficient information to make judicial determinations that involve consideration of a defendant's or a pre-trial detainee's financial resources (judge) | No AOC form yet | | |
| I have approved use of a form describing a defendant's rights, which is used to document a waiver of those rights, and I affirm that this form accurately describes those rights and the consequences of waiving them. (judge) | AOC form is in bench book | | |
| I have approved use of a form for defendants to use to enter pleas. (judge) | AOC form is in bench book | | |
| I affirm that all forms approved for use in the court meet current legal standards. | | | |
| Notification of Rights/Waiver of Rights | | | |
| The rights waiver form approved by the judge is provided to every defendant, and defendants are instructed to read the form carefully and bring it with them when they speak to the judge. (clerk) | | | |
| I orally inform every defendant individually of the information in the approved rights form, and I only ask the defendant to sign the waiver form after making a determination that the waiver is voluntary and informed. (judge) I make sure that every defendant has a copy of the approved rights form and ask the defendant to take the form when approaching the judge. (clerk) | | | |
| I engage individually with each defendant to make sure he or she understands the charges and the consequences of making a plea of guilty or nolo contendere (judge) | | | |

| Affirmation | Discussed room for improvement with primary contact for the Governing Authority? Yes/No/Not Needed | Yes/No | Initials |
|-------------|--|--------|----------|
|-------------|--|--------|----------|

| Court Operations | | | |
|---|---|--|--|
| I have notified the primary contact for the Governing Authority of any Judicial Emergency Orders that require changes to court operations, and have requested resources necessary to comply with such Orders. (judge) | | | |
| Court operations comply with applicable Judicial Emergency Orders, which are published on www.georgiacourts.gov . (judge) | | | |
| I have reviewed all standing orders of the court, including those issued by other judges, and affirm that they are lawful and appropriate. | | | |
| <p>I have approved a record retention schedule for all recordings of court proceedings and all documents collected or created through the operation of the court and I affirm that the schedule is in accordance with the requirements of the Uniform Rules of Municipal Court. (judge)</p> <p>All court proceedings are recorded (either by audio-recording, video-recording or court reporting) and recordings are maintained in accordance with a record retention schedule approved by the judge. (clerk)</p> | | | |
| <p>I receive copies of any Notice of Appeal, Petition for Certiorari, or Application for Discretionary Review in a timely manner (judge).</p> <p>I promptly forward copies of any Notice of Appeal, Petition for Certiorari, or Application for Discretionary Review to the judge and prosecutor (or, if no prosecutor, to the city attorney). (clerk)</p> | Number of Appeals, petitions for Cert., applications for discretionary review for the year: _____ | | |
| I promptly forward copies of discovery requests to the prosecutor (or, if no prosecutor, to the city attorney). (clerk) | | | |
| I promptly forward any correspondence addressed to the judge or prosecutor. (clerk) | | | |
| I promptly forward any correspondence addressed to the public defender, and I ensure that the system for delivery of such correspondence maintains the confidentiality of the communication between the public defender and any defendant he or she may represent or be asked to represent. (clerk) | | | |
| I follow a written procedure approved by [_____] when handling fine money and recording payments. I was last trained on this procedure on _____. I understand that | | | |

| Affirmation | Discussed room for improvement with primary contact for the Governing Authority? Yes/No/Not Needed | Yes/No | Initials |
|-------------|--|--------|----------|
|-------------|--|--------|----------|

| | | | |
|---|--|--|--|
| following this procedure ensures proper handling of payments and prevents issuance of erroneous warrants. (clerk) | | | |
| I use approved court software, and I have completed all appropriate training for the current version of this software. I last received training on use of the software on _____. (judge, clerk) | | | |

| | | | |
|--------------------|---|---------------|-----------------|
| Affirmation | Discussed room for improvement with primary contact for the Governing Authority? Yes/No/Not Needed | Yes/No | Initials |
|--------------------|---|---------------|-----------------|

| Public Defender | | | |
|--|--|--|--|
| I affirm that the the process for determining eligibility for appointment of free legal counsel due to indigency meets current legal standards. (judge) | | | |
| I affirm that I consistently use the approved financial consideration form and follow the process for gathering information needed for the judge to determine eligibility for appointment of free legal counsel. (clerk) | | | |
| Interpreter/Hard of Hearing | | | |
| When I determine that a pre-trial detainee or a defendant is entitled to an interpreter, I ensure that a qualified and certified interpreter is present during all communications with the court at no cost OR I reschedule the defendant's case and ensure that a qualified and certified interpreter will be present on the rescheduled date at no cost to the defendant. | | | |
| Our court follows the guidelines of the Bench Cards entitled "Working with Limited English Proficient Persons and Foreign-Language Interpreters in the Courtroom" and "Working with Deaf or Hard of Hearing Persons and Sign Language Interpreters in the Courtroom," as posted here on the website of the Administrative Office of the Courts. (judge, clerk) | | | |
| Mental Illness | | | |
| When mental illness in the courtroom appears to be a factor, I observe and consider the matters set forth in the Bench Card entitled "Judge's Guide to Mental Illness in the Courtroom," as posted here on the website of the Administrative Office of the Courts. (judge) | | | |
| | | | |

| | | | |
|--------------------|---|---------------|-----------------|
| Affirmation | Discussed room for improvement with primary contact for the Governing Authority? Yes/No/Not Needed | Yes/No | Initials |
|--------------------|---|---------------|-----------------|

| Bail | | | |
|---|---|--|--|
| If I have issued or approved a bail schedule, I affirm that it is appropriate and lawful. (judge) | | | |
| Our court follows the guidelines set forth in the Bench Card entitled “Georgia Misdemeanor Bail Practices,” as posted here on the website of the Administrative Office of the Courts. (judge, clerk) | | | |
| I have issued a Standing Bail Order that directs the release of pre-trial detainees on their own recognizance (without payment of any bond) if a first appearance by a judicial officer has not occurred within 48 hours of pre-trial detention. (judge) | See Calhoun Standing Bail Schedule (approved as constitutional by 11 th Circuit) | | |
| To the best of my knowledge, a judicial officer conducts a first appearance hearing of all pre-trial detainees that includes determination of indigent status and setting of appropriate bail in accordance with the bail considerations below within 48 hours (no warrant)/72 hours (warrant). (judge) | | | |
| <p>Bail considerations. When determining bail for an individual person who is detained pre-trial, I do not impose excessive bail and I only set conditions reasonably necessary to ensure such person attends court appearances and to protect the safety of any person or the public given the circumstances of the alleged offense and the totality of circumstances.</p> <p>When determining bail, I consider: (A) The accused's financial resources and other assets, including whether any such assets are jointly controlled; (B) The accused's earnings and other income; (C) The accused's financial obligations, including obligations to dependents; (D) The purpose of bail; and (E) other factors I deem appropriate. (judge)</p> | | | |

| | | | |
|--------------------|---|---------------|-----------------|
| Affirmation | Discussed room for improvement with primary contact for the Governing Authority? Yes/No/Not Needed | Yes/No | Initials |
|--------------------|---|---------------|-----------------|

| Sentencing | | | |
|--|--|--|--|
| I affirm that each defendant has been afforded due process of law in conformity with standards of the United States Constitution and the Constitution of the State of Georgia and that sentences entered in this Court are in compliance with the laws of the State of Georgia and the United States. (judge) | | | |
| <p>The court follows the guidelines of the Bench Card entitled “Georgia and U.S. Constitutional Law Regarding Misdemeanor Probation” as posted here on the website of the Administrative Office of the Courts, to determine whether it is necessary to waive or reduce the fines/fees or impose community service as an alternative to fines/fees. (judge, clerk)</p> <p>If a “presumption of significant financial hardship” exists, and if the judge has not waived or reduced the fines and fees or converted to community service, the judge makes a record of why no significant financial hardship exists. (judge, clerk)</p> | | | |
| Probation | | | |
| <p>I make all determinations about whether to issue an arrest warrant related to violation of a probation condition, and I enter the issue date on such warrants. (judge)</p> <p>I do not schedule hearings for revocation of probation unless the probation company is able to provide notice at least 72 hours in advance. (clerk)</p> <p>At every petition for revocation hearing, I confirm that the defendant received at least 72 hours of notice before the hearing. If not, I reschedule the hearing or obtain a written waiver of notice. (judge)</p> | | | |
| I have received and reviewed all quarterly and annual reports provided to me by the private probation company and there is no indication in these reports that the private probation company has provided services that were not authorized by me. (judge) | Legally mandated quarterly reports of Probation company were received on these dates _____ | | |
| I reviewed any audit report about the probation services company that was provided to me by the Misdemeanor Probation Oversight Division of the Department of Community Supervision and forwarded a copy of it to the primary city contact for the probation services company contract, along with my comments. (judge) | Audit reports (if any) were provided on these dates _____ | | |

This Self-Assessment of Municipal Court Best Practices was developed by Georgia Municipal Association, Inc. as an informational tool for cities, and does not contain legal guidance. This Self-Assessment may be used with, or as an alternative to, [GMA's Sample Annual Report & Affirmation of the Municipal Court Judge and Clerk](#). Please consult your city attorney for legal advice about the proper use of this self-assessment.

| CITY SELF-ASSESSMENT OF MUNICIPAL COURT BEST PRACTICES | | | |
|---|---|---------------------------------------|---------------------------|
| Best Practice Descriptions | <i>Examples of Supporting Documentation (City Keeps in its regular records)</i> | Initials (if following best practice) | Best Practice Reason Code |
| Independence and Professionalism of Court | | | |
| The city's elected and appointed officials have received training on the independence of the court. | Proof of training | | 1 |
| The municipal court's funding for the upcoming year is independent of the fines/fees projected to be imposed by the municipal court for the upcoming year. Budget should include a footnote affirming this. | Budget with footnote | | 1 |
| The judge and municipal court clerk are not employees of or under the direction or supervision of the police department. | Job descriptions, organization charts | | 1 |
| Court Operations | | | |
| <p>All court proceedings are recorded (either by audio-recording, video-recording or court reporting) and recordings are maintained in accordance with record retention schedule. Recordings show that:</p> <ul style="list-style-type: none"> Each defendant is individually read his rights regarding self-incrimination, right to jury trial (for misdemeanor offense or higher), right to counsel, etc., as well as waiver of those rights and an individual affirmative determination is made that the defendant understands those rights before the defendant is allowed to enter a plea. Signature on a rights waiver form occurs only after that individual determination has been completed. During the process of taking a plea of guilty or nolo contendere, the Judge questions the defendant individually as to his understanding of his rights, his understanding of the charges against him, and the voluntariness of his decision to plead. | Log of audio-recordings, affirmation of court clerk | | 1 |
| Copies of any Notice of Appeal, Petition for Certiorari, or Application for Discretionary Review are forwarded immediately to the judge and solicitor (or, if none, to the city attorney). | Procedure, affirmation of court clerk | | 1A |
| Discovery requests are immediately forwarded to the solicitor (or, if none, to the city attorney) for handling. | Procedure, affirmation of court clerk | | 1A |

| | | | |
|---|---|--|----|
| A system exists for mail addressed to the judge, solicitor and/or public defender to be promptly forwarded or otherwise made available in a timely manner to those persons. In the case of the public defender, the system maintains the confidentiality of the communication between the public defender and any defendant he or she may represent or be called upon to represent. | Procedure, affirmation of court clerk | | 1A |
| Court operations comply with the requirements of any Judicial Emergency Order. | Court operational guidelines, as amended to comply with Judicial Emergency Order; affirmation of judge, affirmation of city attorney. | | 1B |

| Judge | | | |
|--|---|--|---|
| The city has a written agreement, ordinance provision, or charter provision setting the term of the municipal court judge (of at least one year), and the agreement, ordinance provision or charter provision has been approved by the city attorney as accurately describing the obligations of the judge and the independence of the court and identifying judges pro tem. Note: review of obligations identified in GMA's Sample Municipal Court Judge Service Agreement is recommended. | Contract, ordinance or charter provision, signature or affirmation of city attorney. | | 2 |
| The city pays for required training of the judge, and maintains a copy of training certification as proof that training is up to date. | Receipts, training certifications | | 3 |
| Prosecuting Attorney (Solicitor) | | | |
| A. The city retains an attorney who acts as prosecutor (often called a solicitor) and is present at all court sessions and pre-trial matters and is registered with the State OR | Copy of resolution or ordinance creating officer of the prosecuting attorney; contract with solicitor or job description if employee; proof of up to date, accurate information about prosecuting attorney that was submitted to Prosecuting Attorneys' Council | | 4 |
| B. The city has considered the cost of retaining a prosecuting attorney, and, after input of the city attorney, decided not to retain one. To ensure consistent treatment of defendants, the city has: <ul style="list-style-type: none"> Adopted a policy or provided in the judge's contract or in the charter that the judge shall not engage in plea deals or act as a prosecutor in any case before the court; Adopted a policy that police officers and code enforcement officers may only entertain plea arrangements with defendants in pre-trial matters and shall only act as a witness during trial, and provided training to officers on the policy; Adopted a policy to retain the city attorney or other attorney to serve as solicitor on a case-by-case basis where there are pre-trial legal issues or complex facts beyond the police officer's knowledge; In conjunction with the city attorney, an outside attorney, or POST training entities, provided training to police officers about changing charges or conducting pre-trial negotiations that are usually performed by a prosecuting attorney. | Documentation of the cost of retaining a prosecuting attorney and the decision not to do so; policies, training materials; identification of the attorney who will be retained on a case-by-case basis when needed. | | 5 |

| Court Clerk | | | |
|---|---|--|----|
| The city pays for all required training of the municipal court clerk, and maintains a copy of the municipal court clerk's certification of training completion. | Receipts, training certifications | | 6 |
| The city authorizes the municipal court clerk to seek guidance directly from the city attorney when he or she has questions or concerns about court operations, procedures, and matters related to private probation companies. | Job description or correspondence or training materials or policy | | 6 |
| Public Defender | | | |
| A. A public defender retained by the city is present at every court session OR | Contract or job description (if employee); budget | | 7 |
| B. When the judge determines that a defendant is entitled to a public defender, he or she reschedules the defendant's case, ensures that a public defender will be present on the rescheduled date, and provides the defendant information necessary to contact the public defender. | Contract with public defender; documentation of re-scheduling when public defender needed but not present; copy of communication showing defendant is provided contact information for the public defender. | | 7 |
| The court follows a process for determining eligibility for appointment of counsel due to indigency that meets legal standards. | Forms and other documents of the process, affirmation of judge. | | 7 |
| Interpreter | | | |
| When the judge determines that a defendant is entitled to an interpreter, a qualified and certified interpreter present on that date is made available to the defendant at no cost OR the judge reschedules the defendant's case and ensures that a qualified and certified interpreter will be present on the rescheduled date at no cost to the defendant. | Budget (shows projected costs for interpreters); Proof of rescheduling; proof of qualification/certification of interpreter; affirmation of judge; affirmation of court clerk | | 8 |
| The judge follows the guidelines of the Bench Cards entitled "Working with Limited English Proficient Persons and Foreign-Language Interpreters in the Courtroom" and "Working with Deaf or Hard of Hearing Persons and Sign Language Interpreters in the Courtroom," as published on the website of the Administrative Office of the Courts. | Contracts with interpreters, job description if interpreter is city employee, proof of certification of interpreters, affirmation of judge, affirmation of court clerk | | 8 |
| Fines/Fees/Alternatives | | | |
| The city has a procedure in place to ensure that the judge is notified immediately when a defendant is incarcerated, so a first appearance hearing (which includes determination of indigent status and setting of appropriate bail) may be arranged ASAP and no later than 48 hours after arrest. The city enforces this procedure. | Procedure, proof of enforcement. | | 9 |
| The city has an established method for defendants to complete community service as an alternative to paying fines and fees. | Description of community service options provided to defendants; contract or letter | | 10 |

| | | | |
|---|---|--|--------|
| | agreement with community service partners | | |
| If a judge has determined that a fine, fee or bail amount is due, the judge routinely and consistently inquires whether payment of any fine, fee or bail amount presents a significant financial hardship to the defendant. If the defendant answers yes, the judge either offers community service or follows the guidelines of the Bench Card entitled “Georgia and U.S. Constitutional Law Regarding Misdemeanor Probation,” as posted on the website of the Administrative Office of the Courts, to determine whether it is necessary to waive or reduce the fines/fees or impose community service as an alternative. | Affirmation of judge and affirmation of court clerk | | 10 |
| Personnel handling fine money and recording payments follow a written procedure designed to ensure proper handling of payments and to prevent issuance of erroneous warrants, and receive periodic training on the procedure. | Procedure, proof of training. | | 10A |
| Private Probation Company (Complete if City Uses a Private Probation Company) | | | |
| The probation provider follows the guidelines of the Bench Card “Georgia and U.S. Constitutional Law Regarding Misdemeanor Probation” as posted on the website of the Administrative Office of the Courts. | Affirmation of probation provider | | 11 |
| Contract with private probation company is between the city and the private probation company, meets the requirements of Georgia law, and includes the provisions set forth in GMA’s Sample Private Probation Services Agreement or equivalent provisions. | Contract, affirmation of city attorney | | 11, 12 |
| The city has designated a “business owner” for the contract with the private probation company who is responsible for reviewing complaints about the private probation company and advising the city council about whether the private probation company is complying with the terms of the contract. | Document identifying business owner, correspondence | | 11, 12 |
| The city attorney approves the contract with the private probation company and all changes to the contract prior to execution of the contract or changes. | Contract or amendment signature page with dated city attorney signature | | 11, 12 |
| The chief judge reviews all quarterly and annual reports provided by the private probation company and 1) notifies the city that review is complete and there is no indication that the private probation company has provided unauthorized services or 2) notifies the city and the city attorney of any concerns arising from the reports. | Correspondence | | 12 |
| The city council reviews the annual report provided by the private probation company and a report from the business owner of the private probation contract and makes a determination of whether to continue the contract. | Minutes | | 12 |

Reasons for Affirmations in Self-Assessment

1. If the mayor or council members attend court or try to influence the judge, this leads to a perception that the court is not independent. If the court's operating costs are paid from fines and fees, this leads to a perception that the court's procedures and the judge's determinations are designed not to promote justice, but instead to bring in revenue. When the court staff are police department employees or under the supervision of the police department, this leads to a perception that the "deck is stacked" against the defendant and in favor of the police officer. If the process is fair, defendants are more likely to accept negative outcomes. See Ferguson Report, p. 42 ("The Ferguson municipal court handles most charges brought by FPD, and does so not with the primary goal of administering justice or protecting the rights of the accused, but of maximizing revenue. The impact that revenue concerns have on court operations undermines the court's role as a fair and impartial judicial body.")

See also Burke, K. & Legen, S., Procedural Fairness: A Key Ingredient in Public Satisfaction (2007); a White Paper of the American Judges Association; <http://aja.ncsc.dni.us/courtrv/cr44-1/CR44-1-2BurkeLeben.pdf> as visited 12/5/2016, p. 6. ("People are in fact more willing to accept a negative outcome in their case if they feel that the decision was arrived at through a fair method. Significantly, even a judge who scrupulously respects the rights of litigants may nonetheless be perceived as unfair if he or she does not meet these expectations for procedural fairness.")

Making and keeping an audio recording of every court proceeding demonstrates transparency and promotes a perception of fairness. Uniform Municipal Court Rule 26 requires "a verbatim mechanical recording" or a "contemporaneous paper record" or both of proceedings at which defendants enter pleas. However, it is best practice to require at least an audio recording of all proceedings coming before the court, not just pleas. This means proceedings involving probation revocation hearings, indigence hearings, etc. should be recorded as well. The reasons best practice dictates that all proceedings before the municipal court be recorded is that such recordings help prevent holes in the record which could be exploited in litigation against a city. By maintaining such records, no holes would exist, and the actual facts of all proceedings will be held out as fact in litigation.

- 1A. Failure to promptly forward these documents to the correct party can result in failure to meet deadlines and other negative consequences for the city.
- 1.B Courts must comply with the requirements of any Judicial Emergency Order. For example, Judicial Emergency Orders issued during the COVID-19 pandemic establish specific requirements for courts. These Orders are sent to all chief judges, are communicated to all municipal court judges by the Council of Municipal Court Judges, and are posted on www.georgiacourts.gov. Failure to comply with such orders can result in discipline of the judge and exposure to litigation against the city.

2. Revisions to O.C.G.A. Section 36-32-2 and 36-32-2.1 in 2016 removed a statement that said the judge “shall serve at the pleasure of the governing authority,” proscribed minimum one year terms, grounds for termination mid-year, and process for termination. (“Any individual appointed as a judge under this Code section shall serve for a minimum term of one year and until a successor is appointed or if the judge is removed from office as provided in Code

Section 36-32-2.1. Such term shall be memorialized in a written agreement between such individual and the governing authority of the municipal corporation or in an ordinance or a charter.”) It is common practice to document the responsibilities of the judge in a contract. The contract can serve as an important memorialization of the judge’s independence and responsibilities, and as documentation of the limited role played by the city.

O.C.G.A. Section 15-1-3 provides that the court has the power “to control, in the furtherance of justice, the conduct of its officers and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto.” In March, 2016, the U.S. Department of Justice issued a letter emphasizing the judge’s responsibility to oversee court staff and probation officers: “Courts must safeguard against unconstitutional practices by court staff and private contractors. In many courts, especially those adjudicating strictly minor or local offenses, the judge or magistrate may preside for only a few hours or days per week, while most of the business of the court is conducted by clerks or probation officers outside of court sessions. As a result, clerks and other court staff are sometimes tasked with conducting indigency inquiries, determining bond amounts, issuing arrest warrants, and other critical functions—often with only perfunctory review by a judicial officer, or no review at all. Without adequate judicial oversight, there is no reliable means of ensuring that these tasks are performed consistent with due process and equal protection. Regardless of the size of the docket or the limited hours of the court, judges must ensure that the law is followed . . .”

It is reasonable to expect that the judge will be absent or recused periodically. It is important to identify judges pro tem and the process for using them. This is especially important during emergency situations such as the COVID-19 pandemic.

3. O.C.G.A. Section 36-32-11(d)(“The reasonable costs and expenses of such training shall be paid by the governing authority of the jurisdiction where the judge presides.”)
4. O.C.G.A. Section 15-18-91(“(a) Subject to the provisions of this article, the governing authority of a municipality shall be authorized to create the office of prosecuting attorney of the municipal court. A copy of the resolution or ordinance creating the office of prosecuting attorney of the municipal court shall be provided to the Prosecuting Attorneys' Council of the State of Georgia. (b) It shall be the duty of the municipal court clerk, or such other person designated by the governing authority of a municipality, to notify the Prosecuting Attorneys' Council of the State of Georgia of the name of any person appointed to be the prosecuting attorney of a municipal court within 30 days of such appointment.”)
5. Cities are not required by law to have a prosecuting attorney. Judges are prohibited from engaging in plea discussions. Uniform Municipal Court Rules 25 (a) “The trial judge shall not participate in plea discussions.” Usually, plea negotiations are handled by the city’s prosecuting attorney. If the city does not have one, it appears that law enforcement officers may be authorized to act in the capacity of a prosecutor for pre-trial matters and plea negotiations. Preamble to Uniform Municipal Court Rules: “It is not the intent of these rules, nor shall these rules be construed, to require any municipal, recorder or any other court deemed a municipal court, to become or remain a court of record or to employ the services

of any personnel, including solicitors or prosecuting attorneys, unless otherwise provided by general law, charter or ordinance.”

Rule 20.2(c) of the Uniform Municipal Court Rules provides that law enforcement officers may serve as prosecutors at commitment hearings, and suggests that they may serve as prosecutors in other pre-trial matters: “At the commitment hearing, the following procedures shall be utilized: (1) The rules of evidence shall apply except that hearsay may be allowed; (2) **The prosecuting entity** shall have the burden of proving probable cause; and **may be represented by a law enforcement officer**, a district attorney, a solicitor, or otherwise **as is customary in that court**; (3) The accused may be represented by an attorney or may appear pro se; and (4) The accused shall be permitted to introduce evidence.” (emphasis supplied)

However, the practice of using law enforcement officers to engage in plea deals creates exposure to the city due to conflicts of interest, the appearance of unfairness, and the risk of inconsistency in how plea deals are handled.

6. Georgia law requires municipal court clerks to receive minimum training that this paid for by the city. O.C.G.A. Section 36-32-13(b)(3) “The reasonable costs and expense of training required by this Code section shall be paid by the governing authority of the municipality from municipal funds.” Training designed for all clerks cannot address all questions associated with a particular court. Permitting the clerk to seek counsel from the city attorney promotes ongoing compliance with legal obligations.
7. Georgia statutes require every municipal court to provide a free public defender to any defendant who is determined by the judge to be indigent. O.C.G.A. Section 36-32-1 (f); (“Any municipal court . . . shall not impose any punishment of confinement, probation, or other loss of liberty, or impose any fine, fee, or cost enforceable by confinement, probation, or other loss of liberty . . . unless the court provides to the accused the right to representation by a lawyer, and provides to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender Council for representation of indigent persons in this state” O.C.G.A. Section 36-32-1 (g) “Any municipal court . . . that has jurisdiction over the violation of municipal or county ordinances or such other statutes as are by specific or general law made subject to the jurisdiction of municipal courts, and that holds committal hearings in regard to such alleged violations, must provide to the accused the right to representation by a lawyer, and must provide to those accused who are indigent the right to counsel at no cost to the accused. Such representation shall be subject to all applicable standards adopted by the Georgia Public Defender Council for representation of indigent persons in this state.)

Uniform Municipal Court Rules Rule 21, Appointment of Counsel for Indigent Defendants states: “The municipal court shall have a procedure and forms consistent with state law in order to determine indigence and to appoint counsel to defendants who apply and qualify for appointed counsel. The applications shall be available through the clerk of the municipal court. The rules of municipal courts shall embrace and include OCGA § 17-12-1 et seq. The

Georgia Public Defender Standards, as amended, are incorporated by reference to the extent that they are applicable to municipal courts.”

The judge must make the final decision about whether the defendant is indigent. See O.C.G.A Section 17-12-2(6)(A); Thomas v. State, 677 S.E.2d 433, 437 (“the determination of whether a defendant is indigent . . . lies within the discretion of the trial court, and this determination is not subject to review.”)

8. State Court Rules, Rules for Use of Interpreters Appendix A (A) (Attached)

Excerpts:

II. “An interpreter is needed and an interpreter shall be appointed when the decision maker, which would include the judge, magistrate, special master, commissioner, hearing officer, arbitrator, neutral, or mediator, determines, after an examination of a party or witness, that: (1) the party cannot understand and speak English well enough to participate fully in the proceedings and to assist counsel; or (2) the witness cannot speak English so as to be understood directly by counsel, the decision maker, and/or the jury.

(B) The decision maker should examine a party or witness on the record to determine whether an interpreter is needed if: (1) a party or counsel requests such an examination; or (2) it appears to the decision maker that the party or witness may not understand and speak English well enough to participate fully in the proceedings, or (3) if the party or witness requests an interpreter. The fact that a person for whom English is a second language knows some English should not prohibit that individual from being allowed to have an interpreter.

(C) To determine if an interpreter is needed the decision maker should normally include questions on the following:

1. Identification (for example: name, address, birth date, age, place of birth);
2. Active vocabulary in vernacular English (for example: “How did you come to the proceeding today?”, “What kind of work do you do?”, “Where did you go to school?”, “What was the highest grade you completed?”, “Describe what you see in the room”, “What have you eaten today?”). Questions should be phrased to avoid “yes or no” replies;
3. The criminal or civil proceedings (for example: the nature of the charge or the type of proceeding, the purpose of the proceedings and function of the decision maker, the rights of a party or criminal defendant, and the responsibilities of a witness).

(D) After the examination, the decision maker should state its conclusion on the record, and the file in the case should be clearly marked and data entered electronically when appropriate by personnel to ensure that an interpreter will be present when needed in any subsequent proceeding.”

...

(F) When a Certified, Conditionally Approved, or Registered interpreter is not being used, the decision maker or the decision maker’s designee should give instructions to interpreters, either orally or in writing, that substantially conform to the following . . .

VII. Interpreter's Fees and Expenses: Foreign language interpreters.

(A) Any interpreter providing service under this rule shall be compensated as directed by the local court or appropriate governing body.

(B) The expenses of providing an interpreter in any legal proceeding will be borne by the local court or appropriate governing body.

9. Municipal court judges surveyed by GMA in July, 2016 reported that the greatest barrier to complying with the requirement of a first appearance hearing within 48 hours of a defendant's arrest was the city's failure to notify the judge of the incarceration. A procedure designed to ensure prompt notification can be as simple as requiring the arresting officer to affirm that he or she has notified the judge before placing the defendant in custody. Uniform Municipal Court Rules Initial Appearance Hearing. "As soon as is reasonably practicable following any arrest but no later than forty-eight (48) hours if the arrest was without a warrant, or seventy-two (72) hours following an arrest with a warrant, unless the accused has made bond in the meantime, the arresting officer or other law enforcement officer having custody of the accused shall present the accused in person before a municipal judge or other judicial officer for first appearance." "At the first appearance, the municipal judge or judicial officer shall . . . Determine whether or not the accused desires and is in need of an appointed attorney and, if appropriate, advise the accused of the necessity for filing a written application "

Currently, the question of whether 48 hours is too long of a time period to have arrestees incarcerated before receiving their first appearance is being litigated in Georgia and in other jurisdictions throughout the country. It is entirely possible that the courts may hold that incarcerating arrestees for a maximum of 48 hours before their first appearance to determine indigency is too much time. In such event, the courts may determine that a first appearance for misdemeanor arrestees must take place immediately upon arrest and if this is not possible such persons may be required to be released immediately. The City of Calhoun, which is the defendant in the aforementioned litigation, currently has undertaken this practice due to a court decision and is not holding misdemeanor arrestees for first appearances. Some jurisdictions have a policy of automatically releasing misdemeanor arrestees on their own recognizance if the first appearance hearing is not held within 48 hours.

10. National law firms and civil rights groups have been joining forces to bring class actions against cities across the country for failure to properly determine financial hardship and waive fines and fees accordingly. These cases result in damage to the city's brand, attorneys' fees, forced adoption of new policies and procedures, forced training, and ongoing monitoring. The costs of being "forced" into compliance far outweigh the cost of proactively developing appropriate procedures and implementing necessary training. Examples of settlement agreements are attached.

- Cleveland v. City of Montgomery, No. 2:13CV732-MHT, 2014 WL 6461900, at *1 (M.D. Ala. Nov. 17, 2014) (plaintiffs brought suit against city and two municipal court judges claiming they were put in jail because they couldn't afford to pay parking tickets and the city eventually settled agreeing to conduct constitutionally required hearings and provide public defenders);
- State v. Blazina, 344 P.3d 680, 685 (Wash. 2015) (individualized inquiries into defendants' ability to pay fines was required before the court imposed debt);
- Bell et al. v. City of Jackson, Mississippi, No. 3:15-cv-732-TSL-RHW (S.D. Miss. October 9, 2015)(A group of plaintiffs sued the city for being forced to sit out debts in jail, even for those who were disabled and unable to work);
- Thompson v. Dekalb County (ACLU, Southern Center for Human Rights, and Rogers & Hardin LLP represented plaintiff who was jailed for five days for failure to pay; settled for \$70,000 and judge's agreement to follow bench card), press release and bench card attached);
- Fuentes v. Benton County, ACLU and Terrell Marshall Law Group filed class action (Sup. Ct. Wash. Yakima County Oct. 6, 2015) claiming that Benton County routinely assesses fines and fees in an amount upwards of \$1,000 without considering a person's ability to pay, and indigent people who are unable to pay these charges are sentenced to incarceration in jail or to toil on a work crew. Settlement agreement requires city to pay \$3,000 to individuals, reasonable attorneys' fees, and to do the following: provide training on new procedures for indigence inquiries to prosecutors, public defenders and court staff, amend contracts with public defenders to address training requirements, collect data annually on public defender appointment, charges, jail visits, provide information to Plaintiff's counsel every six months for five years;
- Kennedy v. City of Biloxi (S.D. Miss. Oct. 21, 2015)(plaintiffs incarcerated for failure to pay fines and fees imposed by the court, but were allegedly not afforded ability-to-pay hearings or informed of right to request counsel prior to being jailed. City increased budget for court by \$253,000 for fiscal year 2016 and \$344,024 for subsequent fiscal years to pay for additional city duties set forth in the settlement agreement. City paid \$75,000 in damages and attorneys' fees. Agreement requires: audio recording of all hearings of inability to pay, procedures for inability to pay hearings, judge must follow a bench card. City must no longer use any private probation company after June 1, 2016. Secured money bonds will not be used to detain persons arrested unless the court determines that it is the only pretrial release option that will adequately assure presence at trial. City must place a notice on its website about individual rights to hearing on ability to pay. Required training on inability to pay hearings for judges, required training for police on inability to pay hearings and right to representation by public defender. Required training of probation company staff and city probation staff. Required training of public

defenders on ability to pay hearings. Required training of prosecutors on ability to pay hearings. Required Public defender contract language provisions. Required city to provide information to Plaintiffs' Counsel every six months for two years.

- 10A. If fines or fees are not properly recorded, bench warrants for failure to appear may be erroneously issued. This can result in exposure to lawsuits for unlawful arrest. Moreover, failure to properly handle certain fines and fees can result in loss of federal highway funds and other penalties, and in some case may warrant criminal charges.
11. O.C.G.A. Section 42-8-107 requires the contract to include certain provisions and describe certain requirements. The city can protect itself by including additional provisions that protect the city. For example, when a private probation company violates the constitutional rights of defendants by failing to identify the need for financial hardship hearings or threatening incarceration for failure to pay, the city is at risk of exposure. The city can protect itself by ensuring that the contract includes indemnification language.
- Georgia Department of Audits and Accounts Performance Audit Report No. 12-06, April, 2014 (audit found that “courts provided limited oversight of providers, with contracts that often lack the detail needed to guide provider actions and periodic reports from providers that tell little about their own or their probationers’ performance.”)
 - Reynolds, et al. v. Judicial Correction Services, Inc., et al., 2:15-cv-00161-MHT-CSC (M.D. Ala., June 16, 2015) (Assisted by the Southern Poverty Law Center, a group of plaintiffs filed suit against the City of Clanton, Alabama and its private probation provider for threatening to jail them when they fell behind on paying fines for traffic violations. Particularly, the lawsuit accused the probation provider with extorting monthly payments from probationers which included an additional fee for the provider and accused the city of formalizing the relationship through an illegal contract with the probation provider. The probation company settled with the plaintiffs. The Southern Poverty Law Center sent letters to 100 cities in Alabama working with the probation company and all of them severed ties with the company.)
12. O.C.G.A. Section 42-8-108 requires probation providers to deliver detailed quarterly reports to the court and annual reports to the governing authority of the city. O.C.G.A. Section 42-8-101 authorizes the governing authority of the city to enter into or terminate a contract with a private probation company at the request of the chief judge and with his or her written consent. Formerly, the chief judge entered into the contract with the consent of the governing authority. This reporting is designed to address the lack of oversight identified in the audit described in Note 11. By ensuring the reports meet the legal requirements and reviewing the reports, the city demonstrates its compliance with oversight obligations.