

CONTRACT TO PROVIDE MUNICIPAL JUDGE SERVICES

This Contract to Provide Municipal Judge Services (hereinafter the “AGREEMENT”) is made and entered into effective as of January 6, 2022, between the CITY OF CARTERSVILLE, GEORGIA, a municipal corporation of the State of Georgia, (hereinafter referred to as “CITY”) and HARRY B. WHITE, Attorney at Law, and Harold J. Choate, III, Attorney at Law.

WITNESSETH:

WHEREAS, the CITY desires the services of HARRY B. WHITE, as Chief Municipal Court Judge and HAROLD J. CHOATE, III, as Associate Municipal Court Judge (hereinafter collectively referred to as “**JUDGES**”) pursuant to Section 6.02(a) of the CITY Charter; and

WHEREAS, the **JUDGES** are qualified to serve as Municipal Court Judges pursuant to O.C.G.A. §36-32-1.1 and desire to serve as Chief Judge and Associate Judge, respectively, of the City of Cartersville Municipal Court; and

WHEREAS, **JUDGES** desire to serve in said capacity as independent contractors, rather than as employees of the CITY; and

WHEREAS, it is the desire of all parties hereto to establish and set forth their mutual responsibilities one to the other; and

NOW THEREFORE, in consideration of the mutual promises contained herein, it is hereby agreed as follows:

1. **Duties**. The CITY hereby contracts with HARRY B. WHITE, to perform all functions and duties of the Chief Judge of the Municipal Court, and with Harold J. Choate, III, to perform all the functions and duties of Associate Judge of Municipal Court and to perform such other legally permissible and proper duties and function as said positions shall require. These duties shall include, but are not limited to, the following:
 - a. Provide an overview of the Municipal Court judicial function, including pretrial conferences, scheduling of *pro tem* judges, and annual reviews of the financial condition of the Municipal Court system;
 - b. Preside over civil and criminal violations in the City of Cartersville, traffic and parking cases, arraignments, trials, issue warrants, bond hearings, pretrial hearings, City of Cartersville Code violations, all other hearings, and set forth the courtroom calendar;
 - c. Develop and carry out policies for trial procedures, including the adoption of an appropriate bail schedule;
 - d. Coordinate with the City Solicitor and Court Clerk to reduce or eliminate backlogs of pending cases;
 - e. Review annually, data gathered by the CITY regarding cases generated by the City of Cartersville Police Department, which are being filed in the Municipal Court;

- f. In conjunction with the City Attorney, prepare an annual report concerning Municipal Court operations and personally present that report to the Mayor and City Council, if so requested;
- g. In conjunction with the City Attorney, annually review and recommend changes to the City of Cartersville Municipal Code which relate to Municipal Court;
- h. Make recommendations to the CITY to improve the financial or other operational conditions of the Municipal Court;
- i. Appoint qualified members of the State Bar of Georgia to serve as Public Defenders for the Municipal Court pursuant to O.C.G.A. §36-32-1(f);
- j. 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, they shall act in accordance with any published opinions of the Judicial Qualifying Committee or its successor;
- k. At all times faithfully and to the best of their 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;
- l. In coordination with the City Attorney and the Court Clerk, approve 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;
- m. In coordination with the City Attorney and the Court Clerk, provide proper training of court staff and officials subject to the **JUDGES'** direction and control regarding court procedures and the use of court forms and updating such training as necessary;
- n. Ensuring that court staff and officials subject to the **JUDGES'** 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;
- o. Notifying the City Attorney of additional resources necessary to ensure compliance with applicable laws and rules;
- p. Notifying the City Attorney of service provider performance deficiencies;
- q. Reviewing all reports and other communications from Probation Services and taking any actions the **JUDGES** deem necessary or appropriate;
- r. Conducting an initial hearing for any person detained in jail on a charge in Municipal Court within forty-eight (48) hours of said person being detained as scheduled in coordination with the Chief Judge;
- s. The **JUDGES** understand that court staff adhere to the same applicable personnel policies as other CITY employees. The parties agree that the **JUDGES** will participate in the review and amendment of any such policies to ensure that they recognize the unique nature of court employment and the **JUDGES'** rights and responsibilities with respect to court employees. The

JUDGES acknowledge that said employees may perform other duties for the CITY that are not in conflict with the separation of powers; and

- t. The **JUDGES** will confer with the City Manager or his/her designee, 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.
2. **Independent Contractor.** In performing the duties of Municipal Court Judge, HARRY B. WHITE and HAROLD J. CHOATE, III, shall serve as independent contractors and not as employees of the CITY. The CITY shall have no right or responsibility to control or influence the manner in which the **JUDGES** carry out their judicial responsibilities, save and except that the **JUDGES** agree to carry out their duties in a timely, consistent, and impartial manner. If any employee or agent of the **JUDGES** is tasked to assist with the duties of the **JUDGES** under this AGREEMENT, such employee/agent shall remain solely the employee/agent of the **JUDGES** and agree to comply with Title 34, Chapter 9, and all other applicable laws as to such persons. The **JUDGES** may engage in the private practice of law; provided, however, the **JUDGES** may not appear and represent a client before the City Municipal Court. The **JUDGES** are independent from the CITY when performing judicial responsibilities and nothing contained herein shall be construed to interfere with the **JUDGES** when performing judicial duties. The *pro tem* judge, when serving in the absence of the **JUDGES**, is solely responsible for judicial decisions. Judicial decisions include, but are not limited to, establishment of a standard bail schedule, determination of bail in individual cases, 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.
 3. **Pro Tem Services.** While it is agreed that the **JUDGES** shall personally serve as the Municipal Court Judges and shall be available to fill the duties of that office generally not less than ninety percent of the time, it is anticipated that ethical conflicts, scheduling conflicts, vacations, illness, etc., will occasionally require the appoint of *pro tem* municipal judges. It is understood that it is in the interest of both parties to maintain an active pool of *pro tem* judges so that the work for the Municipal Court will not be interrupted when the **JUDGES** must be absent from that position. Therefore:
 - a. **JUDGES** shall be subject to City Council approval, and shall appoint *pro tem* judges to serve as necessitated by the circumstances. The **JUDGES** in the Order approving *pro tem* shall set their fees and expenses; and
 - b. **JUDGES** shall instruct all *pro tem* municipal judges concerning procedures and customary sentences in order to promote uniformity to the greatest extent possible.
 4. **Term.** This AGREEMENT shall commence on the date set forth on page one and shall continue until January 5, 2023. This contract may be renewed annually upon the terms set forth herein or upon any other terms mutually agreeable to both parties.

5. **Compensation.** Effective January 6, 2022, the compensation shall be as follows:
 - a. The Chief Judge, HARRY B. WHITE, and the Associate Judge, HAROLD J. CHOATE, III, shall be jointly paid the total lump sum of Two Thousand Fifty (\$2,050.00) Dollars per month;
 - b. Additionally, the **JUDGES** shall be entitled to mileage expenses at the prevailing I.R.S. standard rate for travel related to official duties;
 - c. The **JUDGES'** salary shall be set and approved through the CITY's budget process. The **JUDGES'** compensation within the adopted budget may be increased, but not decreased, during the **JUDGES'** terms of office;
 - d. The **JUDGES'** salary shall be reviewed annually on January 1. This salary shall constitute compensation for all responsibilities and duties in the administration of Municipal Court;
 - e. The CITY shall pay for the cost of ICJE professional judicial education classes required for judges, including registration, lodging, per diem and mileage expenses in accordance with established CITY travel policies;
 - f. As independent contractors, the **JUDGES** expressly understand and are aware that the CITY will not deduct Federal and State taxes, Social Security, or Medicare/Medicaid from compensation paid to the **JUDGES**. The CITY will issue a Form 1099 to the **JUDGES** at year end and the **JUDGES** shall be solely responsible for any taxes or other deductions on compensation paid to the **JUDGES** under this AGREEMENT; and.
 - g. The **JUDGES** will not receive any benefits from the CITY, including but not limited to medical coverage, vacation pay, and retirement pay.
6. **Removal.** **JUDGES** may be removed from the position as Municipal Judge during the term of this Contract for the reasons and upon the procedures set forth in O.C.G.A. § 36-32-2.2
7. **Court Schedule.** The Municipal Court shall convene four (4) Mondays per month as provided for in Section 13.2 and 13.3 of the City of Cartersville Code of Ordinances, unless otherwise scheduled or cancelled by the Mayor and City Council or the Chief Judge. The Chief Judge shall modify the schedule as needed to avoid CITY and State holidays.
8. **Hours of Work.** It is recognized that the hours devoted by the **JUDGES** in the performance of responsibilities may vary with the caseload of the Court. The **JUDGES** shall report, when requested by the City Council, an account describing the amount of time being devoted to judicial duties.
9. **Dues and Subscriptions.** The Municipal Court Judges shall maintain membership in the Georgia Council of Municipal Court Judges, and all fees required for such membership shall be paid by the CITY.

10. **Qualifications of Judges.** The **JUDGES** shall be, and remain, attorneys admitted to practice law in the State of Georgia. The **JUDGES** must also be citizens of the United States of America and the State of Georgia. The **JUDGES** must comply with all other requirements for service as a municipal court judge, including but not limited to complying with all judicial training requirements.

11. **General Provisions.** This AGREEMENT shall constitute the entire agreement between the parties and supersedes any previous agreements or understandings. If any provision or a portion thereof contained in this AGREEMENT is held to be unconstitutional, invalid, or unenforceable, the remainder of this AGREEMENT, or portion thereof, shall be deemed severable, shall not be affected, and shall remain in full force and effect. No other benefits, consideration, or compensation of any kind shall be due from the CITY as set forth herein.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals to this AGREEMENT, as of the date and year so listed above.

CITY OF CARTERSVILLE:

JUDGES:

By: _____
Matthew J. Santini, Mayor

Harry B. White

Attested to:
by: _____
Julia Drake, City Clerk

Harold J. Choate, III

[AFFIX CITY SEAL]

APPROVED AS TO FORM:

E. Keith Lovell, Assistant City Attorney
City of Cartersville, Georgia