

**REQUEST FOR BOARD ACTION**  
**HENDERSON COUNTY**  
**BOARD OF COMMISSIONERS**

**MEETING DATE:** June 28, 2023

**SUBJECT:** MOU - Opioid Settlement Fund Expenditure Authorization

**PRESENTER:** John Mitchell, County Manager

**ATTACHMENTS:** Yes

1. MOU - Opioid Settlement Fund Expenditure Authorization

**SUMMARY OF REQUEST:**

In order to establish and staff a program to assist with drug and alcohol-related cases, the District Attorney has applied to the NCAOC Director, pursuant to G.S. 7A-64, for authority to hire one Assistant District Attorney. The County may appropriate funds under contract with the NCAOC as outlined in the attached MOU to pay for those services. The budget amendment would allocate funds for this position from the Opioid Settlement funds.

**BOARD ACTION REQUESTED:**

The Board is requested to adopt the memorandum of understanding and budget amendment as presented.

**SUGGESTED MOTION:**

I move that the Henderson County Board of Commissioners approve the memorandum of understanding and budget amendment as presented.

## **NORTH CAROLINA**

### **HENDERSON COUNTY**

**THIS AGREEMENT** is made and entered into, by, and between **Henderson County**, (hereinafter “the County”); **Raymond Murray**, District Attorney, 42nd Prosecutorial District (hereinafter “the District Attorney”); and the **North Carolina Administrative Office of the Courts** (hereinafter “the NCAOC”); (collectively, the “Parties” and individually, a “Party”), effective as of the date the last Party signs below.

### **WITNESSETH**

**THAT WHEREAS**, the District Attorney has applied to the NCAOC Director, pursuant to G.S. 7A-64, for authority to hire one Assistant District Attorney for the purpose of handling drug and alcohol related cases within Henderson County;

**WHEREAS**, pursuant to G.S. 153A-212.1, the County may appropriate funds under contract with the NCAOC for the provision of services for the speedy disposition of cases involving a threat to public safety;

**WHEREAS**, the County has appropriated funds to implement a program of expediting these cases and has budgeted the annualized sum to pay for the personnel position costs for each position listed in Appendix A, which Appendix A is attached hereto and is incorporated herein as if fully set out;

**WHEREAS**, the NCAOC Director has found that the District Attorney has made a showing, pursuant to G.S. 7A-64, that the overwhelming public interest warrants the use of additional resources for the speedy disposition of cases involving a threat to public safety within the meaning of that statute;

**WHEREAS**, the County desires to pay to the NCAOC on behalf of the District Attorney the amounts specified herein for the use by the District Attorney to hire personnel as shown in Appendix A;

**WHEREAS**, the NCAOC is responsible for administering the receipts and expenditures of the Judicial Branch, including the office of the District Attorney; and

**WHEREAS**, the parties hereto have mutually agreed to the terms of this Agreement as hereinafter set out.

**NOW THEREFORE**, in consideration of the terms and conditions hereinafter set forth, the County does hereby agree to provide funds and the NCAOC agrees to administer the funds on behalf of the District Attorney for the position(s) shown in Appendix A.

**THE TERMS AND CONDITIONS OF THIS AGREEMENT ARE AS FOLLOWS:**

1. The term of this Agreement shall be for a period of 12 months, beginning on July 1, 2023 and terminating on June 30, 2024.
2. The employee(s) under this contract will be the employee(s) of the District Attorney accordingly for all purposes, and shall be hired by and work under the supervision and direction of the District Attorney for the 42nd Prosecutorial District.
3. The County will be responsible for paying the personnel and operating costs as budgeted and other related costs that may arise. Any changes in salary shall be communicated in writing to the County, the District Attorney, and the NCAOC. The parties agree to act in good faith to facilitate such budget amendments as may be necessary from time to time. The District Attorney shall provide space and furnishings for their staff positions under this agreement commensurate with other staff offices. The NCAOC shall provide administrative services (including Human Resources processing and payroll services) pursuant to this Agreement, but shall not contribute funds or be responsible for paying any operating expenses of the project, nor shall the NCAOC or County be responsible for the hiring or supervision of the positions.
4. The County shall provide funds to the NCAOC Chief Fiscal Officer as outlined in Appendix A. Expenses for unemployment, workers compensation and disability claims, as outlined in paragraph 9 below, are unforeseen expenses which are not included in Appendix A and may increase the County's financial obligation above and beyond the base amount indicated in Appendix A, should a claim be filed.
5. All payment of funds must be made electronically via an account with the North Carolina Department of State Treasurer, as established through the NCAOC and the North Carolina Office of the State Controller. After each electronic payment of funds, the County must then notify NCAOC's Cash Management Division via email, [NCJC.FSD.CashManagement@nccourts.org](mailto:NCJC.FSD.CashManagement@nccourts.org), detailing the amount and relevant month for which the payment applies, or by attaching the relevant invoice to the email.
6. The County agrees to provide to the NCAOC all operating costs associated with the position(s) in this contract in accordance with annual NCAOC position cost statements supplied by the NCAOC Financial Services Division, as shown in Appendix A. Typical operating costs in NCAOC position cost statements represent expenditures such as transportation, meals and lodging, registration fees, maintenance agreements, general office supplies, telephone service and equipment, personal computer, software, and wiring and installation. Using funds provided by the County, the NCAOC will purchase and maintain all equipment outlined in Appendix A. The County will submit payment upon the receipt of a detailed invoice.

7. If the County fails to pay an invoice within 60 days of receipt, the NCAOC will apply the requisite amount of court facilities fees collected pursuant to G.S. 7A-304 and 7A-305 toward the outstanding invoice amount. If the County chooses to remit payment to the NCAOC after the court facilities fees have already been applied to the outstanding invoice amount, the NCAOC will reclassify the amount of court facilities fees allocated to the outstanding invoice so that that County will receive its full share of court facilities fees pursuant to G.S. 7A-304 and 7A-305.
  
8. The County agrees that it will increase the payments under this Agreement by the amount necessary to provide for each of the following increases in the compensation or benefits of any person whose position is funded under this Agreement, with each increase to become effective on the effective date of the relevant increase in compensation or benefits. Should the amounts needed for any increase exceed ten percent (10%) of the total contract amount, the County must agree in writing to any amount in excess of ten percent (10%) of the total contract amount. If the County does not agree in writing to pay the amount in excess of ten percent (10%), then the parties may terminate this contract in accordance with paragraph 11 below.
  - a. Any increase in salary due to legislative act, reclassification, in-range adjustment, or longevity
  - b. Any increase in salary to which any assistant or deputy clerk is entitled under the pay plan adopted pursuant to G.S. §7A-102
  - c. Any legislatively mandated increase in the employer contributions to the North Carolina Teachers' and State Employees' Retirement System or the Consolidated Judicial Retirement System
  - d. Any legislatively mandated increase in the employer's premium to provide coverage under the North Carolina Teachers' and State Employees' Major Medical Plan
  
9. The County agrees to reimburse the NCAOC for any and all costs arising from an unemployment, workers' compensation and/or disability claim submitted by an employee under this contract who qualifies for such payments based on his/her duration of employment with the Judicial Branch. The County agrees to reimburse the NCAOC for all costs arising from any such claim that is submitted after the contract period specified in paragraph 1 above, so long as the termination of employment or injury that is the subject of such claim occurred during said contract period. Costs arising from unemployment, workers' compensation and/or disability claims are not included in Appendix A and may result in costs in excess of those outlined in paragraph 4 above. Absent a specific line item in Appendix A for unemployment, workers' compensation, and/or disability costs, such costs may be offset and covered with (i) funds reallocated from other line items, where available; and/or (ii) lapsed salary resulting from vacant positions under this Agreement. Vacant positions under this Agreement may be held vacant for an extended period of time to ensure that there will be a sufficient amount of lapsed salary with which to reimburse the NCAOC for any such claims. This provision does not limit the authority of the Office of the North

Carolina Attorney General to represent the NCAOC in any litigation that may arise hereunder. Additionally, the NCAOC may purchase workers' compensation insurance to cover any workers' compensation claims that may be filed in accordance with this Agreement. The County agrees to reimburse the NCAOC for the cost of workers' compensation insurance premiums and deductibles paid by the NCAOC. The NCAOC will send an invoice to the County for payment of any and all costs arising from an unemployment, workers' compensation and/or disability claim and for insurance premiums and deductibles and the County shall pay any invoice not later than 60 days after the County's receipt of the invoice.

10. The NCAOC and the County shall maintain all appropriate documentation of expenditures under this contract for examination by the Office of the State Auditor. The NCAOC shall provide to the County, and the County shall provide to the NCAOC, copies of said documentation upon request.
11. This Agreement may be terminated by the County, the NCAOC, or the District Attorney upon giving sixty (60) days' notice in writing or by mutual consent of all parties.
12. It is understood and agreed between the County, the District Attorney, and the NCAOC that the renewal or extension of the payment specified in this Agreement is dependent upon and subject to the allocation, availability, or appropriation of funds by the County.
13. It is understood and agreed between the County, the District Attorney, and the NCAOC that this Agreement is entered into pursuant to G.S. 7A-64 and 153A-212.1, and that nothing in this Agreement shall be construed to obligate the NCAOC to maintain or request funding for positions or services initially provided under this Agreement.
14. This Agreement may be amended by written agreements executed by all parties, except that if the only change is an increase in positions and corresponding costs, then only the County and the NCAOC need sign the amendment.
15. This Agreement, including Appendix A, is the entire Agreement among the parties and there are no other Agreements, oral, written, expressed or implied.
16. This Agreement and any amendments or modifications hereto, to the extent signed in handwriting and then delivered by means of electronic transmission in portable document format ("PDF"), shall be treated in all manner and respects as an original agreement or instrument, and shall be considered to have the same force and legal effect as an original signature.

**IN WITNESS WHEREOF**, the Parties, or their duly authorized representatives, have executed this Agreement as of the Effective Date. The undersigned County Manager agrees to provide the NCAOC with copies of minutes or other documentation authorizing them to execute this contract on behalf of the County.

**HENDERSON COUNTY**

BY: \_\_\_\_\_  
County Manager

Date: \_\_\_\_\_

**DISTRICT ATTORNEY  
42ND PROSECUTORIAL DISTRICT**

BY: \_\_\_\_\_  
District Attorney

Date: \_\_\_\_\_

**NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS**

BY: \_\_\_\_\_  
Director or Director's Designee

Date: \_\_\_\_\_

Approved as to Form

This instrument has been pre-audited in the manner required by the Local Government Budget and Fiscal Control Act.

\_\_\_\_\_  
County Attorney

\_\_\_\_\_  
County Finance Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

APPENDIX A

Estimated Contract Cost

5/31/2023

Invoices will be based on actual, not estimated, costs.

<b>Position Title: Assistant District Attorney</b>	<b>State FY 2024 Costs</b>
<b>Salary &amp; Longevity</b>	<b>80,000</b>
<b>Social Security 7.65%</b>	<b>6,120</b>
<b>Retirement 25.78%</b>	<b>20,624</b>
<b>Health Insurance</b>	<b>7,646</b>
<b>Workers' Compensation</b>	<b>400</b>
<b>Unemployment</b>	<b>700</b>
<b>Office Supplies</b>	<b>800</b>
<b>Training/Conference Registration Fees</b>	<b>50</b>
<b>Hardware, Software, Support Services</b>	<b>1,560</b> <sup>2</sup>
<b>Data Infrastructure</b>	<b>708</b> <sup>2</sup>
<b>Bar Dues</b>	<b>300</b>
<b>Parking</b>	<b>0</b> <sup>1</sup>
<b>Cell Phone</b>	<b>0</b> <sup>1</sup>
<b>Travel</b>	
Mileage (500 miles x \$0.66/mile)	<b>330</b>
Lodging (\$85/day)	<b>425</b>
Meals (\$42/day)	<b>210</b>
<b>Total Estimated Cost</b>	<b>\$119,873</b>

1 Expenses not anticipated during this fiscal year.

2 Expenses are invoiced regardless of position vacancy status.