Lumpkin County, Georgia

Finance Department

Date: May 26, 2016

Agenda Item: Enotah Circuit Public Defender – Circuit Wide Contract

Item Description: Approval of the Indigent Defense Services Agreement

Facts & Historical Information: The Enotah Circuit Public Defender's Office has been in operation since 2005. The Enotah Circuit entered into an agreement with the State to help reduce the liability of counties in the defense of indigent persons with the implementation of this system with Lumpkin County agreeing to act as the financial administrator for the contract for a small administrative fee. This is an agreement that the Circuit signs annually with the Georgia Public Defender Standards Council. This agreement defines the statutory services, requirements and responsibilities of the State and the Circuit and has been presented to the Circuit members for consideration. The budget, as presented, does not utilize $35,000 of fund balance in the Public Defender's fund as that amount has decreased to such a level it will cash flow issues if the amount if decreased. The members of the Circuit did agree to fund a 3% pay increase for administrative county paid staff and a $5,000 increase for the three county paid attorney paid positions. Once the contract and supporting attachments are received from the State, they will be placed in the agenda book for review.

Potential Courses of Action:

A) Approve the contract as presented. This option will allow the contract to proceed to each circuit member county and will keep this service in place which saves each county money for the defense of indigent persons. The approval of this agreement also ensures that the circuit receives State assistance in the defense of indigent persons.

B) Disapprove the contract. This is the least favorable of the options as it places the county fully responsible for the defense of indigent persons with no assistance from the State. If the other circuit members do not agree to withdraw from the agreement, the County would still have to participate.

Budget Impact: Lumpkin County's portion is not included in the 2016 budget but has been included the proposed 2017 budget.

GEORGIA INDIGENT DEFENSE SERVICES AGREEMENT

THIS AGREEMENT is entered into this_____ day of_____, 2016, among the Circuit Public Defender Office of the Enotah Judicial Circuit (herein referred to as "**the Public Defender Office**"), the governing authority of Lumpkin County, a body politic and a subdivision of the State of Georgia (herein referred to as "**Lumpkin County**"), the governing authority of Towns County, a body politic and a subdivision of the State of Georgia (herein referred to as "**Towns County**"),and the governing authority of Union County, a body politic and a subdivision of the State of Georgia (herein referred to as "**Union County**"), and the governing authority of White County, a body politic and a subdivision of the State of Georgia (herein referred to as "**White County**". Lumpkin, Towns, Union, White Counties are herein referred to collectively as "**the Counties**." This agreement is effective July 1, 2016.

WITNESSETH:

WHEREAS, the Public Defender Office and the Counties enter into this agreement to implement the provisions of the Georgia Indigent Defense Act of 2003, as amended,

WHEREAS, the Counties are bodies politic, existing and operating under the laws and Constitution of the State of Georgia with full power to enter into contracts and agreements with other political entities; and

WHEREAS, the Public Defender Office is existing under the laws of the State of Georgia and operating under the laws and Constitution of the State of Georgia with full power to enter into contracts and agreements with other entities; and

WHEREAS, it is the intent of the parties to this agreement to provide for the operation of an indigent defense system to assure that adequate and effective legal representation is provided, independent of political considerations or private interests, to indigent defendants in criminal cases consistent with the standards adopted by the Georgia Public Defender Council. This system and this agreement include the following:

(1) The provision by the Public Defender Office of the statutorily required services to the Counties;

(2) The payment to the Public Defender Office by the counties for additional assistant circuit public defenders and administrative assistants;

(3) The payment by the Counties of their pro rata share of the costs of appropriate offices, utilities, telephone expenses, materials, and supplies as may be necessary to equip, maintain, and furnish the office or offices of the circuit public defender in an orderly and efficient manner;

(4) Travel advances and reimbursement of expenses; and

(5) The provision for other matters necessary to carry out this agreement.

NOW THEREFORE, in consideration of the mutual covenants and promises contained in the agreement and for Ten Dollars ($10) and other good and valuable consideration, **IT IS AGREED AS FOLLOWS:**

ARTICLE 1

STATUTORY PERSONNEL

Section 1.01 Statutory Staffing. The Public Defender Office agrees to provide for the Enotah Judicial Circuit full-time staff for a circuit public defender office or offices consisting of a circuit public defender; an assistant public defender for each superior court judge authorized for the circuit, excluding the chief judge and senior judges; an investigator; and 2 additional persons to perform administrative, clerical or paraprofessional services.

Section 1.02 Statutory Services. The Public Defender Office agrees to provide representation to indigent defendants in the following cases:

(1) Misdemeanor and felony cases prosecuted in the superior courts of the Counties under the laws of the State of Georgia in which there is a possibility that a sentence of imprisonment or probation or suspension of sentence of imprisonment may be adjudged;

(2) Hearings in the superior courts of the Counties on a revocation of probation;

(3) Cases prosecuted in the juvenile courts of the Counties in which a child may face a disposition in a delinquency case of confinement, commitment or probation; and

(4) Direct appeals from a decision in cases described in (1), (2), and (3) above.

Section 1.03 Conflicts. The Public Defender Office agrees to provide for legal representation by an attorney who is not an employee of the Public Defender Office in cases described in Section 1.02 in which the Public Defender Office has a conflict of interest.

ARTICLE 2

ADDITIONAL PERSONNEL AND SERVICES

Section 2.01 Additional personnel and services. The Public Defender Office agrees to provide and the Counties agree to pay for the services and personnel described in Attachment A. The parties agree to the terms in Attachment A. Attachment A is incorporated into this agreement by reference. The amount to be paid includes a 7% administrative services fee. This fee is determined by the total amount for all of the budgeted positions. Upon expiration or termination of the agreement, any unused portion of the administrative services fee may be refunded to the Counties in the discretion of the Georgia Public Defender Council. Any changes to Attachment A shall be made in accordance with Section 5.06 of this agreement. Any additional personnel employed by the Public Defender Office pursuant to this section are full-time state paid employees of the Public Defender Office in the unclassified service of the State Merit System of Personnel Administration with all the benefits provided by law to employees in the unclassified service. The parties agree that the employment of additional personnel employed by the Public Defender Office pursuant to this section may be terminated by the Public Defender Office if the Counties do not pay for the cost of these personnel in advance in accordance with this agreement.

ARTICLE 3

PROVISION BY THE COUNTIES OF THEIR PRO RATA SHARE OF THE COSTS OF APPROPRIATE OFFICES, UTILITIES, TELEPHONE EXPENSES, MATERIALS, AND SUPPLIES AS MAY BE NECESSARY TO EQUIP, MAINTAIN, AND FURNISH THE OFFICE OR OFFICES OF THE CIRCUIT PUBLIC DEFENDER.

Section 3.01 Office expenses. The Counties agree to pay their pro rata share of the budget provided in Attachment B, which is the budget for appropriate offices, utilities, telephone expenses, materials, and supplies to equip, maintain, and furnish the office or offices of the Public Defender Office. The amount of the County's pro rata share based on population is stated in the budget. The Counties agree to the payment terms. Attachment B is incorporated into this agreement by reference.

ARTICLE 4
TRAVEL AND REIMBURSEMENT OF EXPENSES

Section 4.01 Travel expense reimbursement. The Counties agree to provide travel advances and to reimburse expenses which may be incurred by an employee of the Public Defender Office in the performance of the employee's official duties for the office to the extent the expenses are not reimbursed by the state and **to the extent the expenses are authorized by the county paying the expense**. The Counties shall provide the Public Defender Office with the information concerning the travel advances and expense reimbursements required by the State Auditor.

ARTICLE 5

MISCELLANEOUS

Section 5.01 Term. The term of this agreement is 12 months beginning July 1, 2016 and ending June 30, 2017.

Section 5.02 Maintenance of effort. The Counties agree that they will continue to fund indigent defense for the term of this agreement, at a minimum, at the level of its most recent budgeted level of funding (the current fiscal year or the planned budget for the next fiscal year if that budget has already been developed) for indigent defense and as part of this support each county agrees to provide the space, equipment and operating expenses necessary to effectively operate the circuit public defender office.

Section 5.03 Severability. Any section, subsection, paragraph, term, condition, provision or other part (hereinafter collectively referred to as "part") of this agreement that is judged, held, found, or declared to be voidable, void, invalid, illegal or otherwise not fully enforceable shall not affect any other part of this agreement, and the remainder of this agreement shall continue to be of full force and effect. Any agreement of the parties to amend, modify, eliminate, or otherwise change any part of this agreement shall not affect any other part of this agreement, and the remainder of this agreement shall continue to be of full force and effect.

Section 5.04 Cooperation, dispute resolution and jurisdiction. (a) The Public Defender Office and the Counties collectively and individually acknowledge that this agreement may need to be revised periodically to address new or unforeseen matters.

(b) Each party to this agreement agrees to cooperate with the other party to effectuate and carry out the intent of this agreement.

(c) This agreement, and the rights and obligations of the parties, are governed by, and subject to and interpreted in accordance with the laws of the State of Georgia. The parties acknowledge and agree that by law, the exclusive jurisdiction for contract actions against the state, departments and agencies of the state, and state authorities is the

Superior Court of Fulton County, Georgia. The parties further acknowledge that the Fulton Superior Court has a Court sponsored Arbitration and Mediation Program in which the parties agree to fully participate.

Section 5.05 Notice. A notice to a party to this agreement shall be made in writing and shall be delivered by first class mail or personally to the person and at the address indicated below:

Circuit Public Defender Office of the Enotah Judicial Circuit:

Charles Brown
Circuit Public Defender
1536 Highway 129 South
Cleveland, GA 30528

Lumpkin County:

_____
Name
_____
Street
_____GA, _____
City, Zip Code

Towns County:

_____
Name
_____
Street
_____GA, _____
City, Zip Code

Union County:

_____
Name
_____
Street
_____GA, _____
City, Zip Code

White County

_____
Name
_____
Street
_____GA, _____
City, Zip Code

Georgia Public Defender Council:
Bryan Tyson, Director
104 Marietta Street , Suite 400
Atlanta, GA 30303

Section 5.06 Agreement modification. This agreement, including all Attachments hereto, constitutes the entire agreement between the parties with respect to the subject matter of this agreement and may be altered or amended only by a subsequent written agreement of equal dignity; provided, however, that the parties' representatives identified in Section 5.05 may agree in writing by an exchange of letters or emails prior to the budget revision becoming effective to budget revisions which do not increase or decrease the total dollar value of the agreement. This agreement supersedes all prior agreements, negotiations and communications of whatever type, whether written or oral, between the parties hereto with respect to the subject matter of this agreement. After the agreement has been approved by the Director of the Georgia Public Defender Council, no modifications may be made without prior notice to the Director of the council.

Section 5.07 Termination. (a) Due to non-availability of funds. In the event that any of the sources of reimbursement for services under this agreement (appropriations from the General Assembly of the State of Georgia, or appropriations from a county governing authority) is reduced during the term of this agreement, the Public Defender Office may make financial and other adjustments to this agreement and notify the Counties accordingly. An adjustment may be an agreement amendment or may be the termination of the agreement. The certification by the director of the Georgia Public Defender Council of the occurrence of reduction in State funds is conclusive. The certification of the occurrence of the reduction in county funds by the person designated in Section 5.05 for the receipt of notice for each of the Counties of the occurrence of the reduction in county funds is conclusive. The Counties agree to promptly notify the Public Defender Office in writing of the non-existence or insufficiency of funds and the date of termination. The Public Defender Office shall then immediately cease providing the services required hereunder except for any necessary winding down and transition services required under Section 5.08. In lieu of terminating this agreement, the Counties and the Public Defender Office may make financial and other adjustments to this agreement by amending it pursuant to Section 5.06 .

(b) For cause. This agreement may be terminated for cause, in whole or in part, at any time by any party for failure by the other party to substantially perform any of its duties under this agreement. "Cause" means a breach or default of any material obligation hereunder which default is incapable of cure, or which, being capable of cure, has not been cured within 30 days after receipt of notice of such default (or such additional cure period as the non-defaulting party may authorize). Should a party exercise its right to terminate this agreement under this subsection, the termination shall be accomplished in writing and specify the reason and the termination date. In the event of termination under this subsection the Public Defender Office shall submit a final agreement expenditure report containing all charges incurred through and including the termination date to the Counties no later than 30 days after the effective date of written notice of termination and the Counties shall pay the amount due within 15 days of the receipt of the final agreement expenditure report. Upon termination of this agreement, the Public Defender Office shall not incur any new obligations after the effective date of the termination, except as required under Section 5.08. The above remedies contained in this subsection are in addition to any other remedies provided by law or the terms of this agreement.

(c) For Convenience. This agreement may be cancelled or terminated by either of the parties without cause; however, the party seeking to terminate or cancel this agreement shall give written notice of its intention to do so to the other party at least 60 days prior to the effective date of cancellation or termination.

(d) Post-termination obligations. After termination of this agreement pursuant to this Section, the Public Defender Office and the Counties agree to comply with the provisions of Section 5.08 (b).

Section 5.08 Cooperation in transition of services. (a) At the beginning of the agreement. The Counties agree upon the beginning of this agreement to cooperate as requested by the Public Defender Office to effectuate the smooth and reasonable transition of services for existing clients, if applicable. This includes but is not limited to the payment for the continuation of representation by current counsel where appropriate or required by law, court rule or the State Bar of Georgia ethical standards or the facilitation of the timely transfer to the Public Defender Office of the client records.

(b) During or at the end of the agreement. The Public Defender Office agrees upon termination or expiration of this agreement, in whole or in part, for any reason to cooperate as requested by the Counties to effectuate the smooth and reasonable transition of services for existing clients. This includes but is not limited to the continuation of representation by Public Defender Office where appropriate or required by law, court rule or the State Bar of Georgia ethical standards or the facilitation of the timely transfer to the Counties of the client records. The Counties shall compensate the Public Defender for all post-termination or post-expiration services under this subsection. The Public Defender Office shall submit a monthly expenditure report containing all charges incurred during the preceding month on or before the 5th day of each month. The Counties shall pay the amount due within 15 days of the receipt of the monthly expenditure report. This subsection survives the termination or expiration of the agreement.

(c) Statutory responsibility continuation. The Public Defender Office and the Counties acknowledge that both have responsibilities for indigent defense costs under the Georgia Indigent Defense Act of 2003, as amended and that the termination or expiration of this agreement does not relieve either party of their responsibility under the law.

Section 5.09 Advance of Funds. The parties agree that advances of funds cannot remain outstanding following agreement termination or expiration and will be reclaimed. The parties agree that upon termination of this agreement all unexpended and unobligated funds held by the parties revert to the party entitled to the funds. The parties agree to reconcile expenditures against advances of funds within 30 days of termination of this agreement.

Section 5.10 Rollover of Funds. The Counties acknowledge that state agencies have a fiscal year from July 1 to June 30. The Counties agree to authorize the Georgia Public Defender Council to roll over remaining county funds from the end of one fiscal year to the start of the new fiscal year.

Section 5.11 Time. Time is of the essence.

IN WITNESS WHEREOF, the parties have each here unto affixed their signatures the day and year first written above.

ATTEST:

Lumpkin County

_____ BY: _____
Signature

_____
Title

ATTEST:

Towns County

_____ BY: _____
Signature

_____
Title

ATTEST:

Union County

_____ BY: _____
Signature

_____
Title

ATTEST:

White County

_____ BY: _____
Signature

_____
Title

ATTEST:

Circuit Public Defender

_____ BY: _____
Signature
Circuit Public
Defender

ATTEST: Consented to:

Georgia Public Defender Council

_____ BY: _____
Signature
Director

Enotah Judicial Circuit

ATTACHMENT A – Personnel Expenditures

Lumpkin County

July 1, 2016 – June 30, 2017

The County agrees to pay the Public Defender Office **$341,175.74 in** 12 monthly installments of **$28,431.31**. Installments are due to the Georgia Public Defender Council (GPDC) on the 15th of the preceding month beginning on June 15, 2016. Invoices will be sent to the following address:

_____

_____

_____

Installments will be paid directly to GPDC at the following address:

GPDC
Attn: Jason Ring
104 Marietta Street
Suite 400
Atlanta, GA 30303

The Public Defender Office agrees to use these funds for the purpose of paying the salary and benefits for county funded public defenders and assistants.

Enotah Judicial Circuit Public Defender Office
July 1, 2016 - June 30, 2017
ATTACHMENT B

STATE FUNDED - Public Defender and Assistants							
Name	#	Salaries	FICA	Retirement	Health Insurance	Unemployment	Total
			7.65% of Salary	24.69% of Salary	33.214% of Salary	$31 per Position	
CPD (Brown)	1	$ 105,526.08	$ 8,072.75	$ 26,054.39	$ 35,049.43	$ 31.00	$ 174,733.65
APD (Deacon)	1	$ 59,963.55	$ 4,587.21	$ 14,805.00	$ 19,916.29	$ 31.00	$ 99,303.06
APD (Tiger)	1	$ 60,035.73	$ 4,592.73	$ 14,822.82	$ 19,940.27	$ 31.00	$ 99,422.55
TOTAL:	**2**	**$ 225,525.36**	**$ 17,252.69**	**$ 55,682.21**	**$ 74,905.99**	**$ 93.00**	**$ 373,459.25**

STATE FUNDED - Public Defender Administrative							
Name	#	Salaries	FICA	Retirement	Health Insurance	Unemployment	Total
			7.65% of Salary	24.69% of Salary	33.214% of Salary	$31 per Position	
Admin (Shedd)	1	$ 40,258.74	$ 3,079.79	$ 9,939.88	$ 13,371.54	$ 31.00	$ 66,680.95
Investigator (Dawson)	1	$ 52,143.87	$ 3,989.01	$ 12,874.32	$ 17,319.06	$ 31.00	$ 86,357.26
Investigator (Turner)	1	$ 41,200.08	$ 3,151.81	$ 10,172.30	$ 13,684.19	$ 31.00	$ 68,239.38
TOTAL:	**3**	**$ 133,602.69**	**$ 10,220.61**	**$ 32,986.50**	**$ 44,374.80**	**$ 93.00**	**$ 221,277.60**

COUNTY FUNDED - Public Defender and Assistants							
Name	#	Salaries	FICA	Retirement	Health Insurance	Unemployment	Total
			7.65% of Salary	24.69% of Salary	33.214% of Salary	$31 per Position	
APD (Baron)	1	$ 45,532.56	$ 3,483.24	$ 11,241.99	$ 15,123.18	$ 31.00	$ 75,411.97
APD (Hunter)	1	$ 45,532.56	$ 3,483.24	$ 11,241.99	$ 15,123.18	$ 31.00	$ 75,411.97
APD (Hamilton)	1	$ 45,532.56	$ 3,483.24	$ 11,241.99	$ 15,123.18	$ 31.00	$ 75,411.97
TOTAL:	**3**	**$ 136,597.68**	**$ 10,449.72**	**$ 33,725.97**	**$ 45,369.55**	**$ 93.00**	**$ 226,235.92**

Benefits	
FICA	7.65%
Retire	24.69%
Health	33.214%
Total	**65.554%**

COUNTY FUNDED - Public Defender Administrative							
Name	#	Salaries	FICA	Retirement	Health Insurance	Unemployment	Total
			7.65% of Salary	24.69% of Salary	33.214% of Salary	$31 per Position	
Admin (Ash)	1	$ 28,296.24	$ 2,164.66	$ 6,986.34	$ 9,398.31	$ 31.00	$ 46,876.56
Admin (Williams)	1	$ 27,472.32	$ 2,101.63	$ 6,782.92	$ 9,124.66	$ 31.00	$ 45,512.52
TOTAL:	**2**	**$ 55,768.56**	**$ 4,266.29**	**$ 13,769.26**	**$ 18,522.97**	**$ 62.00**	**$ 92,389.08**

Enotah Judicial Circuit Public Defender Office
July 1, 2016 - June 30, 2017
ATTACHMENT B

COUNTY FUNDED - Office Expenditures			
		Per Month	Annual
Copying Expense	*	$ 50.00	$ 600.00
Court Reporter Services	*	$ 166.67	$ 2,000.00
Minor Equipment	*	$ 41.67	$ 500.00
Office Supplies	*	$ 500.00	$ 6,000.00
Postage	*	$ 133.33	$ 1,600.00
Printing	*	$ 83.33	$ 1,000.00
Professional Organization Dues	*	$ 125.00	$ 1,500.00
Reference Books/Law Books	*	$ 125.00	$ 1,500.00
Repairs	*	$ 166.67	$ 2,000.00
Subscriptions	*	$ 125.00	$ 1,500.00
Telephone Expense	*	$ 833.33	$ 10,000.00
Training (Outside)	*	$ 125.00	$ 1,500.00
Transcripts	*	$ 208.33	$ 2,500.00
Travel (Outside)	*	$ 41.67	$ 500.00
TOTAL:	*	**$ 2,725.00**	**$ 32,700.00**

TOTAL CIRCUIT EXPENDITURES			
		State Funded	County Funded
Public Defender and Assistants	*	$ 373,459.25	$ 226,235.92
Public Defender Administrative	*	$ 221,277.60	$ 92,389.08
7% Administrative Fee	*	$ -	$ 22,303.75
Office Expenditures	*	$ -	$ 32,700.00
PERSONNEL CONTRACT TOTAL:	*	$ -	**$ 340,928.75**
TOTAL:	*	**$ 594,736.85**	**$ 373,628.75**

COUNTY PER RATA SHARE (Personnel)			
		Annual	Monthly
Lumpkin	33.70%	$ 114,892.99	$ 9,574.42
Towns	11.80%	$ 40,229.59	$ 3,352.47
Union	24.00%	$ 81,822.90	$ 6,818.57
White	30.50%	$ 103,983.27	$ 8,665.27
TOTAL:	**100%**	**$ 340,928.75**	**$ 28,410.73**

ADMINISTRATION OF THE BUDGET (Lumpkin County):			
Lumpkin			**$18,681.44**
Towns	11.80%	17.80%	$3,324.90
Union	24.00%	36.20%	$6,762.51
White	30.50%	46.00%	$8,594.02
TOTAL:	**66.30%**	**100.00%**	**$18,681.44**

Enotah Judicial Circuit Public Defender Office
July 1, 2016 - June 30, 2017
ATTACHMENT B

COUNTY PER RATA SHARE					
County Funded % of Overall Circuit Population*					
With Additional Administration of Budget				Use of Fund Balance	Quarterly Amount
Lumpkin	33.70%	$ 125,912.89	$ 125,912.89	$ 1,228.58	$ 31,171.08
Towns	11.80%	$ 44,088.19	$ 47,413.09	$ 430.19	$ 11,745.73
Union	24.00%	$ 89,670.90	$ 96,433.41	$ 874.96	$ 23,889.61
White	30.50%	$ 113,956.77	$ 122,550.79	$ 1,111.93	$ 30,359.72
TOTAL:	**100%**	**$ 373,628.75**	**$ 392,310.18**	**$ 3,645.66**	**$ 97,166.13**

***Each county in the circuit will provide appropriate office space and will furnish the office**

****Requested staff will cover Superior Court and Juvenile Deliquency cases**

*****Office can contract with circuit for service in Probate Court, Magistrate Court, and Juvenile Deprivation cases**

Enotah Judicial Circuit Public Defender Office
July 1, 2016 - June 30, 2017
ATTACHMENT B

Increase w/ Benefits	Increase w/out Benefits	Current Salary	Proposed Salary
$ 5,000.00	$ 3,020.16	$ 42,512.40	$ 45,532.56
$ 5,000.00	$ 3,020.16	$ 42,512.40	$ 45,532.56
$ 5,000.00	$ 3,020.16	$ 42,512.40	$ 45,532.56
$ 15,000.00	**$ 9,060.49**	**$ 127,537.20**	**$ 136,597.68**