

BOARD OF COUNTY COMMISSIONERS SARPY COUNTY, NEBRASKA

RESOLUTION AUTHORIZING INTERLOCAL AGREEMENT BETWEEN THE COUNTY OF DOUGLAS, NEBRASKA, THE COUNTY OF SARPY, NEBRASKA, AND THE COUNTY OF POTTAWATTAMIE, IOWA FOR COOPERATIVE USE OF THE REGIONAL 911 BACKUP CENTER

WHEREAS, pursuant to Neb. Rev. Stat. § 23-104 (Reissue 2007), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. § 23-103 (Reissue 2007), the powers of the County as a body are exercised by the County Board; and,

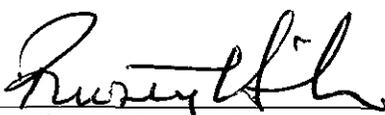
WHEREAS, an agreement has been proposed between the County of Douglas, Nebraska, the County of Sarpy, Nebraska and the County of Pottawattamie, Iowa for the cooperative use of the regional 911 backup center, a copy of which is attached to this resolution as Exhibit A; and,

WHEREAS, said agreement is in the best interests of the citizens of Sarpy County.

NOW, THEREFORE, BE IT RESOLVED by the Sarpy County Board of Commissioners that this Board hereby approves and adopts the attached Interlocal Agreement between the County of Douglas, Nebraska, the County of Sarpy, Nebraska and the County of Pottawattamie, Iowa for the cooperative use of the regional 911 backup center.

BE IT FURTHER RESOLVED that the Chair of this Board, together with the County Clerk, is hereby authorized to sign on behalf of this Board the above referenced Interlocal Agreement, a copy of which is attached, and any other related documents, the same being approved by this Board.

The above Resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 30th day of October, 2012.

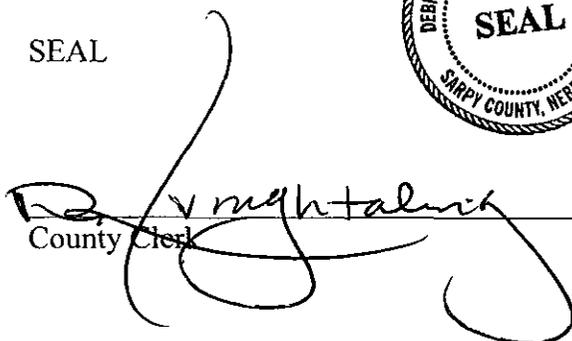


Sarpy County Board Chairman

Attest:

SEAL





County Clerk

**INTERLOCAL AGREEMENT
FOR
COOPERATIVE USE OF THE
REGIONAL 911 BACKUP CENTER**

^{20th} THIS INTERLOCAL AGREEMENT ("Agreement") is hereby made and entered into this 20th day of October, 2012, between the County of Douglas, a political subdivision organized and existing under the laws of the state of Nebraska located in Douglas County, Nebraska ("Douglas County"), and the County of Sarpy, a political subdivision organized and existing under the laws of the State of Nebraska located in Sarpy County Nebraska ("Sarpy County"), and the County Of Pottawattamie, a political subdivision organized and existing under the laws of the State of Iowa ("Pottawattamie County") and (hereinafter referred to as "County" together); hereinafter referred to collectively as "Parties" or individually as "Party.

WHEREAS, the Interlocal Cooperation Act of the State of Nebraska, being specifically § 13-801 et seq. (N.R.S. Reissue 2007), and Iowa Code Chapter 28E, Joint Exercise of Governmental Powers, enables separate political subdivisions of any state to cooperate on the basis of mutual advantage to provide for joint undertakings, services and facilities, in a manner and pursuant to forms of governmental organization that will accord with best geographic, economic, population, and other factors influencing the needs and developments of local communities;

WHEREAS, sharing in the use, cost, and configuration of the 911 Backup Center currently located on C level of the City/County Bldg. at 1819 Farnam Street, Omaha Nebraska leverages resources, space and equipment to provide a redundant, resilient backup center capable of handling 911 emergency calls in the event that there would be a technical, mechanical or building failure at any of the Parties primary 911 Centers.

WHEREAS, one of the primary public safety priorities, in the region, is to be able to share resources on a real time, on demand, basis to help mitigate an emergency that threatens the region, or a jurisdiction in the region;

WHEREAS, by providing space and sharing in equipment ensures the capability to continually operate a 911 Public Safety Answering point in the event that disaster strikes at one of the primary 911 centers in the region. The Backup Center will offer the necessary components of 911 to include, phone, radio and CAD to support operations in any configuration.

~~WHEREAS, the proper planning and configuration of resources will allow the capability to disperse the workload while the affected 911 center relocates.~~

WHEREAS, the new Backup Center will help increase multi-jurisdictional, multi-disciplinary interoperability to insure a competent level of regional prevention, communication, cooperation, and coordination for an all-hazards incident necessary to execute a wide range of incident management operations if the need would occur.

WHEREAS, with the Parties agreeing to share resources, equipment, and maintenance costs each County should realize a considerable cost savings as they maneuver through the anticipated changes in technology that will occur as Next Generation 911 ("NG 911") becomes available and is implemented.

WHEREAS, it is necessary for the Parties to enter into an agreement to set forth their respective rights, duties and obligations; and,

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND AGREEMENTS HEREIN CONTAINED, PARTIES DO HEREBY MUTUALLY UNDERTAKE, PROMISE, AND AGREE AS FOLLOWS:

1. The Parties agree that the Back-Up Center must be configured and used in compliance with their respective State Laws and this Agreement.
2. The Parties agree that an outage or a disaster situation (as defined herein) at any one of the Parties' Primary 911 Centers will give that center the priority to use the Back-Up Center for as long as it takes to restore services at the down Primary 911 Center.

3. The Parties agree that the priority of use for the Back-Up Center will be the following:
 - a. the 911 center that has an unplanned outage or experiences a disaster situation such that it would dictate the evacuation of their primary 911 center. Such a 911 Primary Center would be considered “down”;
 - b. a planned outage caused by equipment or service upgrades;
 - c. planned training and familiarization events.
4. ~~The Parties agree that if a planned event is necessary at a Primary 911 Center, the 9-1-1~~ directors will immediately coordinate with the all Parties, prior to the planned event, to ensure that the Back-Up Center is scheduled for use by the Party with the planned event. The Party seeking to schedule an event at the Back-Up Center will use best efforts to provide at least 10 calendar days’ notice to the other Parties. If a conflict would occur, for planned events at the Back-Up Center, the 911 directors will have an equal vote in determining the priority of the events and the priority of the user, if the situation is outside the planned priorities.
5. The Parties agree that Back-Up Center can be configured for primary use by a Party for training and familiarization at a maximum of once a quarter. The Parties agree that any associated expenses incurred during the activation of the Back-Up Center will be the responsibility of the user. For example, these expenses would include but not be limited to rerouting the calls and any maintenance required outside the existing maintenance plan.
6. The Parties agree that each 911 Center will be responsible for the configuration of their applications and that they will strictly adhere to any cyber security and network configuration policies that are put into place. On a semi-annual basis the 911 directors will meet and discuss any new policy or change in policy that must be put into place.
7. The Parties agree that the 911 Directors will meet on a semi-annual basis and have the authority to implement policies and procedures, outside the specifics of this Agreement, needed to successfully operate the Back-Up Center, provided that the policies and procedures do not affect cost.
8. The Parties agree that any other jurisdiction, not a Party to this Agreement, may be approved on an emergency basis to use the Back-Up Center. Such approval is contingent upon that jurisdiction agreeing in writing to pay for all service changes and expenses that are caused by their occupancy of the Back-Up Center. The 911 directors will have an equal vote in determining whether or not the other jurisdiction may use the Back-Up Center. And if any

911 Center desires to use the regional Back-Up Center and become a Party to this Agreement, they can be approved by an addendum to this Agreement.

9. The Parties agree that they will contribute the following facilities and equipment to the Back-Up Center as the bases of this sharing Agreement:

- a. Douglas County will provide approximately 5800 sq. feet of operating space which includes new floor, ceiling, lighting, newly covered walls, generators, uninterrupted power system, two liebert air handling systems, a Shortel VOIP phone system for admin phones, electrical wiring and outlets, network configuration and equipment for network connectivity. Douglas County will contract with CenturyLink for the purchase of 13 Power 911 Phone positions. In addition, Douglas County will ensure the Viper at 156th& Maple has the capability to provide redundancy for Pottawattamie County or Sarpy County. Douglas County will be responsible for 50% of the cost of rent, currently estimated to be \$65,000 a year, the hardware and software maintenance currently estimated for the phones estimate to be \$20,000 a year and the hardware and software maintenance for 5 Motorola MCC 7500 radio consoles currently estimated to be \$15,000 a year.
- b. Pottawattamie County will provide an expenditure of \$650,000. This will include 18 dispatch workstations and chairs plus computer monitors, storage equipment, network wiring and new Motorola MC 7500 console positions. In return for the expenditure of \$650,000, Pottawattamie County will not have to share in rent, equipment maintenance and software maintenance for the phone and radio consoles purchased as part of this Agreement for ten years. After Douglas County signs the contract with CenturyLink for the 13 Power Positions Pottawattamie County will also remit the sum of \$40,000 to Douglas County to offset the \$130,000 cost of the phone equipment. Pottawattamie County will also ensure the Viper located at 227 S 6th Street, Council Bluffs, Iowa 51501 will have the capability to provide redundancy for Douglas County.
- c. Sarpy County will remit the sum of \$90,000 to Douglas County to offset the \$130,000 cost of the phone equipment. Sarpy County will also be responsible for 50% of the cost of rent, currently estimated to be \$65,000 a year, the hardware and software maintenance currently estimated for the phones estimate to be to be \$20,000 a year

and the hardware and software maintenance for 5 Motorola MCC 7500 radio consoles currently estimated to be \$15,000 a year.

10. All Parties agree to share equally in the costs associated with any future upgrade in equipment or facilities that will be caused by technology changes caused by NG 911 or otherwise.

11. The Parties agree that their respective 911 Directors will review the shared costs every two years and coordinate any adjustments that may need to be made.

12. ~~Term and Termination. This Agreement shall become effective upon November 1, 2012~~ This Agreement will terminate on November 1, 2022. Prior to the natural expiration of this Agreement on November 1, 2022, any Party may give the other Parties thirty (30) days written notice of the notifying Party's desire to renegotiate this Agreement. During the pendency of these negotiations, this Agreement will remain in full force and effect, except for the provision in #9.b. concerning Pottawattamie County's exclusion from paying a share of rent, equipment maintenance and software maintenance for the phone and radio consoles purchased as part of this Agreement. Pottawattamie County's exclusion from paying expires on the tenth anniversary and this exclusion shall not extend during the pendency of negotiations.

A Party may terminate this Agreement for convenience at any time for any reason by giving the other Parties one year's written notice. Each Party shall be liable for its share of the maintenance costs and all other expenses specified herein until the effective date of the termination.

This Agreement may be terminated for a material breach not cured within a reasonable time following written notice. Such notice, to be effective must describe the breach or breaches complained of and provide a reasonable time to cure which time may not be less than 45 days following receipt, unless the cure is only the payment of money, in which case such time may be 30 days. Following a failure to cure, the breaching Party may notify the remaining Parties in writing that the Agreement is terminated as to the breaching Party effective in one year following the receipt of such notice. Each Party shall be liable for its share of the maintenance costs and all other expenses specified herein until the effective date of the termination.

Following a Party's failure to cure, the remaining Parties may elect to terminate that breaching Party's participation in the Back-Up- Center and that Party's voting power under this Agreement, while maintaining the remainder of this Agreement in full force and effect. A unanimous vote of non-breaching 911 Directors is required to remove a breaching Party. Following a failure to cure and unanimous vote to remove a breaching Party, the remaining (non-breaching) Parties shall notify the breaching Party in writing that the Agreement is terminated with respect to that breaching Party effective in one year following the removal vote. Each breaching/removed Party shall be liable for its share of the maintenance costs and all other expenses specified herein until the effective date of the termination.

The Parties herein reserve the right, by written request sent by registered mail from the notifying Party to each other Party, to amend as provided herein any provision of this Agreement. If on or after 180 days of such amendment notice, amendment negotiations fail, then a Party may notify the others in writing of that Party's intent to withdraw and that the notifying Party's participation in this Agreement is terminated following 180 days after the withdrawal notice. All such notices, provided for in this section, shall be sent by registered mail to the County Clerk, the County's Chief Administrative Officer and the County's 911 Director for each Party.

In the event of the exercise of termination pursuant to this section, the remaining Parties hereby agree that an equitable division of the continued operational costs will be negotiated.

13. Nondiscrimination. The Parties, in the performance of this Agreement, shall not discriminate in violation of Federal or State law or local ordinances. In accordance with state and federal law, the Parties shall not discriminate against any employee or applicant for employment, to be employed in the performance of this Agreement, with respect to hire, tenure, terms, conditions, or privileges of employment because of race, color, age, religion, sex, disability, national origin or similar protected status of the employee or applicant.
14. Nonwaiver. The failure of any Party to insist on strict performance of any covenants or conditions, or to exercise any option herein conferred on any one or more instances, shall not be construed as a waiver or relinquishment of any such covenant, condition, right, or option, but the same shall remain in full force and effect. For a waiver of a right or power to be

effective, it must be in writing signed by the waiving Party. An effective waiver of a right or power shall not be construed as either a future or continuing waiver of that same right or power, or the waiver of any other right or power. In addition, any act by any Party which is not obligated to do hereunder shall not be deemed to impose any obligation upon any Party to do any similar act in the future or in any way change or alter any of the provisions of this Agreement.

15. Applicable Law / Venue. This Agreement shall be construed and all of the rights, powers, and liabilities of the Parties hereunder shall be determined in accordance with the laws of the State of Nebraska. Venue for any action under this Agreement shall be in Omaha, Nebraska, Douglas County District Court or for any federal action; it shall be in Omaha, Nebraska, the United States District Court for the State of Nebraska.
16. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or otherwise unenforceable, that provision will be severed and the remainder of this Agreement will remain in full force and effect. The Parties further recognize that this Agreement shall be subject to amendments in laws and regulations and to new laws and regulations. Any law or regulation that invalidates, or is otherwise inconsistent with the terms of this Agreement or that would cause one or both Parties to be in violation of the law or regulation, shall be deemed to have superseded the terms of this Agreement, provided, however, that the Parties shall exercise their best efforts to accommodate the terms and intent of this Agreement to the greatest extent possible.
17. Third Party Rights. This Agreement does not create any third-party rights for those who are not a Party to this Agreement.
18. Assignment. This Agreement may not be assigned or transferred, whether voluntarily or by operation of law, nor may any of the duties and responsibilities be assigned or transferred, whether voluntarily or by operation of law, without prior written consent of each non-assigning Party.
19. Amendment. This Agreement may be amended only by a written, signed and dated agreement of all Parties to the Agreement.
20. Entire Agreement. This Agreement contains the whole understanding of the Parties and supersedes all prior oral or written representations and statements among the Parties.

21. Binding Effect. This Agreement shall be binding upon the successors and assigns of the Parties hereto.

22. Indemnification. Each Party will indemnify, defend and hold harmless the other Parties from any and all liability, expense, cost, attorney's fees, claim, judgment, suit and / or cause of action (whether or not meritorious), settlement, or demand for personal injury, death or damage to tangible property which may accrue against the other Party to the extent it is caused by the negligent acts or omissions of the Indemnifying Party, its officers, employees, agents, or subcontractors while performing their duties under this Agreement, provided that the other Party gives the Indemnifying Party prompt, written notice of any such claim, suit, demand or cause of action. The other Party shall cooperate in the defense or settlement negotiation of such claim, suit, demand or cause of action.

These provisions are not intended to waive a Party's sovereign immunity. Each Party's liability is governed by and limited to the extent provided by the Nebraska Political Subdivision Tort Claims Act or other applicable provisions of law.

23. Independent Contractor. It is agreed that nothing contained herein is intended or should be construed in any manner as creating or establishing a partnership or joint venture between the Parties. Any and all acts that the parties or their personnel, employees, agents, contractors, or servants, perform pursuant to the terms of this Agreement shall be undertaken as independent contractors and not as employees of the other. The Parties shall, except as provided herein, act in their individual capacities and not as agents, employees, partners, joint ventures or associates of the other. An employee or agent of one shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. None of the Parties nor its personnel, employees, agents, contractors, or servants shall be entitled to any benefits of the other. The Parties shall not provide any insurance coverage to the other or their employees including, but not limited to, workers' compensation insurance. Each Party shall pay all wages, salaries and other amounts due its employees and shall be responsible for all reports, obligations, and payments pertaining to social security taxation, income tax withholding, workers' compensation, unemployment compensation, group insurance coverage, collective bargaining agreements or any other such similar matters. Neither Party shall have any authority to bind the other by or with any contract

or agreement, nor to impose any liability upon the other. All acts and contracts of each shall be in its own name and not in the name of the other.

24. Captions. The captions used in this Agreement are for convenience and are not used in the construction of this Agreement.

25. Force Majeure. Except as may be otherwise specifically provided in this Agreement, no Party shall be in default under this Agreement if and to the extent that any failure or delay in such Party's performance of one or more of its obligations hereunder is caused by any of the following conditions, and such Party's performance of such obligation or obligations shall be excused and extended for and during the period of any such delay: act of God; fire; flood; fiber, cable, conduit or other material failures, shortages or unavailability or other delay in delivery not resulting from the responsible Party's failure to timely place orders therefore; lack of or delay in transportation; changes to any of the following: government codes, ordinances, laws, rules, regulations or restrictions, as to which either Party's compliance is necessary to carry out the terms and conditions of this Agreement; war or civil disorder; or any other cause beyond the reasonable control of such Party. The Party claiming relief under this section shall promptly notify the other Parties in writing of the existence of the event relied on and the cessation or termination of said event.

26. Joint Work Product. This Agreement is the joint work product of all Parties; accordingly, in the event of any ambiguity, no presumption shall be imposed against or in favor of any Party by reason of document preparation.

27. Dispute Resolution. Any dispute which, in the judgment of a Party to this Agreement, may affect the performance of such Party shall be reduced to writing and delivered to the other Parties. As soon as possible thereafter, the Parties authorized representatives shall schedule a face to face meeting to resolve the dispute in a mutually satisfactory manner. Prior to the institution of any formal legal proceeding, the Parties must meet in this manner to resolve the dispute. This meeting must take place within ten (10) business days after service of the written statement of dispute. During the pendency of negotiations, the Parties shall act in good faith to perform their respective duties described herein. If the Parties are unable to resolve their dispute using the process described above, the Parties may commence a legal action against the other Party in a proper court of their jurisdiction.

28. Authorized Representatives and Notice. Except as provided in paragraph 12, the following named authorized representatives for each Party are available as a point of contact for any inquiries related to the performance of this Agreement. The Parties hereto expressly agree that for purposes of notice, during the term of this Agreement and thereafter, the following named individuals shall be the authorized points of contact of the Parties:

A. For Douglas County, Nebraska

Mark S. Conrey
Chief of Communications
Douglas County Ne 68116
402-444-5800

B. For Sarpy County, Nebraska:

Larry Lavelle
Sarpy County Emergency Mgr
1210 Golden Gate Dr
Papillion 68046
402-593-2283

C. For Pottawattamie County, Iowa:

Robert Andersen
227 South 6th St
Council Bluffs IA 51501
712-328-5739.

Notice shall be in writing and shall be effective upon receipt. Delivery may be by hand, in which case a signed receipt shall be obtained, or by United States mail, registered or certified, return receipt requested or by facsimile with a signed return facsimile acknowledging receipt.

29. Confidentiality. Each Party will take reasonable precautions to protect the other Parties' Confidential Information, using at least the same standard of care as it uses to maintain the confidentiality of its own confidential information, (which in any case shall be not less than reasonable care). For the purposes of this Agreement, "Confidential Information" is any information disclosed in written, graphic, or machine-recognizable form, and is marked, designated, labeled or identified at the time of disclosure as being confidential or its equivalent. In addition and notwithstanding any provision to the contrary, Confidential Information shall not include any information that: (i) is or becomes publicly known through no wrongful act of the

receiving party; (ii) is already known to the receiving party without restriction when it is disclosed; (iii) is, or subsequently becomes, rightfully and without breach of this Agreement, in the receiving party's possession without any obligation restricting disclosure; (iv) is independently developed by the receiving party without breach of this Agreement; (v) is explicitly approved for release by written authorization of the disclosing party or (vi) receiving party may disclose information as necessary to comply with state public records laws. The receiving party may disclose Confidential Information if required by a governmental agency, by operation of law, or if necessary in any proceeding to establish rights or obligations under this Agreement, provided that the receiving party gives the disclosing party reasonable prior written notice sufficient to permit the disclosing party an opportunity to contest such disclosure.

30. Drug Free Workplace Policy. Each Party agrees that it will operate a drug-free workplace in accordance with State guidelines and has implemented a drug-free workplace policy.

31. Public Employer Contract Provision- Neb. Rev. Stat. §4-114(2). Pursuant to and in order to be in compliance with Neb. Rev. Stat. §4-114(2), each Party hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee physically performing services within the State of Nebraska.

32. Public Benefits - Neb. Rev. Stat. §§4-108- 113. No Parties an individual or sole proprietorship. Therefore, no Party is subject to the public benefits attestation and related requirements of Neb. Rev. Stat. §§4-108 – 113.

33. Unavailability of Funding. Due to possible future reductions in State and/or Federal appropriations, a Party cannot guarantee the continued availability of funding for this Agreement notwithstanding the consideration stated above. In the event funds to finance this Agreement become unavailable to a Party either in full or in part due to such reductions in appropriations, that Party will notify the remaining Parties in writing giving at least 180 days' notice. Said notice shall be delivered by certified mail return receipt requested or in person with proof of delivery.

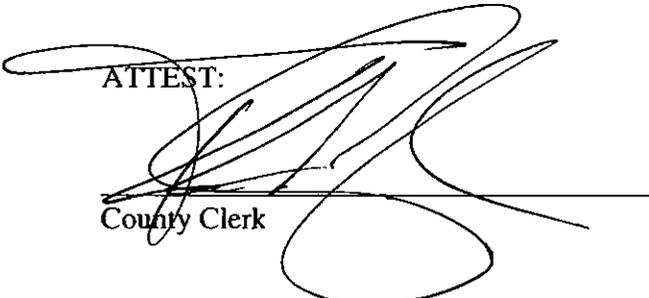
Such written notification will also serve as the notifying Party's notice of termination. The notifying Party will cease to be a Party to this Agreement as of the date of termination. Each notifying Party shall be liable for its share of the maintenance costs and all other expenses specified herein until the effective date of the termination. Each Party shall be the final authority as to the availability of its funds.

IN WITNESS WHERE OF, the parties hereto set their hands to this Agreement upon the day and year hereinafter indicated.

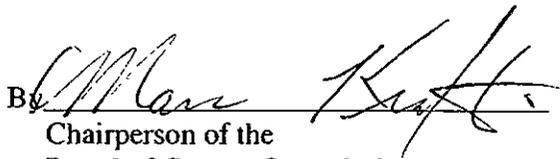
EXECUTED this 30th day of October, 2012.

COUNTY OF DOUGLAS, NEBRASKA a
political subdivision

ATTEST:



County Clerk

By 

Chairperson of the
Board of County Commissioners

APPROVED AS TO FORM:



Deputy County Attorney

EXECUTED this 30th day of October, 2012.

COUNTY OF SARPY, NEBRASKA a
political subdivision

ATTEST:

[Signature]
County Clerk



By [Signature]
Chairperson of the
Board of County Commissioners

APPROVED AS TO FORM:

[Signature]
Deputy County Attorney

EXECUTED this 30th day of October, 2012.

COUNTY OF POTTAWATTAMIE, IOWA
a political subdivision

ATTEST:

[Signature], First Deputy
County Auditor

By [Signature]
Chairperson of the
Board of County Supervisors

APPROVED AS TO FORM:

[Signature]
County Attorney

