

BOARD OF COUNTY COMMISSIONERS

DATE: January 14, 2014
AGENDA ITEM NO. 23

Consent Agenda ☐

Regular Agenda ☒

Public Hearing ☐

County Administrator's Signature:

Subject:

Infrastructure Surtax Funding Agreements with the Palm Harbor Special Fire Control District and the East Lake Tarpon Special Fire Control District

Department:

Office of Management and Budget

Staff Member Responsible:

Bill Berger, Interim Director

Recommended Action:

I RECOMMEND THE BOARD OF COUNTY COMMISSIONERS APPROVE THE ATTACHED INFRASTRUCTURE FUNDING AGREEMENTS WITH THE PALM HARBOR SPECIAL FIRE CONTROL DISTRICT AND THE EAST LAKE TARPON SPECIAL FIRE CONTROL DISTRICT AND AUTHORITY BE GRANTED FOR THE CHAIR TO SIGN AND THE CLERK TO ATTEST.

Summary Explanation/Background:

On June 6, 2013, the Board approved a request from the Palm Harbor Special Fire Control District to revise the Capital Improvement Program and schedule \$1,500,000 for equipment purchases in FY14. This change reduced the total allocation for this project by \$750,000. Previously, on June 5, 2012, the Board approved a request from the East Lake Tarpon Special Fire Control District to revise the Capital Improvement Program and schedule \$1,500,000 for equipment purchases in FY14. This change reduced the total allocation for this project by \$750,000. The approved FY2014 Budget included these changes and appropriated the necessary funds for these projects.

The attached Infrastructure Funding Agreements provide the framework for implementing the projects. The project appropriations are "not to exceed" amounts and the County's contributions will be based on the actual purchase price of the vehicles. One squad pumper and two engine pumps are to be acquired for each District under these agreements. The agreements also include requirements that the Districts develop the specifications and select the vendors for the equipment purchases, and specify the documentation required for the District to receive the County's share of funding.

Fiscal Impact/Cost/Revenue Summary:

The total amount of funding for these agreements is \$3,000,000 and is budgeted in the Capital Projects Fund for FY14 within the Public Safety Function and Other Public Safety Projects program. The Palm Harbor Fire Control Equipment is project # 001131A and the East Lake Fire Control Equipment is project #001132A.

Exhibits/Attachments Attached:

1. Agreement with Palm Harbor Special Fire Control District
2. Agreement with East Lake Tarpon Special Fire Control District

NON-PURCHASING CONTRACT REVIEW TRANSMITTAL SLIP

PROJECT: Infrastructure Surtax Funding Agreement – Palm Harbor Fire Control District	
CONTRACT NO.: NA	ESTIMATED <u>EXPENDITURE</u> / REVENUE: \$1,500,000 (Circle or underline appropriate choice above.)

In accordance with Contract Administration and its Review Process, the attached documents are submitted for your review and comment. Please complete this Non-Purchasing Contract Review Transmittal Slip below with your assessment, and **forward to the next Review Authority on the list, skipping any authority marked "N/A."** Indicate suggested changes by noting those in "Comments" column, or by revising, in RED, the appropriate section(s) of the document(s) to reflect the exact wording of the desired change(s).

OTHER SPECIFICS RELATING TO THE CONTRACT:

REVIEW SEQUENCE	DATE	INITIAL/ SIGNATURE	COMMENTS (IF ANY)	COMMENTS REVIEWED & ADDRESSED OR INCORPORATED
Originator: Jackie Trainer, OMB	8/29/13	JA		
Public Safety Services: Mike Cooksey	8/29/13	MC	None	
Risk Mgmt: Virginia Holscher	9/5/13	GH	Public Entity to Public Entity	
Finance:** Cassandra Williams	9/11/13	CBW		
OMB:** Eric Naughton-	9/13	EN	Included as an addressed change to FY14 Budget	
Legal: Dennis Long	9/13	DL		
Assistant County Administrator or Executive Director: Mark Woodard	9/17/13	CMW	Suggest including a Whereas, renegotiating the original (revised) funding commitment + the District request to accelerate in exchange for a reduction in the art.	gt 10/9/13

Please return to Jackie Trainer, OMB By Sept 19, 2013.

All inquiries should be made to Jackie Trainer, OMB ext.464-3186.

INFRASTRUCTURE SURTAX FUNDING AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into on the ____ day of _____, 2013 ("Effective Date"), by and between the Palm Harbor Special Fire Control and Rescue District, a Florida independent special district ("District") and Pinellas County, a political subdivision of the State of Florida ("County") (collectively, "Parties").

W I T N E S S E T H

WHEREAS, pursuant to Section 212.055(2), Florida Statutes, the County has levied a local government infrastructure sales surtax of one percent (1%) throughout Pinellas County for a ten-year term ending on December 31, 2019 ("Infrastructure Surtax"), to finance, plan and construct infrastructure as defined herein; and

WHEREAS, the District operates a full service fire and rescue department that supplies fire prevention, suppression and investigation, and advanced life support as part of the Pinellas County Emergency Medical Services System; and

WHEREAS, the County previously allocated the sum of \$2,250,000 to the District for its capital needs in FY2018 in the County's Capital Improvement Plan, the District has requested that the County accelerate the capital funding to provide capital funding in FY2014, and the County has agreed to provide up to \$1,500,000 in FY2014 as provided herein to replace the FY2018 funding; and

WHEREAS, the District has a current need for the purchase of fire suppression vehicles, including a squad truck for Squad 65 and two engine pumpers for Engine 66 and a reserve engine, which qualify as infrastructure as defined in the Infrastructure Surtax statute, and the County is willing to contribute to the cost from the County's share of the Infrastructure Surtax funds budgeted in the County's FY14 capital project fund, as provided herein.

NOW, THEREFORE, for and in consideration of the foregoing recitals (all of which are hereby adopted as an integral part of this Agreement), the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **TERM.** The term of the Agreement shall commence on the Effective Date of this Agreement and continue in full force and effect until September 30, 2014, unless otherwise terminated or extended as provided herein.
2. **COUNTY FUNDING AND RESPONSIBILITIES.** The County agrees to contribute the sum of not-to-exceed \$500,000 per vehicle to the District to be utilized for the purchase of the vehicles and related equipment authorized herein, upon receipt of a payment request from the District, and in accordance with the following:

- A. The District shall be responsible for developing the specifications and selecting vendor(s) for the Squad 65 squad truck and Engine 66 and reserve engine pumpers authorized herein; provided that prior to authorizing the purchase of the vehicles, the District shall submit the final specifications and purchase price to the County for review and approval of the vehicle and equipment costs eligible for funding pursuant to this Agreement, which approval shall not be unreasonably withheld. In the event that the County identifies vehicle or equipment costs that are not approved by the County, the County shall immediately notify the District of the determination.
- B. The County shall contribute the sum equal to the actual purchase price of the equipped vehicles approved as provided in Section 2.A. herein, but not exceeding the sum of \$500,000 per vehicle, for the purchase of the vehicles as provided in this Section 2. The District will provide either: (i) evidence of its obligation to purchase the vehicles such as a purchase order, contract, or other written evidence of a legally binding obligation acceptable to the County in its sole discretion; or (ii) evidence that the District has paid the vendor for the vehicle(s), and the County will pay or reimburse the District the sums due in accordance with this Section 2. To the extent that the County pays the District based on documentation provided in accordance with (i) above, the District shall provide to the County evidence that it paid the vendor in full for the costs approved by the County in accordance with Section 2.A. within ten (10) days of payment to the vendor.
- C. The \$500,000 per vehicle contributed by the County shall constitute the maximum funding provided by the County for acquisition of vehicles, and the District shall be solely responsible for any costs in excess of this sum, or for any costs incurred by the District related to the vehicles and related equipment not approved by the County in accordance with Section 2.A.
- D. The District shall submit payment requests for funds as provided herein to the address set out in Section 9, along with such documentation as required herein, which sums shall be paid in accordance with Section 218.70 et seq., Florida Statutes, "The Local Government Prompt Payment Act."

3. DISTRICT'S USE OF FUNDING AND RESPONSIBILITIES.

- A. The District agrees to utilize the funding provided by the County herein for the purchase and/or acquisition of a squad truck for Squad 65 and two engine pumpers for Engine 66 and as a reserve engine, and for no other purpose unless authorized by written amendment to this Agreement. The Parties acknowledge that the County is not a party to the purchase of the vehicles and assumes no responsibility, obligation, or liability of any party relative to the purchase of the vehicles as provided herein.
- B. The District shall be solely responsible for all costs incurred for the operation, insurance, maintenance, upkeep, repair and replacement of the vehicles.

4. **COMPLIANCE WITH LAWS.** The Parties shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and the orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "Laws"), including but not limited to public records laws.
5. **INDEMNIFICATION.** The District shall defend, indemnify and pay the cost of defense, and hold harmless the County from all damages, suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the Agreement or the purchase or operation of the vehicles, or on account of any act or omission, neglect or misconduct of the District; or by, or on account of, any claim or amounts received under the Workers' Compensation Law or of any other laws, by-laws, ordinance, order or decree. This paragraph shall not be interpreted to waive the District's limits of liability under Section 768.28, Florida Statutes.
6. **DUE AUTHORITY.** Each party to this Agreement represents and warrants to the other party that: (i) it has the full right and authority and has obtained all necessary approvals to enter into this Agreement; (ii) each person executing this Agreement on behalf of the party is authorized to do so; and (iii) this Agreement constitutes a valid and legally binding obligation of the party, enforceable in accordance with its terms.
7. **ASSIGNMENT.** No party to this Agreement may assign any rights or delegate any duties under this Agreement without the prior written consent of the other party.
8. **NOTICES.** Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be given by either party shall be in writing and shall be deemed given and delivered on the date delivered in person to the authorized representative of the recipient provided below, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, or return receipt requested, to the authorized representative of the recipient provided below, or upon the date delivered by overnight courier (signature required) to the authorized representative of the recipient provided below:

TO THE COUNTY:

Jackie Trainer
Pinellas County Office of Mgt & Budget
14 S. Ft. Harrison Ave.
Clearwater, FL 33756

TO THE DISTRICT:

James Angle
Palm Harbor Fire Rescue
250 West Lake Blvd
Palm Harbor, FL 34684

Either party may change its authorized representative or address for receipt of notices by providing the other party with written notice of such change. The change shall become effective ten (10) days after receipt by the non-changing party of the written notice of change.

9. **WAIVER.** No act of omission or commission of either party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be effected only through a duly executed written modification to this Agreement.
10. **TERMINATION.**
- A. The County reserves the right to terminate this Agreement, without cause, by giving thirty (30) days prior written notice to the District of its intention to terminate pursuant to this provision.
- B. Failure of the District to comply with any of the provisions of this Agreement shall be considered a material breach hereof and shall be cause for immediate termination of the Agreement at the discretion of the County upon written notice to the District.
- C. In the event funds are not budgeted and appropriated by the County in any fiscal year for purposes described herein, then the County shall notify the District of such occurrence, and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the County.
11. **BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.
12. **NO THIRD PARTY BENEFICIARY.** Persons not a party to this Agreement may not claim any benefit hereunder or as third party beneficiaries hereto.
13. **HEADINGS.** The paragraph headings are inserted herein for convenience and reference only and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.
14. **NO CONSTRUCTION AGAINST PREPARER OF AGREEMENT.** This Agreement has been prepared by the County and reviewed by the District and its professional advisors. The District, County, and County's professional advisors believe that this Agreement expresses their understanding and that it should not be interpreted in favor of either the District or County or against the District or County merely because of their efforts in preparing it.
15. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties and no change will be valid unless made by supplemental written agreement executed by the Parties.
16. **SEVERABILITY.** Should any paragraph or portion of any paragraph of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other paragraph or portion of this Agreement.

17. **GOVERNING LAW.** This Agreement shall be construed in accordance with the Laws of the State of Florida.

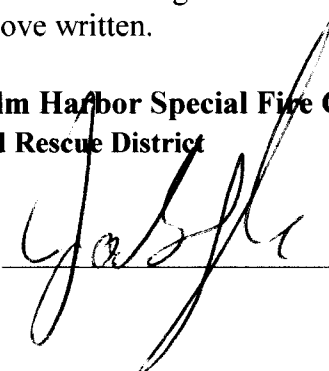
(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date first above written.

**PINELLAS COUNTY, FLORIDA, by and
through its Board of County Commissioners**

By: _____
Chairman

**Palm Harbor Special Fire Control
and Rescue District**

By:  _____

ATTEST:
KEN BURKE, CLERK OF COURT

By: _____
Deputy Clerk

APPROVED AS TO FORM

By:  _____
Office of the County Attorney

NON-PURCHASING CONTRACT REVIEW TRANSMITTAL SLIP

PROJECT: Infrastructure Surtax Funding Agreement – East Lake Tarpon Fire Control District	
CONTRACT NO.: NA	ESTIMATED <u>EXPENDITURE</u> / REVENUE: \$1,500,000 (Circle or underline appropriate choice above.)

In accordance with Contract Administration and its Review Process, the attached documents are submitted for your review and comment. Please complete this Non-Purchasing Contract Review Transmittal Slip below with your assessment, and **forward to the next Review Authority on the list, skipping any authority marked "N/A."** Indicate suggested changes by noting those in "Comments" column, or by revising, in RED, the appropriate section(s) of the document(s) to reflect the exact wording of the desired change(s).

OTHER SPECIFICS RELATING TO THE CONTRACT:

See proposed revisions from East Lake Tarpon Fire Rescue.

REVIEW SEQUENCE	DATE	INITIAL/ SIGNATURE	COMMENTS (IF ANY)	COMMENTS REVIEWED & ADDRESSED OR INCORPORATED
Originator: Jackie Trainer, OMB	8/29/13	JT		
Public Safety Services: Mike Cooksey	8/29/13	MC	None	9/4/13 OK with East Lake's proposed revisions. JT
Risk Mgmt: Virginia Holscher	9/5/13	VH	Public Entity to Public Entity	
Finance:** Cassandra Williams	9/13	CM	Funded in FY14 CIP	
OMB:** Eric Naughton-	9/11/13	EN		
Legal: Dennis Long	9/13/13	DL		
Assistant County Administrator or Executive Director: Mark Woodard	9/17/13	MW	OMB - Is this the change approved by the BCC in 2012? Include a Whereas memorializing the original funding a revised request from the District (see PTH item)	9/10/13

Please return to Jackie Trainer, OMB By Sept 19, 2013.

All inquiries should be made to Jackie Trainer, OMB ext.464-3186.

INFRASTRUCTURE SURTAX FUNDING AGREEMENT

THIS AGREEMENT ("Agreement") is made and entered into on the ____ day of _____, 2013 ("Effective Date"), by and between the East Lake Tarpon Special Fire Control District, a Florida independent special district ("District") and Pinellas County, a political subdivision of the State of Florida ("County") (collectively, "Parties").

W I T N E S S E T H

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WHEREAS, the District operates a full service fire and rescue department that supplies fire prevention, suppression and investigation, and advanced life support as part of the Pinellas County Emergency Medical Services System; and

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WHEREAS, the District has a current need for the purchase of fire suppression vehicles, including a squad pumper for Squad 57 and two engine pumpers for Engines 57 and 58, which qualify as infrastructure as defined in the Infrastructure Surtax statute, and the County is willing to contribute to the cost from the County's share of the Infrastructure Surtax funds budgeted in the County's FY14 capital project fund, as provided herein.

NOW, THEREFORE, for and in consideration of the foregoing recitals (all of which are hereby adopted as an integral part of this Agreement), the mutual promises contained herein and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

1. **TERM.** The term of the Agreement shall commence on the Effective Date of this Agreement and continue in full force and effect until September 30, 2014, unless otherwise terminated or extended as provided herein.
2. **COUNTY FUNDING AND RESPONSIBILITIES.** The County agrees to contribute the sum of not-to-exceed \$600,000 for the squad pumper and \$450,000 each for the two engine pumpers to the District to be utilized for the purchase of the vehicles and related equipment authorized herein, upon receipt of a payment request from the District, and in accordance with the following:

- A. The District shall be responsible for developing the specifications and selecting vendor(s) for the Squad 57 squad pumper and Engine 57 and 58 engine pumpers authorized herein; provided that prior to authorizing the purchase of the vehicles, the District shall submit the final specifications and purchase price to the County for review and approval of the vehicle and equipment costs eligible for funding pursuant to this Agreement, which approval shall not be unreasonably withheld. In the event that the County identifies vehicle or equipment costs that are not approved by the County, the County shall immediately notify the District of the determination.
- B. The County shall contribute the sum equal to the actual purchase price of the equipped vehicles approved as provided in Section 2.A. herein, but not exceeding the sum of \$600,000 for the squad pumper and \$450,000 each for the two engine pumpers for the purchase of the vehicles as provided in this Section 2. The District will provide either: (i) evidence of its obligation to purchase the vehicles such as a purchase order, contract, or other written evidence of a legally binding obligation acceptable to the County in its sole discretion; or (ii) evidence that the District has paid the vendor for the vehicle(s), and the County will pay or reimburse the District the sums due in accordance with this Section 2. To the extent that the County pays the District based on documentation provided in accordance with (i) above, the District shall provide to the County evidence that it paid the vendor in full for the costs approved by the County in accordance with Section 2.A. within ten (10) days of payment to the vendor.
- C. The \$600,000 for the squad pumper and \$450,000 each for the two engine pumpers contributed by the County shall constitute the maximum funding provided by the County for acquisition of vehicles, and the District shall be solely responsible for any costs in excess of this sum, or for any costs incurred by the District related to the vehicles and related equipment not approved by the County in accordance with Section 2.A.
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B. The District shall be solely responsible for all costs incurred for the operation, insurance, maintenance, upkeep, repair and replacement of the vehicles.

4. **COMPLIANCE WITH LAWS.** The Parties shall comply with all applicable federal, state, and local laws, ordinances, rules and regulations, the federal and state constitutions, and the orders and decrees of any lawful authorities having jurisdiction over the matter at issue (collectively, "Laws"), including but not limited to public records laws.
5. **INDEMNIFICATION.** The District shall defend, indemnify and pay the cost of defense, and hold harmless the County from all damages, suits, actions or claims of any character brought on account of any injuries or damages received or sustained by any person, persons, or property, or in any way relating to or arising from the Agreement or the purchase or operation of the vehicles, or on account of any act or omission, neglect or misconduct of the District; or by, or on account of, any claim or amounts received under the Workers' Compensation Law or of any other laws, by-laws, ordinance, order or decree. This paragraph shall not be interpreted to waive the District's limits of liability under Section 768.28, Florida Statutes.
6. **DUE AUTHORITY.** Each party to this Agreement represents and warrants to the other party that: (i) it has the full right and authority and has obtained all necessary approvals to enter into this Agreement; (ii) each person executing this Agreement on behalf of the party is authorized to do so; and (iii) this Agreement constitutes a valid and legally binding obligation of the party, enforceable in accordance with its terms.
7. **ASSIGNMENT.** No party to this Agreement may assign any rights or delegate any duties under this Agreement without the prior written consent of the other party.
8. **NOTICES.** Unless and to the extent otherwise provided in this Agreement, all notices, demands, requests for approvals and other communications which are required to be given by either party shall be in writing and shall be deemed given and delivered on the date delivered in person to the authorized representative of the recipient provided below, upon the expiration of five (5) days following the date mailed by registered or certified mail, postage prepaid, or return receipt requested, to the authorized representative of the recipient provided below, or upon the date delivered by overnight courier (signature required) to the authorized representative of the recipient provided below:

TO THE COUNTY:

Jackie Trainer
Pinellas County Office of Mgt & Budget
14 S. Ft. Harrison Ave.
Clearwater, FL 33756

TO THE DISTRICT:

Tom Jamison
East Lake Fire Rescue
3375 Tarpon Lake Blvd.
Palm Harbor, FL 34685

Either party may change its authorized representative or address for receipt of notices by providing the other party with written notice of such change. The change shall become

effective ten (10) days after receipt by the non-changing party of the written notice of change.

9. **WAIVER.** No act of omission or commission of either party, including without limitation, any failure to exercise any right, remedy, or recourse, shall be deemed to be a waiver, release, or modification of the same. Such a waiver, release, or modification is to be effected only through a duly executed written modification to this Agreement.

10. **TERMINATION.**

A. The County reserves the right to terminate this Agreement, without cause, by giving thirty (30) days prior written notice to the District of its intention to terminate pursuant to this provision.

B. Failure of the District to comply with any of the provisions of this Agreement shall be considered a material breach hereof and shall be cause for immediate termination of the Agreement at the discretion of the County upon written notice to the District.

C. In the event funds are not budgeted and appropriated by the County in any fiscal year for purposes described herein, then the County shall notify the District of such occurrence, and this Agreement shall terminate on the last day of the current fiscal period without penalty or expense to the County.

11. **BINDING EFFECT.** This Agreement shall inure to the benefit of and be binding upon the Parties' respective successors and assigns.

12. **NO THIRD PARTY BENEFICIARY.** Persons not a party to this Agreement may not claim any benefit hereunder or as third party beneficiaries hereto.

13. **HEADINGS.** The paragraph headings are inserted herein for convenience and reference only and in no way define, limit, or otherwise describe the scope or intent of any provisions hereof.

14. **NO CONSTRUCTION AGAINST PREPARER OF AGREEMENT.** This Agreement has been prepared by the County and reviewed by the District and its professional advisors. The District, County, and County's professional advisors believe that this Agreement expresses their understanding and that it should not be interpreted in favor of either the District or County or against the District or County merely because of their efforts in preparing it.

15. **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the Parties and no change will be valid unless made by supplemental written agreement executed by the Parties.

16. **SEVERABILITY.** Should any paragraph or portion of any paragraph of this Agreement be rendered void, invalid or unenforceable by any court of law for any reason, such determination shall not render void, invalid or unenforceable any other paragraph or portion of this Agreement.
17. **GOVERNING LAW.** This Agreement shall be construed in accordance with the Laws of the State of Florida.

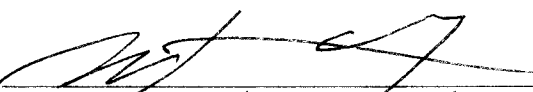
(SIGNATURE PAGE FOLLOWS)

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives on the date first above written.

PINELLAS COUNTY, FLORIDA, by and through its Board of County Commissioners

East Lake Tarpon Special Fire Control District

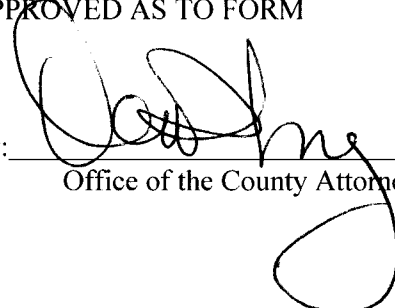
By: _____
Chairman

✓ By: 
Mark Weinkrantz
Chairman

ATTEST:
KEN BURKE, CLERK OF COURT

By: _____
Deputy Clerk

APPROVED AS TO FORM

By: 
Office of the County Attorney