

The DeKalb County Commission met in session on Wednesday, January 12, 2011 due to a snow event on Tuesday, January 11, 2011 (regular scheduled meeting date.) Those present were Ricky Harcrow, Ed Nix, Chris Kuykendall and Dewitt Jackson. Those absent were none.

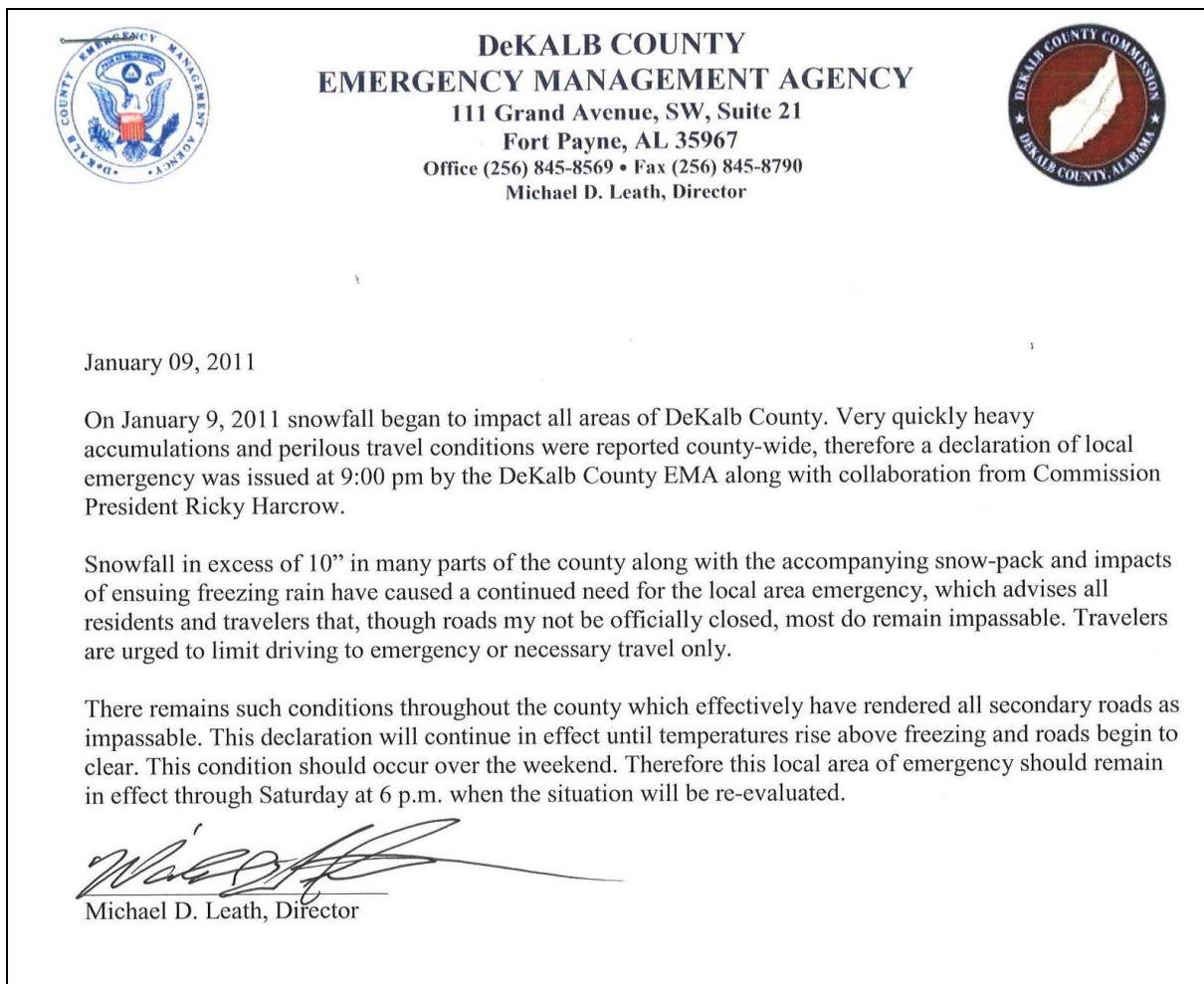
Note: This meeting was originally scheduled for Tuesday, January 11; however, due to over 7 inches of snow on January 10, the meeting was rescheduled to Wednesday, January 12.

The meeting was called to order by President Harcrow with a moment of silence for the victims of the shooting in Arizona. Dewitt Jackson led the invocation and Chris Kuykendall leading the Pledge.

It was moved by Mr. Nix, seconded by Mr. Jackson, all members voting affirmatively, motion carrying to dispense with the reading of the minutes and to accept them as presented in written format.

EMA Director Mike Leath addressed the Commission requesting the Commission to ratify the Declaration of Emergency declared on Sunday, January 9, 2011 at 9:00 p.m. at the request of Mr. Harcrow and the municipalities in the County. After numerous accidents on County Roads Sunday night, all roads were declared impassable and are still considered dangerous and impassable today.

It was moved by Mr. Jackson, seconded by Mr. Nix, all members voting affirmatively, motion carrying to ratify the following Declaration of Local Emergency:



County Road Superintendent Tom Broyles addressed the Commission as follows:

- 1) Snow/Ice: The County has an agreement with ALDOT to assist them in case of a large snowfall in clearing State routes inside the limits of the County. County crews using all nine (9) County motor graders started shortly after midnight Sunday night clearing snow off State Highways and I-59. They worked several hours and got up by sunup Monday morning and began working again until about 9:00 Monday night and worked until about lunch yesterday on state routes. Every

State road was worked with the exception of Hwy 35 which was worked by the State and contractors. Crews have now fell back to working on County Roads. Some backhoes were used to clear mountain gaps. Motor graders can be used effectively on asphalt surfaces; however, the blades can damage tar/gravel roads and reflectors and elevated striping on some roads. Also dirt roads are so narrow there is nowhere to put the snow. All of the bridges/overpasses are still icy and slick and there is not enough chips in the quarry to put on all of the County bridges/overpasses. All of the asphalt roads in the County should be cleared by today.

- 2) Truck Auction: Mr. Broyles requested the Commission to authorize him to obtain quotes on minimum guarantees for the sale of the 14 Mack Trucks purchased last year.

It was moved by Mr. Jackson, seconded by Mr. Kuykendall, all members voting affirmatively, motion carrying to authorize Mr. Broyles to solicit guarantees to Auction Companies for the sale of Mack trucks.

- 3) Truck: One 4WD Truck was damaged in the freezing rain episode a couple weeks ago and is considered a total loss. He asked the Commission to authorize purchase of a new vehicle off the State Bid List. Those vehicles can be purchased for less than \$18,000.

It was moved by Mr. Nix, seconded by Mr. Kuykendall, all members voting affirmatively, motion carrying to authorize Tom Broyles, Road Superintendent to replace a 4WD truck that was damaged if not repairable.

Wade Hill addressed the Commission on behalf of the Sheriff's Office requesting the Commission to award bids for the purchase of vehicles.

Carl Gregory bid \$21,885 – (3) Crown Vic's
Woodson Jones bid \$24,806.40 – (3) Chevrolet Caprice

He also asked the Commission to award bids for an SUV vehicle for the Sheriff to replace his current one to Woodson Jones Chevrolet for Option 1 \$40,456.75 (less \$1,000 discount) for a total of \$39,456.75 for a 4WD Tahoe.

It was moved by Mr. Nix, seconded by Mr. Jackson, all members voting affirmatively, motion carrying to approve the bids for Patrol Cars and Sheriff Vehicle. Note: The Sheriff's vehicle will be purchased from the Pistol Permit Fund through a short-term loan. The three (3) patrol vehicles will be purchased from other Sheriff funds (federal inmate funds held by the Sheriff).

Mitch Dendy addressed the Commission requesting that four correction officers attend Jail School in Anniston, January 18-25.

It was moved by Mr. Kuykendall, seconded by Mr. Jackson, all members voting affirmatively, motion carrying to send four employees to jail management school to be paid from Special Jail Funds.

Federal Inmate Agreement:

Mr Harcrow: The next and final item on the agenda is the Federal Inmate Agreement. Over the past several months, we've worked on this agreement. Matt and the Attorney's and all parties involved. We came to a reconciliation of it and we presented that to the Commissioner's and the Attorney, he's not here today, but I talked to him Friday, Matt has it and so we're going to present that to you Gentlemen. Look it over, give you the opportunity to speak to it, pass it. This is up to you all but you know Matt has done a lot of work, the Sheriff's office has done a lot of work, our Attorneys have and they are comfortable with it, so I set that before you.

Mr. Kuykendall: I have one question I intended to ask our Counselor but he's not here today. I'm a little uncomfortable addressing an agreement of this magnitude without his presence but that's neither here nor there. I didn't personally have a chance to ask him, but I've read the agreement quite carefully. I want to know in your opinion, does this agreement meet the requirements of both parties as set forth in the December 8, 2010 Attorney General's opinion concerning the contract and the disposition of the funds?

Mr. Harcrow: It does Mr. Kuykendall. We made that clearly determined and he understood that and he assured us that he does.

Mr. Kuykendall: I'd like that so noted in our minutes, if we could.

Mr. Harcrow: Let the record reflect such.

AG Opinion shown below:



STATE OF ALABAMA
OFFICE OF THE ATTORNEY GENERAL

December 8, 2010

TROY KING
ATTORNEY GENERAL

500 DEXTER AVENUE
MONTGOMERY, AL 36130
(334) 242-7300
WWW.AGO.STATE.AL.US

Honorable Charles E. Mauney
Attorney for DeKalb County
408 Gault Avenue South
Fort Payne, Alabama 35967

Contracts – Sheriffs – Prisons and
Prisoners – County Commissions –
Jails – Counties

Both the county commission and the
sheriff should be parties to any
contract to house federal prisoners in
the county jail.

Monies collected under the contract
should be deposited in the county
general fund.

Dear Mr. Mauney:

This opinion of the Attorney General is issued in response to your request on behalf of the DeKalb County Commission.

QUESTIONS

(1) Should the county commission be a party to a contract to authorize and provide for the housing of federal prisoners in the county jail?

(2) Should any monies paid to the county pursuant to such an agreement be deposited into the county general fund, even if all proceeds are to be utilized by the sheriff in the operation of the jail?

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FACTS AND ANALYSIS

Your request states that federal prisoners are currently housed in the DeKalb County jail pursuant to an agreement between the sheriff and the U.S. Marshal's Office. The contract is due to expire soon, and negotiations are under way to execute a new contract.

This Office has addressed the role of the county commission in a contract to house municipal prisoners, concluding that the county, in addition to the sheriff, should be a party to such a contract with a municipality. Opinion to Honorable James B. Johnson, Sheriff, Baldwin County Sheriff's Office, dated November 13, 2002, A.G. No. 2003-032. That opinion relied on an opinion to Honorable Iva Nelson, City Clerk, City of Gadsden, dated June 5, 2002, A.G. No. 2002-248. The *Johnson* opinion reasoned as follows:

The opinion to Ms. Nelson stated that the county commission should be a party to a contract to house municipal prisoners in the county jail because of its role and authority to direct, control, and maintain the property of the county. *Id.* at 3. The sheriff should also be a party to the contract because of his or her authority to control the county jail. *Id.* at 3.

Johnson, at 2. This same analysis applies to a contract to house federal prisoners.

Section 36-22-17 of the Code of Alabama governs the disposition of monies received by the sheriff. It provides as follows:

All fees, commissions, percentages, allowances, charges and court costs heretofore collectible for the use of the sheriff and his deputies, excluding the allowances and amounts received for feeding prisoners, which the various sheriffs of the various counties shall be entitled to keep and retain, except in those instances where the county commission directs such allowances and amounts to be paid into the general fund of the county by proper resolution passed by said county commission of said county, shall be

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collected and paid into the general fund of the county.

ALA. CODE § 36-22-17 (2001) (emphasis added).

This Office has stated that this section requires that fees collected by the sheriff for providing copies of Uniform Incident/Offense Reports as public records must be paid into the county general fund. Opinion to Honorable Lucius D. Amerson, Sheriff, Macon County, dated August 14, 1981, A.G. No. 81-00517. Monies collected under a contract to house federal prisoners should be similarly deposited.

CONCLUSION

Both the county commission and the sheriff should be parties to any contract to house federal prisoners in the county jail.

Monies collected under the contract should be deposited in the county general fund.

I hope this opinion answers your questions. If this Office can be of further assistance, please contact Ward Beeson of my staff.

Sincerely,

TROY KING
Attorney General
By:



BRENDA F. SMITH
Chief, Opinions Division

Mr. Jackson: What I've looked over and what I've heard from you all, and it all looks good to me. I'm kinda excited that we've got to this point where we're going to all work together and I know like we said awhile ago, all our heads work together to make the County a better place. I appreciate what you all have done. I appreciate Matt, Charles Mauney, Ricky Harcrow. You all getting all this together. I'm good with it.

Mr. Kuykendall: One last question, I'm sorry. What would be the date that would be utilized?

Mr. Sharp: It's not knowing when this thing was going to come before the Commission, I wasn't sure. We can either do it on today's date if that's good with the Sheriff's Office, or the 31st.

Mr. Kuykendall: We know what the funds were as of the 31st. We don't know what the funds are as of today. I would recommend we use the 31st of December.

Mr. Hill: I would recommend we go with the 31st and then reconcile one more month and then everybody knows exactly. That's what Matt and I had talked about.

Mr. Kuykendall: That sounds fair and reasonable.

Mr. Hill: Because there has been a little money coming in and a little money going out.

Mr. Sharp: You're talking about the 31st?

Mr. Hill: January.

Mr. Sharp: January.

Mr. Kuykendall: I'm good with that if you are.

Mr. Harcrow: Thank you Mr. Kuykendall.

Mr. Nix: Mr. Chairman, I'd like to say that I appreciate your efforts and also the efforts of the Sheriff's Department, Wade and Sheriff Harris. This is something that has been long drawn out and so unnecessary when you came in and I appreciate your effort in going and sitting down with the Sheriff and you all working it out like grown men and understandable. It's a problem with me when you got people elected by the people, 5 of us up here and another man that's elected by the people and can't sit down and come up with an agreement. I've got a problem with that, a bad problem. I commend you Chairman Harcrow and Jimmy our Sheriff and anybody who had any dealings with this. In my going over this, I am completely satisfied with it. Sheriff, are you satisfied and your Attorney?

Sheriff Harris: Yes, we're satisfied.

Mr. Nix: And Ricky, I'm sure you are. I believe we talked about it a little bit and I am also on that, so I'm very appreciative in what you've done you two.

Mr. Harcrow: Well, Gentlemen in hearing your statements, do I hear a motion that we adopt this resolution.

It was moved by Mr. Nix, seconded by Mr. Jackson, all members voting affirmatively, motion carrying unanimously, to adopt the following resolution authorizing the following Federal Inmate Agreement:

STATE OF ALABAMA
County of DeKalb

**MEMORANDUM OF AGREEMENT BETWEEN
THE DEKALB COUNTY COMMISSION
AND DEKALB COUNTY SHERIFF JIMMY HARRIS
AND RESOLUTION ADOPTING AGREEMENT**

THIS AGREEMENT is entered into between the DeKalb County Commission (hereinafter referred to as Commission) and DeKalb County Sheriff Jimmy Harris (hereinafter referred to as Sheriff).

WHEREAS, in 2007 the Sheriff entered into a contract with the United States Marshals Service, more specifically identified as Intergovernmental Agreement No. 19-07-0052, and modified on May 20, 2008, to add the Eastern District of Tennessee, and again on May 8, 2009, to add Immigrations and Customs Enforcement ("ICE") (which original contract and amendments thereto shall hereinafter be referred to as "Agreements"); and

WHEREAS, the Commission and the Sheriff have agreed on the division of the income which is to be derived from the Agreements to house federal inmates; it is

THEREFORE MUTUALLY AGREED that in consideration of the mutual covenants and promises referred to herein and in further consideration of the execution by the parties hereto of the Agreements, which are incorporated herein by reference, and made a part hereof as if set out verbatim herein, and for other good and valuable consideration, the receipt of which is specifically and directly acknowledged by both parties, the Commission and Sheriff agree to, and promise and covenant to be bound by, the following Resolution:

RESOLUTION OF THE DEKALB COUNTY COMMISSION

The DeKalb County Commission and the DeKalb County Sheriff are hereby entering into this agreement regarding the housing of federal inmates, federal proceeds derived therefrom and matters related thereto. This agreement includes but is not limited to matters related to the receipt and distribution of all revenues received from the Federal Government for the housing of federal inmates. This agreement binds the parties to a distribution of all revenues collected for the detention and housing of federal inmates under the above referenced agreements and any future agreements between the County and the Federal Government. The DeKalb County Commission, having heretofore constructed a quality detention center, and the DeKalb County Sheriff, Jimmy Harris, having, through his efforts and relationships with the United States Marshals Service, made the financial arrangements with the federal government for this endeavor possible, both parties anticipate that this endeavor will benefit all citizens of DeKalb County. The DeKalb County Commission manages the local governmental operations of DeKalb County and the Sheriff, Jimmy Harris, manages the operation of the DeKalb County Detention Center. Since both parties provide a different but essential role in their respective positions, it is proper that both parties should reap a financial benefit to enhance their respective operations. For this reason, the DeKalb County Commission and the DeKalb County Sheriff agree to the following:

1. All proceeds (including housing, transportation or other) collected from the housing of federal inmates in the DeKalb County Detention Center shall be deposited into the DeKalb County General Treasury account and directed immediately to a special fund, held by the County, called the Federal Inmate Fund, and such proceeds shall be used only for expenses as noted in this agreement. After deposit, such proceeds shall be distributed between the Commission and the Sheriff as follows:
 - a. First, all expenses directly attributable to the housing of federal inmates shall be paid from these proceeds as they are incurred. These expenses shall include, but not be limited to: salaries and benefits for additional personnel currently paid from the Federal Inmate Fund (or their replacements), training for said personnel, and any other costs that are directly attributable to the operation of housing federal inmates, as well as the expenses of the additional deputy sheriff position currently held by Sethe Greene (or his replacement), including wages, overtime, fringe benefits, uniforms and fuel for vehicle.
 - b. Second, \$30,000 shall be transferred to the Commission's Jail Operating Fund as part of the normal operating budget of the County Detention Center.
 - c. Third, expenses incurred over and above the monthly detention center operating budget shall be transferred to the Jail Operating Fund on a monthly basis. It is the intent of this section to only transfer the amount necessary to bring cash deficits in the Jail Operating Fund to a zero balance after all monthly appropriations, revenues and expenses have been accounted for and recorded. As long as there is a cash balance in the Jail Operating Fund at the end of each month, no additional amounts under this section shall be transferred to the Jail Operating Fund.

d. Fourth, after the payments required under paragraphs (a), (b), and (c), the remaining proceeds, if any, shall be divided equally as follows:

i. Fifty percent (50%) of the proceeds shall be transferred into a special account entitled "DeKalb County Sheriff's Fund – Federal Detainee Fund" solely in the name and direct control of the Sheriff to be expended in his sole and absolute discretion for law enforcement. Any funds in the DeKalb County Sheriff's Fund – Federal Detainee Fund that are not expended at the end of a fiscal year shall be carried over and added to the DeKalb County Sheriff's Fund – Federal Detainee Fund for the next fiscal year.

1. The Sheriff understands and agrees that he shall pay, from his 50% of the federal funds received by him, pursuant to this agreement, all additional future employee costs for any and all additional employee positions hired and/or created by him.

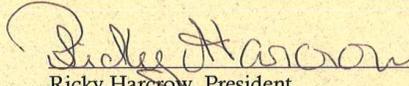
ii. Fifty percent (50%) of the proceeds shall be transferred by the County into a special fund entitled "County Law Enforcement/Jail Fund." Proceeds accumulated in this fund shall be used for any expenditure associated with the law enforcement functions of the Sheriff Office and the County Detention Center at the direction of the County Commission. After payment of interfund loans between the General Fund and other Sheriff and/or Jail Funds held by the County, at least 25% of these proceeds shall be set aside for the capital needs of the DeKalb County Detention Center. Any funds in the County Law Enforcement/Jail Fund that are not expended at the end of a fiscal year shall be carried over and added to the County Law Enforcement/Jail Fund for the next fiscal year.

iii. The interfund loan payment of \$1,000 currently being paid from the Special Jail Fund back to the General Fund shall cease and be redirected to other Sheriff/Detention Center expenditures upon execution of this agreement and the first receipt of Federal Inmate Funds by the County under this agreement.

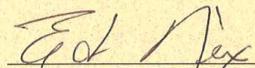
2. At the end of each calendar month, the Sheriff shall bill all entities for which federal inmates were housed in the County Detention Center during that month and shall contemporaneously therewith send a copy of each bill/invoice to the Commission. Each federal entity for which contract inmates are housed shall be instructed to send payment therefore directly to the DeKalb County Treasury account. Any payments therefore sent directly to the Commission or the Sheriff shall be deposited directly into said account the same day as received. The Commission and the Sheriff shall monthly provide each other a summary of the amounts actually received for the housing of federal inmates by the Sheriff of said DeKalb County Detention Center. The Commission and the Sheriff shall take appropriate actions if and as necessary to obtain payment of any past due or unpaid amounts for the housing of federal inmates.
3. The parties shall provide each other with the receipts and expenditures and balances of any of the accounts or funds made a part of this contract monthly by the 10th of each month.
4. Fifty Per Cent (50%) of any accumulated Federal Proceeds held by the Sheriff of DeKalb County as of the 31st day January, 2011 shall be retained by the Sheriff for expenditures as set out in paragraph 1.d(i) above. The remaining Fifty Per-Cent (50%) of said proceeds held by Sheriff shall be paid directly to the County Treasury by the Sheriff on or before the 31st day January, 2011 to be used by the County as setout in paragraph 1.d(ii) above.
5. The County Commission shall not unilaterally reduce the amount of any revenues or services currently provided by the County Commission to or for the Sheriff and the Detention Center due to federal monies received by the Sheriff for the housing of federal inmates.
6. This Contract shall be perpetual in nature so long as Federal Inmates are being housed by the DeKalb County Detention Center; however this Contract shall be subject to termination as herein provided and shall be readdressed at least every 5 years.
7. Modification of the terms of this Contract by the County and the Sheriff may be made only in writing as mutually agreed upon and executed by each of the parties hereto.
8. Any amendments or modifications to any existing agreements or future agreements shall be executed by the County and the Sheriff and neither the Commission nor the Sheriff shall unreasonably withhold its or his signature.
9. This Contract may be terminated at any time by any mutual agreement of the parties hereto.
10. This agreement shall be governed by and in accordance with the laws of the State of Alabama.
11. In the event that one or more of the provisions contained in this Contract shall, for any reason, be held by a court of competent jurisdiction to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other portion hereof and this Contract shall not be construed as if such invalid, illegal, or unenforceable provision was not and had never been contained herein. However, the parties hereto shall take whatever steps are necessary to effectuate the clear intent of the parties including, but not limited to, seeking and supporting the passage of a local law by the Alabama Legislature to carry out the intent of the parties.
12. Any unresolved disputes between the Commission and the Sheriff as to the implementation and utilization of this Contract shall be resolved first by mediation by a mediator mutually agreed upon by the parties, then by utilization of mandatory arbitration, pursuant to the rules and regulations of the American Arbitration Association, the cost of which shall be borne equally by the parties hereto.

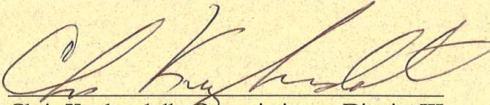
13. The negotiation and preparation of this Contract has been a collective effort of the parties and the Contract shall not be construed more severely against one party on account of the identity or affiliation of its negotiators or drafters.
14. This agreement may be executed in two counterparts, one for each party hereto, each of which shall constitute an original, and all of which, when taken together, shall constitute but one agreement.
15. This agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their respective successors, if any.

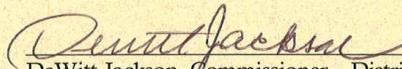
PASSED AND ADOPTED THIS 12th DAY OF January.


Ricky Harcrow, President

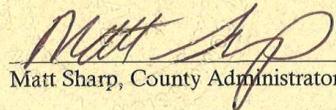
Vacant, Commissioner – District I


Ed Nix, Commissioner – District II

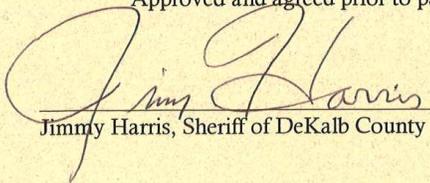

Chris Kuykendall, Commissioner, District III


DeWitt Jackson, Commissioner – District IV

ATTEST:


Matt Sharp, County Administrator

Approved and agreed prior to passage by the DeKalb County Commission:


Jimmy Harris, Sheriff of DeKalb County

Mr. Harcrow called for an adjournment. It was moved by Mr. Jackson, without objection so ordered by the President.

Ricky Harcrow, President

Ed Nix, Commissioner District II

Chris Kuykendall, Commissioner District III

DeWitt Jackson, Commissioner District IV