

**COUNTY OF MILWAUKEE
INTEROFFICE COMMUNICATION**

Date: 01/04/2012

To: Lee Holloway, Chairman of the County Board of Supervisors

FROM: Patrick Farley, Director, Department of Administrative Services

SUBJECT: Request to amend Chapters 44 and 56 of the Milwaukee County Code of General Ordinances as it pertains to contracts (of a public works nature) based on the provisions of the 2012 Adopted Budget

Background

Milwaukee County Code of General Ordinances contains various provisions that relate to contracts and professional services in respect to a public works function. The contracts defined in ordinance require modification due to changes approved in the 2012 Adopted Budget. As stated in the 2012 Adopted Budget, ordinance changes must be brought before the County Board for approval in order to effectuate these changes.

Issue

The 2012 Adopted Budget reorganizes the former Department of Transportation & Public Works Divisions into the Department of Transportation (DOT), the Department of Administrative Services – Facilities Management Division (DAS – Facilities Management), and the Department of Administrative Services – Economic Development Division (DAS – ED).

FROM:			TO:		
<u>Dept.</u>	<u>Division</u>	<u>Section</u>	<u>Dept.</u>	<u>Division</u>	<u>Section</u>
DTPW	Central Fleet	ALL	DOT	Central Fleet	ALL
DTPW	Airport	ALL	DOT	Airport	ALL
DTPW	Highway Maintenance*	ALL	DOT	Highway*	Highway Maintenance
DTPW	Transportation Services*	ALL	DOT	Highway*	Transportation Services
DTPW	Transit & Paratransit Services	ALL	DOT	Transit & Paratransit Services	ALL
DTPW	Director's Office**	Director's Office	DOT	Director's Office**	Director's Office
DTPW	Arch, Eng & Env Services	Arch/Eng	DAS	Facilities Management	Architecture/Engineering Services
DTPW	Arch, Eng & Env Services	Env & Energy	DAS	Facilities Management	Environmental & Energy
DTPW	Director's Office	Real Estate Services	DAS	Economic Development**	Real Estate Services
DTPW	Director's Office	Economic Development	DAS	Economic Development**	Economic Development
DTPW	Arch, Eng & Env Services	MCAMLIS	DAS	Economic Development	MCAMLIS

* The 2012 Adopted Budget created a new DOT Division of Highway that includes the former DTPW Divisions of Highway Maintenance and Transportation Services as Sections.

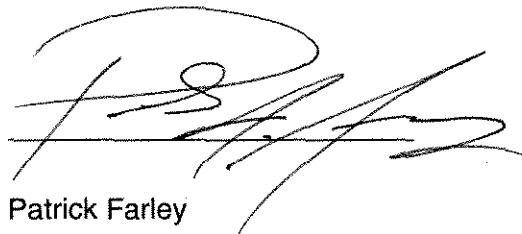
** The former DTPW - Director's Office Division included Real Estates Services, Economic Development, and Director's Office as Sections. The 2012 Adopted Budget transfers the Real Estate Services and Economic Development Sections to the newly created DAS - Economic Development Division (as Sections).

Prior to the 2012 Adopted Budget, public works function(s) included in County Ordinance Chapters 44 and 56 were housed within the Department of Transportation & Public Works (DTPW). Upon adoption of the 2012 Budget, these public works functions are now performed within DAS – ED, DAS – Facilities Management, and DOT. However, these current County Ordinance Chapters only recognize the Director of Public Works and the Department of Public Works. Revisions to these current County Ordinance Chapters are necessary in order to assign responsibility to the appropriate DOT or DAS departments and staff.

Recommendation

The Department of Administrative Services is recommending approval of the proposed amendments to various sections of Chapters 44 and 56 of the Milwaukee County Code of General Ordinances regarding public works (functions) relating to contracts and professional services. The amendments are necessary to effectuate the organizational changes approved in the 2012 Adopted Budget.

DAS anticipates providing additional updates (i.e. March 2012 Committee cycle) to other Ordinance Chapters as they relate to the DAS/DTPW reorganization resulting from the 2012 Adopted Budget. These anticipated updates will contain additional items necessary to properly reflect the reorganization within County Ordinance.



Patrick Farley

Director, Department of Administrative Services

Cc: County Executive Chris Abele
Supervisor John Thomas, Finance & Audit Committee
Supervisor Michael Mayo, Transportation, Public Works, and Transit Committee
Terry Cooley, County Board Chief of Staff
Pamela Bryant, Interim Fiscal & Budget Administrator
Kimberly Walker, Corporation Counsel
Martin Weddle, Senior Research Analyst, County Board
Steve Cady, Fiscal and Budget Analyst, County Board
Carol Mueller, Chief Committee Clerk

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: 1/5/12

Original Fiscal Note

Substitute Fiscal Note

SUBJECT: Fiscal impact of County Ordinance modifications to Chapters 44 and 56 as a result of the DAS / DTPW reorganization as adopted in the 2012 Budget.

FISCAL EFFECT:

- | | |
|---|--|
| <input checked="" type="checkbox"/> No Direct County Fiscal Impact
<input type="checkbox"/> Existing Staff Time Required
<input type="checkbox"/> Increase Operating Expenditures
(If checked, check one of two boxes below)
<input type="checkbox"/> Absorbed Within Agency's Budget
<input type="checkbox"/> Not Absorbed Within Agency's Budget
<input type="checkbox"/> Decrease Operating Expenditures
<input type="checkbox"/> Increase Operating Revenues
<input type="checkbox"/> Decrease Operating Revenues | <input type="checkbox"/> Increase Capital Expenditures
<input type="checkbox"/> Decrease Capital Expenditures
<input type="checkbox"/> Increase Capital Revenues
<input type="checkbox"/> Decrease Capital Revenues
<input type="checkbox"/> Use of contingent funds |
|---|--|

Indicate below the dollar change from budget for any submission that is projected to result in increased/decreased expenditures or revenues in the current year.

	Expenditure or Revenue Category	Current Year	Subsequent Year
Operating Budget	Expenditure	0	0
	Revenue	0	0
	Net Cost	0	0
Capital Improvement Budget	Expenditure		
	Revenue		
	Net Cost		

DESCRIPTION OF FISCAL EFFECT

In the space below, you must provide the following information. Attach additional pages if necessary.

- A. Briefly describe the nature of the action that is being requested or proposed, and the new or changed conditions that would occur if the request or proposal were adopted.
- B. State the direct costs, savings or anticipated revenues associated with the requested or proposed action in the current budget year and how those were calculated.¹ If annualized or subsequent year fiscal impacts are substantially different from current year impacts, then those shall be stated as well. In addition, cite any one-time costs associated with the action, the source of any new or additional revenues (e.g. State, Federal, user fee or private donation), the use of contingent funds, and/or the use of budgeted appropriations due to surpluses or change in purpose required to fund the requested action.
- C. Discuss the budgetary impacts associated with the proposed action in the current year. A statement that sufficient funds are budgeted should be justified with information regarding the amount of budgeted appropriations in the relevant account and whether that amount is sufficient to offset the cost of the requested action. If relevant, discussion of budgetary impacts in subsequent years also shall be discussed. Subsequent year fiscal impacts shall be noted for the entire period in which the requested or proposed action would be implemented when it is reasonable to do so (i.e. a five-year lease agreement shall specify the costs/savings for each of the five years in question). Otherwise, impacts associated with the existing and subsequent budget years should be cited.
- D. Describe any assumptions or interpretations that were utilized to provide the information on this form.

A. Fiscal impact resulting from the proposed Chapter 44 and 56 County Ordinance modifications subsequent to the Department of Administrative Services (DAS) / Department of Transportation & Public Works (DTPW) reorganization as adopted in the 2012 Budget.

B. The proposed County Ordinance modifications for Chapters 44 and 56 reflect the reorganized DTPW / DAS divisions as adopted in the 2012 budget. Therefore, there are no expenditure or revenue impact(s) resulting from the approval of the proposed modifications to County Ordinance Chapters 44 and 56.

C. No budgetary impact results from approval of the proposed County Ordinance change to Chapters 44 and 56. Approval of the ordinance modifications effectuates the DAS / DTPW reorganization as adopted in the 2012 Budget.

Chapter 44 and 56 make reference to the Public Works Department and/or the Public Works Director. The 2012 Adopted Budget reorganizes all former DTPW divisions into the Department of Transportation and the Department of Administrative Services divisions of Facilities Management and Economic Development. If the proposed modification to Chapters 44 and 56 are not approved, there is no existing county department (and director) to be responsible for (public works) contracts and professional services as DTPW and the DTPW Director no longer exist.

¹ If it is assumed that there is no fiscal impact associated with the requested action, then an explanatory statement that justifies that conclusion shall be provided. If precise impacts cannot be calculated, then an estimate or range should be provided.

Department/Prepared By DAS-Fiscal Affairs, Vince Masterson

Authorized Signature 

Did DAS-Fiscal Staff Review? Yes No

1 To conform to the 2012 Adopted budget for Org. Unit 5700–Facilities Management, Org. Unit
2 5040–Airport, Org. Unit 5100–Highway, Org. Unit 5300–Fleet Management, Org. Unit 5500–
3 Water Utility, Org. Unit 5600–Milwaukee County Transit/Paratransit, and Org. Unit 5800–
4 Directors Office:

5
6 File No.
7 (Journal,)
8

9 **AN ORDINANCE**

10
11 The County Board of Supervisors of the County of Milwaukee does ordain as follows:

12
13 **SECTION 1.** Section 30.04(5)(b) of the General Ordinances of Milwaukee County is
14 hereby amended as follows:

15
16 30.04 Audit authority; complaints and filing fees; penalties; hearings; duty of contractor and
17 subcontractor to make and keep payroll records; proof of compliance with chapter 30.

18
19 1) Audit authority. Every contract for the performance of a public work of the county
20 shall require every contractor to permit the county, by its duly authorized representatives,
21 to audit payroll records of the contractor relating to the county contract at all times during
22 the performance of the contract and for three (3) years after completion thereof. If
23 requested by any person, upon the payment of the deposit fee and filing of the verified
24 complaint described below, the county shall audit the payroll records of the contractors,
25 subcontractors or agents to ensure compliance with this chapter.

26
27 (2) Complaint and filing fee. Audit requests from third parties shall be based upon
28 verified complaints which shall be filed with the department and shall, upon filing,
29 become public records. The director shall establish a complaint format and an audit
30 complaint filing fee not to exceed fifty dollars (\$50.00) which shall be paid to the
31 department upon the filing of a complaint requesting an audit. Such fee shall be applied
32 toward the costs of the audit. If the contractor, subcontractor or agent subject to the audit
33 is found to be in compliance with this chapter the department shall retain a sufficient
34 amount from said deposit to cover the costs of the audit and return the balance of said
35 deposit, if any, to the person who signed the complaint. If noncompliance is established,
36 the full deposit shall be returned to the person who signed the complaint, and the costs of
37 the audit shall be charged against the contractor and deducted from any payments due the
38 contractor on the project.

39
40 (3) Penalties. If the contractor, subcontractor, or agent is determined by the audit to be in
41 violation of this chapter, the director may declare the contractor in default and seek
42 recourse against the contractor's bond for payment of the unpaid wages or benefits
43 determined to be due offended employes of the contractor. If the county is holding
44 monies due or to become due to the contractor on the contract, a sum sufficient to make
45 whole the offended employes of the contractor may be withheld from the contractor, paid
46 to the employes, and charged against the balance due the offending contractor. The

47 director may, in addition, declare the offending contractor ineligible to bid on contracts or
48 subcontracts on county projects for up to three (3) years from the date of completion of
49 the audit.

50

51 (4) Hearing. Any contractor or subcontractor subject to this chapter who is found to be in
52 violation hereof and who is penalized as provided in paragraph (3), above, is entitled to a
53 hearing as provided under chapter 110 of the Code.

54 (5) Duty to keep payroll records, production of payroll records.

55

56 (5)(b) In addition to any disclosures of records required in proceedings initiated by the
57 complaint of third parties in the manner described above, every contractor shall, upon
58 written demand from the appropriate director of ~~public transportation (or designee)~~ or
59 the director of administrative services (or designee) and development or such other
60 officer as may be designated by the county board, file a true and correct copy of any
61 such payroll records, including those of any subcontractor, with the county clerk. The
62 copies so furnished shall be public records. Every contract for public works executed by
63 the county shall contain the language in this subparagraph.

64

65 **SECTION 2.** Sections 44.001(b), 44.02, 44.03, 44.04, 44.05, 44.06, 44.07(b), 44.08,
66 44.09(a), 44.11, 44.12, 44.13(1), 44.13(2), 44.14(1), 44.14(2), and 44.16(3) of the General
67 Ordinances of Milwaukee County is hereby amended as follows:

68

69 44.001 Public Works contracts.

70

71 44.001 Exception. Notwithstanding any conflicting provisions of the Milwaukee
72 County Ordinances, the appropriate Director of ~~Public Works Transportation (or~~
73 designee) or the Director of Administrative Services (or designee) is hereby
74 authorized, to the fullest extent of the grant of authority contained in 1999 Wis. Act 9,
75 Sec. 1580m, to proceed with the construction of the project known as the sheriff's
76 department training academy according to the design-build construction process.

77

78 44.02 Separate letting.

79

80 44.02 For purposes of this chapter for contracts calling for the construction, repair,
81 remodeling, or improvement of any public building or structure or utility usage other
82 than highway structures and facilities, the appropriate director of ~~public works~~
83 transportation (or designee) or the director of administrative services (or designee)
84 may bid projects based on a single or multiple division of work. Contracts shall be
85 awarded according to the division of work selected for bidding. The county may set
86 out in any public contract reasonable and lawful conditions, as to the hours of labor,
87 wages, residence, character and classification of workers to be employed by any
88 contractor, and to classify such contractors as to financial responsibility, competency
89 and ability to perform work.

90

91 44.03 Solicitation of bids.

92

93 44.03 The appropriate department of ~~public works~~ transportation or the department of
94 administrative services shall solicit sealed bids by public notice inserted at least twice
95 in a newspaper and/or trade magazine of county-wide circulation with the last
96 publication occurring at least seven (7) days prior to bid opening.
97

98 44.04 Bidding and contract documents.
99

100 44.04 Bidding and contract documents shall be prepared by the appropriate
101 department of ~~public works~~ transportation or the department of administrative services
102 or private consultants and reviewed by the appropriate director of ~~public works~~
103 transportation (or designee) or the director of administrative services (or designee), ~~or~~
104 ~~designee~~, for conformity with project requirements. Such project requirements may
105 include special employment considerations and goals as determined by the director.
106 Single source or brand name products, materials or processes may be specified
107 whenever the department ascertains the need for such specifications; otherwise, the
108 term "or approved equal" shall be used and the department shall establish uniform and
109 fair rules for such approvals.
110

111 44.05 Delivery of bid and contract documents.
112

113 44.05 Bid and contract documents shall be delivered by the appropriate department of
114 ~~public works~~ transportation or the department of administrative services to prospective
115 bidders who deposit cash or credit in an amount determined by the appropriate
116 director of ~~public works~~ transportation (or designee) or the director of administrative
117 services (or designee) to cover cost of document preparation. In lieu of deposit, the
118 appropriate department of ~~public works~~ transportation or the department of
119 administrative services may accept deposit guarantee cards issued by organized
120 contractor associations, approved by the appropriate director of ~~public works~~
121 transportation (or designee) or the director of administrative services (or designee),
122 guaranteeing return of plans and specifications or payment of deposit. Cash or credit
123 deposits shall be refunded upon return of the documents in good order and condition,
124 reasonable wear and tear excepted, within ten (10) days after bid opening, or be
125 forfeited.
126

127 44.06 Bid opening.
128

129 44.06 Bid opening times shall be scheduled by the appropriate department of ~~public~~
130 ~~works~~ transportation or the department of administrative services. A member of that
131 department shall be present at all such bid openings. All sealed bids shall be delivered
132 to, and received by, the office of the county clerk prior to the time set for the opening
133 of said bid. The county clerk, or designee, shall open bids of qualified bidders only,
134 and shall inspect each bid to ascertain whether it conforms to the bid signature
135 affidavit and bond requirements, and shall reject any bid found not to be in
136 compliance with said elements. Evidence of failure of compliance shall be retained by
137 the county clerk and said rejected bid shall be immediately returned to the bidder
138 accompanied by notice of reason for rejection.

139 44.07 Bid requirements, disqualification and rejection of bids.

140

141 44.07(b) Bidder's certificate. A sworn statement shall be incorporated in the bid that
142 the bidder has examined and carefully completed the bid and contract documents
143 supplied by the appropriate department of ~~public works~~ transportation or the
144 department of administrative services and checked it in detail before submission.

145

146 44.08 Bid rejection and forfeiture.

147

148 44.08 Bids received after the time set for closing and bids of contractors not qualified
149 by the appropriate director of ~~public works~~ transportation (or designee) or the director
150 of administrative services (or designee) shall be returned unopened to bidders. Bids
151 which fail to conform to signature, affidavit and bond requirements, shall be rejected
152 by the director and returned to the bidder. If a bidder awarded a contract fails to return
153 the signed contract and executed performance bond within ten (10) days from receipt
154 thereof or within such additional time for which there exists an excusable delay
155 approved by the director, the bid bond and/or deposit shall be forfeited as liquidated
156 damages. Upon such forfeiture, the contract may be awarded by the director to the
157 next lowest, responsible, responsive bidder or readvertised and/or relet to public bid or
158 cancelled if the next lowest responsive, responsible bidder is not within the project
159 budget. The director is authorized to reject all bids, or cancel the entire bid, after
160 consultation with corporation counsel has determined that such action is in the best
161 interest of the county. The rejected bidder may appeal the decision in accordance with
162 chapter 110 of the Code. The county, through its appropriate director of ~~public works~~
163 transportation (or designee) or the director of administrative services (or designee),
164 reserves the right to accept or reject all bids, or cancel the entire bid, in its best
165 interest.

166

167 44.09 Bid withdrawal, correction and contract reward.

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169 44.09(a) Bid withdrawal. A bidder may withdraw at any time prior to the time set for
170 bid closing and submit a new bid if done prior to bid closing. A bidder claiming an
171 error or omission after bid closing but prior to bid opening shall immediately notify
172 the appropriate department of ~~public works~~ transportation or the department of
173 administrative services (or designee) and the bid shall be returned immediately and the
174 bidder shall not be eligible to bid on the work unless it is relet by advertisement.

175

176 44.11 Change orders.

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178 44.11 All contracts shall contain provisions for issuing change orders. The
179 appropriate director of ~~public works~~ transportation (or designee) or the director of
180 administrative services (or designee) or designee is authorized to approve and issue
181 such orders when required to meet conditions not reasonably foreseen at the date of
182 bid submission. No contract amount plus authorized change orders shall exceed funds
183 appropriated for the project unless the county appropriates the necessary additional
184 funds.

185 44.12 Escalator clauses.

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44.12 Public works contracts in excess of fifty thousand dollars (\$50,000.00) and with a projected performance period in excess of six (6) months may, at the discretion of the appropriate director of ~~public works~~ transportation (or designee) or the director of administrative services (or designee), contain escalator clauses providing for additional payment to contractors for increased prices. Bidders, to be eligible for such payment, shall submit with bids, a schedule of materials and equipment which may escalate. No increase shall be allowed in excess of fifteen (15) percent of the scheduled price of any item or the actual cost to the contractor, whichever is less.

44.13 Allowance of partial payments on county public works contracts; who to authorize.

44.13(1) Partial payments for incurred costs shall be made by the county to the contractor from time to time as the work proceeds, upon application as specified in the contract documents and when approved by the head of the department having jurisdiction over the contract. In making such payments, ten (10) percent of the amount approved shall be retained until final completion and acceptance of all work covered by the contract; provided that after fifty (50) percent of the work has been completed and if the appropriate director of ~~public works~~ transportation (or designee) or the director of administrative services (or designee) determines that the contractor's performance and progress are satisfactory, partial payments in full for the work subsequently completed may be made.

44.13(2) Partial payments may include the cost of building and construction materials and equipment for future incorporation in the work, upon presentation by contractors of receipted bills or other satisfactory evidence of payment, and proof of proper storage and protection as required by the appropriate department of ~~public works~~ transportation or the department of administrative services.

44.14 Award of public works contracts.

44.14(1) The appropriate director of ~~public works~~ transportation (or designee) or the director of administrative services (or designee) shall, in his or her sole discretion, establish procedures for awarding all public works contracts where the aggregate amount of any such contract is less than five thousand dollars (\$5,000.00). Except as provided in the preceding sentence and in subsection (4) below, a minor public works contract less than twenty thousand dollars (\$20,000.00) may be awarded to the lowest qualified responsible bidder after solicitation of three (3) informal bids, or may be performed by county forces, provided sufficient county funds are available. Contracts greater than twenty thousand dollars (\$20,000.00) shall be awarded to the lowest, responsive, responsible bidder after solicitation of formal bids.

44.14(2) The appropriate director of ~~public works~~ transportation (or designee) or the director of administrative services (or designee) shall award and execute all public

230 works contracts where the amount of any such contract is five thousand dollars
231 (\$5,000.00) or more.

232

233 44.016 Minority/women business enterprise program.

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235 44.16(3) The appropriate director of the department of ~~public works~~ transportation
236 (or designee) or the director of administrative services (or designee), is further
237 authorized and empowered by this section to effectuate and establish appropriate
238 procedures, standards and bid specifications to implement and achieve the county
239 policies and goals contained in chapter 42.

240

241 **SECTION 3.** Sections 56.20(3)(4) and 56.30(4)(a)(1) of the General Ordinances
242 Milwaukee County is hereby amended as follows:

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244 56.20 Centralized administration of public works contracts and construction.

245

246 (1) Policy. Uniformity of bid documents, contracts and procedures for construction of
247 public works projects and centralization in one (1) office of related activities is essential
248 to efficient management of public construction programs.

249

250 (2) Definitions. As used in this ordinance:

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252 (a) "Public work project" means all projects for construction, repair, remodeling
253 or major maintenance or capital improvements subject to s. 59.08, Wis. Stats., and
254 authorized by the county board or departments of county government, including
boards and commissions.

255

256 (b) "Administration" means preparation of preliminary and final plans,
257 specifications, project and professional service cost estimates, and bid documents;
258 analysis of bids, preparation of schedules for plans, bidding and construction
259 completion, making recommendations for award of contract, contract drafting,
260 inspection of construction during work progress and reporting scheduled progress
261 to responsible department on a monthly basis; drafting and recommending
262 contract change orders and certificates of payment, and maintaining project
263 records; establishment of a program for maintaining structural integrity of all
264 capital improvements and routine major maintenance; recommending professional
265 architectural, engineering and specialized trade consultants, drafting contracts and
266 issuance of certificates of payment for such professional service, and review of all
267 plans and specifications prepared by such professional consultants.

268

269 (3) Central office. Administration of all public work projects shall be the function of, and
270 centralized in, the appropriate department of ~~public works~~ transportation or the
271 department of administrative services.

272

273 (4) Service charge. The cost of all services performed by the appropriate department of
274 transportation or the department of administrative services shall be charged, where

275 applicable, against the project account, the department for which the services are
276 rendered, or the revolving fund established in conformity with section 56.12 of the Code.

277

278 56.30 Professional Services.

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280 (4)(a)(1) During its annual budget process, departments shall provide a list to the
281 county board of which capital projects contained in the recommended budget are
282 intended to require the assistance of a professional services consultant. Departments are
283 authorized to enter into contractual services or professional services agreements as may
284 be required for specific capital improvement projects which have been approved by the
285 county board through the budget process. Expenditures shall only be for those projects
286 and professional services specifically identified in the budget write-up reviewed by the
287 committee on finance and audit during the budget review process and approved by the
288 county board, or for those projects approved by action of the county board. The budget
289 write-up shall contain specific information as to the scope of the project, professional
290 services required and estimated cost of the professional services work to be performed.
291 The appropriate department of ~~public works transportation~~ or the department of
292 administrative services shall provide in February of each year to the committee on
293 finance and audit and the committee on transportation, public works and transit an
294 updated report on public works capital projects requiring the use of a professional
295 services contract. Any professional services work costing more than twenty thousand
296 dollars (\$20,000.00) which is not identified in the February report shall require county
297 board approval.

298

299 **SECTION 4.** This ordinance shall become effective upon publication.