County of Milwaukee

Office of the Sheriff

David A. Clarke, Jr.
Sheriff

Date: **January 6, 2014**

To: Supervisor Marina Dimitrijevic, Chairman, Milwaukee County Board of Supervisors

From: Richard Schmidt, Inspector, Office of the Sheriff

Subject: **Request to Execute a Professional Service Contract extension with CenturyLink Public Communications, Inc. d/b/a CenturyLink to provide telephone service at the Milwaukee County Jail and the House of Correction**

Pursuant to Milwaukee County Ordinance Chapter 56, the Sheriff is requesting referral to the proper board committee for authorization to execute an inmate telephone contract at the Milwaukee County Jail and House of Correction.

Background

Under the current contract, CenturyLink is providing inmate telephone services at the Milwaukee County Jail and House of Correction. The Sheriff entered into this contract February 8, 2012. The initial term approved by the County Board of Supervisors was 2 years. The initial term expires February 8, 2014.

The current contract includes a commission rate of 67.9%. The cost for collect calls would remain at $5.55. Debit card calls would remain at $3.30.

Recommendation

It is requested that the Milwaukee County Board of Supervisors approve the Sheriff's request to execute an extension to this professional services contract to

provide inmate telephone service with Century Link Correctional Communication Service at the Milwaukee County Jail and House of Correction.

The contract extension will be for a minimum one-year period with an additional one-year renewal option.

Richard Schmidt, Inspector
Office of the Sheriff, Milwaukee County

cc: Chris Abele, County Executive
Supervisor Theodore Lipscomb, Sr., Chair, Judiciary, Safety & General Services

File No.
(Journal, 2014)

(ITEM) From the Sheriff requesting to grant an amendment to CenturyLink Public Communications, Inc. d/b/a CenturyLink to provide inmate telephone service at the Milwaukee County Jail and the House of Correction from February 9, 2014 to February 8, 2015:

A RESOLUTION

WHEREAS, the County Board File No. 12-78 approved the execution of a contract between CenturyLink Public Communications, Inc. d/b/a CenturyLink and Milwaukee County for the provision of inmate telephone services at the Milwaukee County Jail and the House of Correction; and

WHEREAS, the contract was dated February 8, 2012 for an initial two year term through February 8, 2014 in the projected annual revenue amount of $2,100,000 with two one-year renewal options; and

WHEREAS, CenturyLink Public Communications, Inc. d/b/a CenturyLink was selected based upon both Technical Proposal and best price after six proposals were received, reviewed and scored by an evaluation committee in 2012 and CenturyLink was scored the highest by all evaluators; and

WHEREAS, the current contract includes a commission rate of 67.9%, cost of collect calls remain at $5.55 and debit card calls at $3.30, and

WHEREAS, the original contract was for a minimum two-year period with two one-year renewal options for an additional 3rd and 4th year for a four-year period, and,

WHEREAS, this amendment to the contract is for February 9, 2014 to February 8, 2015;

BE IT RESOLVED, the Sheriff is hereby authorized to execute an amendment to the existing contract with CenturyLink Public Communications, Inc. d/b/a CenturyLink for the provision of inmate telephone service at the Milwaukee County Jail and House of Correction.

FISCAL NOTE

The 2014 Adopted Budget for the Office of the Sheriff includes revenue of $840,000 for the Milwaukee County Jail and the 2014 Adopted Budget for the House of Correction includes revenue of $1,260,000.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: 01/06/2014

Original Fiscal Note X

Substitute Fiscal Note ☐

SUBJECT: The Sheriff of Milwaukee County requests the authority to grant a one-year contract extension to CenturyLink Public Communications, Inc. d/b/a CenturyLink for inmate telephone services at the Milwaukee County Jail and Milwaukee House of Correction.

FISCAL EFFECT:

X No Direct County Fiscal Impact

☐ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ 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	
	Revenue	0	
	Net Cost	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.

The Sheriff of Milwaukee County is requesting authority to grant a contract extension for one-year with CenturyLink Public Communications, Inc. d/b/a CenturyLink for the provision of inmate telephone services at the Milwaukee County Jail and Milwaukee House of Correction for the period of February 9, 2014 to February 8, 2015.

CenturyLink Public Communications, Inc. d/b/a CenturyLink submitted the minimum commission rate of 67.9%, $5.55 for collect calls and $3.30 for debit card calls.

The 2014 Adopted Budget included revenue of $840,000 for the Milwaukee County Jail and $1,260,000 for the Milwaukee House of Correction. It is not anticipated that this contract extension will have any impact on the current year budget.

Department/Prepared By William R. Lethlean, Public Safety Fiscal Administrator

Authorized Signature William R. Lethlean

Did DAS-Fiscal Staff Review? ☐ Yes X No

Did CBDP Review?[2] ☐ Yes ☐ No X Not Required

[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.

[2] Community Business Development Partners' review is required on all professional service and public work construction contracts.

Amendment to the Agreement
between
Milwaukee County
and
CenturyLink Public Communications, Inc. d/b/a CenturyLink

This amendment is entered into by and between Milwaukee County (County) and CenturyLink Public Communications, Inc., formerly Embarq Payphone Services, Inc. d/b/a CenturyLink (Contractor).

The Sheriff, on behalf of County, and Contractor entered into an Agreement effective February 8, 2012 for an initial term of two (2) years with two (2) additional one (1) year term mutual extensions. Pursuant to the Agreement provisions, the parties agree to extend the Agreement term for a one-year period effective from February 8, 2014 through February 7, 2015, with the possibility of an additional one year extension thereafter by mutual agreement of the parties.

The parties agree that commission payments from completed calls will be disbursed by Contractor directly to each facility, Milwaukee County Jail and the House of Correction, based on the facility from which the call originated. The commission structure in the Agreement remains unchanged, subject to Federal Regulatory changes.

The insurance requirements are as set forth in the original agreement, including a waiver of subrogation for workers compensation by policy endorsement in favor of Milwaukee County.

Except as specifically set forth herein, all other terms and provisions of the Agreement shall remain unaffected by this Amendment and continue in full force and effect.

In Witness whereof, the parties hereto have caused this Amendment to be signed by their duly authorized representatives.

Milwaukee County By Sheriff's Office	Date	CenturyLink	Date

Approved as to form and independent Contractor Status

Corporation Counsel	Date	Risk Management	Date

David A. Clarke Jr.
Sheriff

County of Milwaukee

Office of the Sheriff

Date: January 7, 2014

To: Supervisor Marina Dimitrijevic, Chairman, Milwaukee County Board of Supervisors

From: Richard Schmidt, Inspector, Office of the Sheriff

Subject: **Informational report from the Office of the Sheriff regarding inmate video visiting**

Background

The current video visitation system was installed in 2002. The lowest bidder was chosen, Cremer Engineering. The system met the immediate need. It provided a secure solution to allow families and friends to visit inmates utilizing video visiting technology.

Shortly after the installation, the system began experiencing system failures which the contractor failed to totally alleviate. As the system aged the failures continued. The vendor was unable to properly troubleshoot the failures and come up with a solution. MCSO staff found that rebooting the system and workstation resolved some of the failures of the system. The system needed to be rebooted several times throughout the visiting sessions. Over the years the hardware (monitors, Cremer boxes, handsets, and cameras) failed and replacements were available.

Approximately two years ago the hardware became obsolete and was no longer available. The vendor, Cremer Engineering, went out of business. Support for the equipment and software became non-existent. Milwaukee County electricians and MCSO Special Projects staff have taken parts from units to band aid the equipment to keep the system limping along.

In March 2013 visiting hours and the number of visiting stations were reduced in an effort to reduce the strain on the fragile equipment. Each housing unit was limited to one booth. The hardware in the unused booths was used to keep the remaining booths functioning. In October the hardware failed in two housing units and no more parts could be scavenged to fix the visiting booths.

On December 8, 2013 all video was lost. The booths that still function only produce audio for both the inmate and the visitor. Special projects staff, the county electricians and IMSD were not able to restore the video. We continue to offer visits with audio only. When the audio portion fails, inmate visiting at the Milwaukee County Jail (MCJ) will end.

The industry standard for the life span of similar systems is five to seven years. MCSO's system limped along for 11 years.

The Sheriff's Office submitted, three years in a row, capital improvement requests to replace the video visiting system. The request in 2013 for the 2014 Capital Improvement Budget was listed as a number one priority. The project did not make it to the Finance Committee hearings for the Capital Improvement budget for 2014.

Consequences of the failed system

- All jails in the state of Wisconsin must abide by state Administrative code DOC350. Inmates must be allowed visits from certain members of the public.
- The Constituents of Milwaukee County and family and friends of the incarcerated are not able to visit with the inmates.
- Inmates tend to regress if they do not have contact with family and friends outside of their confinement.
- Inmates are not able to visit with their own clergy that often use the video visiting system for spiritual enrichment.

Solutions

The repeated requests for allocating money through the capital improvement process have failed. We are now faced with three options.

1. An emergency allocation of funds to replace the video visiting system. We would piggy back off of the current Video Visiting Contract for the House of Correction.
2. Enlist the services of the current inmate phone vendor to beta test and ultimately utilize their video visiting system.
3. Write, publish, and evaluate a Request for Proposal for video visiting vendors. An RFP process would take a minimum of three months. This would result in a significant delay. The video visiting system would not be operational until 2015.

Analysis of Option 1 and 2

Utilize current HOC Video Visiting Vendor

Replacing the current MCJ video visiting system would involve removing the existing hardware and pulling network wiring, new hardware installation, network switches, software, storage devices, and an application server. The total estimated cost for project completion is $1,542,170. This was the amount submitted as a capital improvement. The County would own all of the hardware components.

Advantages

- A proper installation would allow visitors to go to either location (HOC or MCJ) to visit an inmate at either location.

- This system currently does not charge for visits. All visits are on-site visits. The vendor does have an optional module whereby the visitors can initiate a visit off-site. A fee is associated with the visit. This option has never been fully explored because it creates bandwidth issues on the County WAN and additional Time Warner service would have to be leased to accommodate off-site visits.
- Visitors only have to register as a visitor one time. If the inmate gets transferred from one facility to another the visitor does not have to register again.
- All recordings are stored on-site.

Disadvantages

- The vendor is not local and they contract out the service on the hardware on an as needed basis. County staff usually performs the minor repairs more expediently.
- This proposal would also have ongoing annual maintenance costs which include software upgrades. HOC maintenance cost for 2013 was approximately $18,000.
- The current County network will not support the information flow and the bandwidth issue would need to be resolved.

Utilize a new system offered by the Inmate Telephone Vendor

The vendor has proposed a **no cost** solution to our "end of life" video visitation system. They propose a beta test of their video visitation system as an extension of the services they currently provide. Initially they will provide three units (one in the visitation area and one in both a Women's and Men's pod) for our evaluation.

After the beta test period, if accepted by the County, the system will be expanded to provide ample service to all of the pods and the visitation area on a revenue share basis and at **no cost to the County**. The County would not own any of the equipment. A separate contract for the video visiting offered by the vendor would be negotiated.

Advantages

- If visitors come to the jail to visit, the 20 minute visit will be free, but there would be limited stations available.
- Visitors would be charged $.50 per minute of visit time when the visitor uses a computer or smart phone off site.
- Inmates would initiate the visit during the time frames that the inmates have access to the dayroom. This would extend visiting from 3 days per week to 7 days per week.
- The vendor would own the equipment and assume all the maintenance of the equipment. They currently provide a technician 24/7/365 to repair phones and this service would extend to the visiting system.
- The County does not assume any of the system costs.

Disadvantages

- The County would have to purchase additional storage if we needed to maintain the recorded visits for longer than 3 months.
- Special attention is necessary when registering visitors to ensure the correct person is visiting the inmate and restraining orders and court orders are not violated.
- Inmate family and friends would be charged a "per minute" fee for the visits.

Summary

The Sheriff's Office has been diligent in trying to facilitate the replacement of the video visiting system. The current system is past its useful life. There are no available options to service or repair the existing system.

The inmates are entitled to visit with their family and friends while incarcerated at the Milwaukee County Jail. The current system of audio only visits does not meet the visiting needs of Milwaukee County Jail inmates. The audio portion of the frail system could fail at any time. When this happens the Milwaukee County Jail will not be able to offer visits to the inmates. The longer we wait to make the decision the longer the inmates and their family and friends will not have contact with each other.

Richard Schmidt, Inspector
Office of the Sheriff, Milwaukee County

cc: Chris Abele, County Executive
Supervisor Theodore Lipscomb, Sr., Chair, Judiciary, Safety & General Services

DATE: January 7, 2014

TO: Marina Dimitrijevic, Chairwoman, Milwaukee County Board of Supervisors

FROM: Mike Hafemann, Superintendent, Milwaukee County House of Correction (HOC)

SUBJECT: From the Superintendent, House of Correction, requesting authorization to pay electronic monitoring services invoices from the 2013 EMU contracts with JusticePoint Inc and WCS until the new vendor(s) is selected by the RFP process.

Issue

When the Superintendent arrived, in May of last year, he developed contracts for the Electronic Monitoring (EM) program. The contract term selected was from the end of May to December 31, 2013. It was envisioned that a new vendor(s) would be selected via the RFP process for 2014.

The RFP process has been initiated but will not be finalized and approved until the February or March board cycle. Therefore, the HOC has been required to enter into month-to-month contracts with JusticePoint Inc and WCS, as anticipated and discussed at board meetings last fall.

Both JusticePoint Inc and WCS have agreed to continue services under the expired contracts until a new vendor(s) is selected. Board approval is required for these additional services and balances due.

Discussion

As envisioned by the terms of the 2013 Adopted Budget and Amendment 1A062, the funds approved for EMU programming were to be transferred back to the House of Correction in order to enable the operation of the EMU program once the Superintendent was put into place. Since the Superintendent assumed control of the House of Correction in May of 2013, the funds were subsequently transferred to the HOC, and he reinstituted the program as expected.

Given the success of the program, the number of inmates out on electronic monitoring via GPS has increased above projections. EMU billing is based on a sliding daily fee scale for the number of inmates approved and out on electronic monitoring. Based on current monthly billing, the total balance due for both vendors totals about $76,000 a month.

Recommendation

It is recommended that the County Board of Supervisors confirm approval of payments to these vendors that have allowed us to continue the EM program. We anticipate the new

vendor(s) will be selected soon through the RFP process. According to the RFP timeline (copy attached), we anticipate selecting a new vendor(s) around January 31st, so we will be seeking Board approval in the March cycle.

Fiscal Effect

The costs for these services have already been identified in the 2013 and 2014 budgets. The per diem revenues associated with the program are set by ordinance. At this time, the revenues are more than the EM service costs. The net effect of the EM program appears* to be positive revenue of about $174,000 per year. A fiscal note form is attached.

*There can be additional costs associated with electronic monitoring which might be reflected elsewhere in the actual budget (e.g., additional Correction Officers to manage the program or participate in an Absconder unit). We still feel that overall costs are lower than expenses. A recent audit that was completed by the County's Audit Department does show there is a cost benefit to maintaining a robust EM Program.

Respectfully Submitted,

Michael Hafemann, Superintendent
Milwaukee County House of Correction

cc: County Executive Chris Abele
Raisa Koltun, County Executive's Office
Kelly Bablitch, County Board
Don Tyler, Director, DAS
Josh Fudge, Fiscal & Budget Administrator, DAS
Steve Cady, Fiscal & Budget Analyst, County Board
Janelle Jensen, Committee Clerk-Finance, County Board Staff

File No. 14-49
(Journal)

(ITEM) From the Superintendent, House of Correction, requesting authorization to pay electronic monitoring services invoices from the 2013 EMU contracts with JusticePoint Inc and WCS until the new vendor(s) is selected by the RFP process by recommending adoption of the following:

A RESOLUTION

WHEREAS, Justice Point and WCS have agreed to continue to provide electronic monitoring services at the same rates as their 2013 contracts until a new vendor(s) is selected; and

WHEREAS, these electronic monitoring contracts expired 12/31/13, so Board approval is required for any balances due for electronic monitoring services rendered until a vendor is selected; and

WHEREAS, these funds are identified and are reasonably within the funds available in the House of Correction's approved budget; and

WHEREAS, the RFP process is underway but will not be finalized and approved until the February or March board cycle; now, therefore,

BE IT RESOLVED that the Superintendent of the House of Correction, or his designee, is hearby authorized to pay for balances due for services rendered until a new vendor is selected and approved via the RFP process; and

BE IT FURTHER RESOLVED, that, if necessary, the provision of the Milwaukee County General Ordinance 56.30 (9) is waived, and the Comptroller's office is authorized to pay for any services rendered prior to this board approval.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: 01/07/2014

Original Fiscal Note X

Substitute Fiscal Note ___

SUBJECT: Authorization to pay electronic monitoring services invoices from the 2013 EMU contracts with JusticePoint Inc and WCS until the new vendor(s) is selected by the RFP process

FISCAL EFFECT:

___ No Direct County Fiscal Impact

___ Existing Staff Time Required

X **Increase Operating Expenditures**
(If checked, check one of two boxes below)

X **Absorbed Within Agency's Budget**

___ Not Absorbed Within Agency's Budget

___ Decrease Operating Expenditures

X **Increase Operating Revenues**

___ Decrease Operating Revenues

___ Increase Capital Expenditures

___ Decrease Capital Expenditures

___ Increase Capital Revenues

___ Decrease Capital Revenues

___ 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	$912,000	$0
	Revenue	($1,086,400)	$0
	Net Cost	($174,400)	$0
Capital Improvement Budget	Expenditure	$0	$0
	Revenue	$0	$0
	Net Cost	$0	$0

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. 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. We are requesting payment of invoices for services rendered under contracts with JusticePoint Inc and WCS for Electronic Monitoring (EM) services. Both of these vendors have agreed to continue to provide EM services until a vendor has been selected through the RFP process. We believe that sufficient monies were budgeted for the EM program, so no changes to funding are being requested.

B. Maintaining a robust EM program does appear to benefit the County. At this time, the per diem revenues collected are greater than expenses.

   The $870,000 budget to fund the electronic monitoring units appears to be sufficient to cover these costs. The RFP will hopefully ensure costs stay under the budget allocation of $870,000. An accrual of about $36,000 from 2013 budget will also help.

C. The tax levy impact associated with this request in 2014 will be positive, as revenues are greater than expected (due to number of inmates in the program) and will exceed the associated operating expenses. The EM program is currently generating a $24 per diem per inmate (as set under County Ordinance 20.01). The costs are currently less than revenues. On a monthly basis, the total cost for both vendors is about $76,000. The revenue average over the last three months is about $90,500/month. The impact of continuing the EM program, therefore, appears to be

the net of $14,500 per month in increased revenues. The remainder of 2014 and 2015 impact could be somewhat more positive, if the RFP results in reduced costs.

*There can be additional costs associated with electronic monitoring which might be reflected elsewhere in the actual budget (e.g., additional Correction Officers to manage the program or participate in an Absconder unit). A recent audit that was completed by the County's Audit Department shows the cost benefits of maintaining a robust EM Program.

This program does not impact capital expenditures.

D.This proposal assumes that per diem rates set by Ordinance remain stable. It also assumes that EM costs are stable although the RFP could result in cost reductions.

Department/Prepared By June Jackson

Authorized Signature Michael Hjemann

Did DAS-Fiscal Staff Review?	**Yes**	No	
Did CBDP Review?	Yes	No	**Not Required**

IV. RFP INFORMATION, PROCESS AND ACTIVITIES

A. PROPOSED TIMETABLE

Prelim. EMU Award Date

RFP Milestones	Proposed Completion Dates
RFP issue date	November 22, 2013
Notice of Intent to Respond due	December 13, 2013
Written Questions due	December 26, 2013, 11:00 am CDT/CST
Written Q&A posted to website	December 27, 2013
Written Proposals due	January 10, 2014, 11:00 am CDT/CST
Evaluation Period / Field Testing Begins	January 13, 2014
Notice of Intent to Award Contract	January 31, 2014
County Board Approval	February 2014
Contract Start Date	March 2014

Note: HOC reserves the right to extend or modify this timetable.

B. LETTER OF INTENT

1. All vendors are required to send a Letter of Intent to Bid (form include in the RFP) stating their intention to bid. Letters of Intent should be e-mailed to kerri.mckenzie@milwenty.com. Proposals will not be accepted from vendors who have not submitted a Letter of Intent to bid. Include with the Letter of Intent to Bid the firm's annual report and a current financial statement covering the last two fiscal years. An Authorization for Reference Check form supplied with this proposal shall also be completed and returned with the Letter of Intent to Bid.

2. As part of the Proposal evaluation process, County may contact those persons or firms that have been identified as potential references or having information concerning credit worthiness, work performance and capability to perform this contract. In addition, County may also contact other business associates or other parties that have knowledge of the firm.

C. VENDOR QUESTIONS/REQUEST FOR ADDITIONAL INFORMATION REGARDING RFP

1. Should clarification of the RFP or additional information be requested, such requests must be made by e-mail and received by 11:00 am CST/CDT on December, 26, 2013. No questions will be accepted after this date. Contact person is:

COUNTY OF MILWAUKEE
Inter-Office Communication

DATE: January 8, 2014

TO: Supervisor Marina Dimitrijevic, Chairwoman, Board of Supervisors

FROM: Jim Sullivan, Director, Department of Child Support Services

SUBJECT: **AUTHORIZATION TO EXECUTE THE 2014 STATE/COUNTY CONTRACT FOR THE ADMINISTRATION OF THE MILWAUKEE COUNTY CHILD SUPPORT PROGRAM**

The Director of Child Support Services respectfully requests authority to execute the 2014 State/County Contract covering the administration of the child and spousal support and establishment of paternity and medical support liability program between the State of Wisconsin's Department of Children and Families (DCF) and Milwaukee County.

Discussion

Wisconsin Statute §59.53(5) requires counties to contract with DCF to implement the child support program. Child Support funding continues to include the 66% Federal match for IVD program expenditures, incentive money based upon performance, reimbursement for medical support liability and State general purpose revenue. Milwaukee County's funding allocation is dependent upon the Department's paternity establishment rate, support order establishment rate, current support collected and number of cases receiving arrears payments.

Fiscal Effect

A fiscal note is attached, reflecting no direct county fiscal impact, as the execution of this contract was anticipated and included in the 2014 budget.

Recommendation

I recommend that the County Board of Supervisors authorize and direct the execution of the 2014 State/County Contract. Risk Management and Corporation Counsel have approved the contract language.

Respectfully submitted,

Jim Sullivan, Director
Department of Child Support Services

Electronic copies with attachments to:
Chris Abele, Milwaukee County Executive
Theodore Lipscomb Sr., Chair, Judiciary, Safety and General Services Committee, County Board
Amber Moreen, Chief of Staff, Milwaukee County Executive's Office
Josh Fudge, Fiscal and Budget Administrator, Department of Administrative Services
Veronica Rudychev, Fiscal Management Analyst, Department of Administrative Services
Steve Cady, Director of Research Services, Office of the Comptroller
Alexis Gassenhuber, Committee Clerk, County Clerk

Attachments

From the Committee on Judiciary, Safety and General Services, reporting on:

File No. ____
(Journal,____ 2014)

From the Director, Department of Child Support Services, requesting authorization to execute the 2014 State/County contract for the administration of the Wisconsin Child Support Program in Milwaukee County for the period of January 1, 2014 through December 31, 2014, by recommending adoption of the following:

A RESOLUTION

WHEREAS, Milwaukee County and the Wisconsin Department of Children and Families are required under Wis. Stat. § 59.53(5) to enter into a contract for the implementation and administration of the Child and Spousal Support, Establishment of Paternity and Medical Support Liability Programs under Wis. Stat. § 49.22; and

WHEREAS, execution of this contract is necessary to ensure continued administrative reimbursement for child support services as administered by the Department of Child Support Services; and

WHEREAS, the Director, Child Support Services, has requested authorization to execute the 2014 State/County Contract resulting in estimated 2014 State and Federal Funding in the amount of $11,564,312; and

WHEREAS, the term of the contract shall be from January 1, 2014 through December 31, 2014; now, therefore,

BE IT RESOLVED, that the Committee on Judiciary, Safety and General Services hereby authorizes the Director, Child Support Services, to enter into and execute the 2014 State/County Contract Covering the Administration of Child and Spousal Support and Establishment of Paternity and Medical Support Liability Programs between the Department of Children and Families and Milwaukee County.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: January 8, 2014

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: From the Director, Child Support Enforcement, requesting authorization to execute the 2014 State/County Contract for the administration of the Wisconsin Child Support Program in Milwaukee County.

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ 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

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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. The Director of Child Support Services requests the County Board's authorization, by resolution, to execute the 2014 State/County Contract for the administration of Wisconsin's Child Support Program in Milwaukee County for the period January 1, 2014, through December 31, 2014. Execution is required under Wis. Stats. § 59.53(5).

B. There are no direct costs, savings, or anticipated revenues associated with this action in the current budget year.

C. There is no budgetary impact associated with these contracts in the current year or subsequent year, as execution of the 2014 contract was anticipated in the 2014 budget. Approval of this request will result in no additional levy impact.

D. No further assumptions are made.

Department/Prepared By Department of Child Support Services, Jim Sullivan, Director

Authorized Signature _____

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☐ Yes ☐ No ☒ Not Required

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[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.

[2] Community Business Development Partners' review is required on all professional service and public work construction contracts.

By Supervisor Stamper File No. 13-869

A RESOLUTION / ORDINANCE
Amending Chapter 1, Milwaukee County General Ordinances,
Rules of the County Board of Supervisors

WHEREAS, each County Board Supervisor represents approximately 53,000 constituents in their respective districts; and

WHEREAS, as a means to increase transparency and open governmental practices, it is reasonable and prudent that Supervisors who wish to abstain from a voice vote provide verbal rationale for abstaining to the public; now, therefore,

BE IT RESOLVED, the County Board of Supervisors does hereby adopt the following ordinance amending Chapter 1, Section 1.04, of the General Ordinances of Milwaukee County.

AN ORDINANCE

To amend Chapter 1 of the General Ordinances of Milwaukee County relating to the Rules of the County Board of Supervisors.

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

SECTION 1. Chapter 1 of the General Ordinances of Milwaukee County, is hereby amended as follows:

Chapter 1 RULES OF THE COUNTY BOARD OF SUPERVISORS

1.04. Voting.

(a)

Quorum. A majority of the supervisors entitled to a seat in the county board shall constitute a quorum for the transaction of business. All questions shall be determined by a majority of the supervisors present, unless otherwise provided by statute or this chapter.

(b)

Abstain from voting. No member shall abstain from voting on a question when put, except by specific notice of that supervisor. Any member wishing to abstain from voting ~~may~~ shall make a brief verbal statement of the reason for abstaining.

SECTION 2. This ordinance shall become effective upon passage and publication.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: 11/18/13

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: A resolution to amend Chapter 1 of the Milwaukee County General Ordinances in regards to voting abstention

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

☒ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ 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	0	0
	Revenue	0	0
	Net Cost	0	0

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.

Approval of this resolution/ordinance shall have no fiscal impact.

Department/Prepared By Jessica Janz-McKnight, Research Analyst, County Board

Authorized Signature

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☐ Yes ☐ No ☒ Not Required

[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.

[2] Community Business Development Partners' review is required on all professional service and public work construction contracts.

OFFICE OF CORPORATION COUNSEL

PAUL BARGREN
Corporation Counsel

MARK A. GRADY
COLLEEN A. FOLEY
Deputy Corporation Counsel

TIMOTHY R. KARASKIEWICZ
ROY L. WILLIAMS
LEE R. JONES
MOLLY J. ZILLIG
ALAN M. POLAN
JENNIFER K. RHODES
DEWEY B. MARTIN
JAMES M. CARROLL
PAUL D. KUGLITSCH
Principal Assistant
Corporation Counsel

Date: December 30, 2013

To: Alexis Gassenhuber, Committee Clerk

cc: Sup. Lipscomb
Sup. Borkowski
Sup. Johnson
Sup. Weishan
Sup. Broderick
Sup. Rainey
Chw. Dimitrijevic
Kelly Bablitch
Jessica Janz-McKnight
Joseph J. Czarnezki
Mark A. Grady
Colleen A. Foley
Legistar (via committee clerk)

From: Paul Bargren PB
Corporation Counsel

Re: Referral from December 5 JSGS Committee (abstentions)

Dear Madam Clerk,

As you communicated to me by email on December 12, 2013, the Committee on Judiciary, Safety and General Services, at its December 5, 2013 meeting, considered File No. 13-869 (amending MCO Ch. 1 related to abstentions) and referred the item to this Office for a legal opinion. My response follows.

Background

File No. 13-869 seeks to amend MCO 1.04(b) by making the following change regarding votes by supervisors:

> *Abstain from voting*. No member shall abstain from voting on a question when put, except by specific notice of that supervisor. Any member wishing to abstain from voting ~~may~~ shall make a brief verbal statement of the reason for abstaining.

With this change, any supervisor abstaining from a vote would need to a) provide notice and b) explain why. Now, notice is required, but providing a reason is optional.

Summary of opinion

Requiring a supervisor to provide a reason for an abstention would violate the supervisor's First Amendment free-speech rights and therefore, in my view, would not be enforceable. If a sanction was imposed against a supervisor who did not provide a reason, that supervisor could respond with a claim that his or her constitutional or civil rights were violated. Requiring a reason is also contrary to longstanding Board practice in related areas. As a result, in my view, the resolution should not be considered.

Analysis

Federal courts have addressed this issue.[1] The decision most directly on point is *Wrzeski v. City of Madison*, 558 F. Supp. 664 (1983). A similar rule adopted by the Madison Common Council was at issue. It stated:

> Every member present, when a question is put, shall vote, unless the presiding office of the council shall, for special reasons, excuse the member.

Under that and related provisions, a member who abstained without giving a reason could be censured and fined $100.

Judge Crabb applied the First Amendment, noting that "plaintiff's status as a legislator does not strip her of any right she would otherwise enjoy under the First Amendment to speak freely or not to speak at all." *Id.* at 667. "Legislators enjoy the same First Amendment protections as any other members of our society." *Id.*, citing *Bond v. Floyd*, 385 U.S. 116, 132-33 (1966). *See also Miller v. Town of Hull*, 878 F.2d 523, 532 (1st Cir. 1989) ("the act of voting on public issues by a member of a public agency or board comes within the freedom of speech guarantee of the first amendment"). Judge Crabb then noted:

> [I]t is well established that "the right of freedom of thought protected by the First Amendment against state action includes both the right to speak freely and the right to refrain from speaking at all."

Wrzeski, *id.* at 667, quoting *Wooley v. Maynard*, 430 U.S. 705, 714 (1977).

Under the First Amendment, the right to keep silent expressly includes the right to abstain. *Coogan v. Smyers*, 134 F.3d 479, 489 (2d Cir. 1998) ("We do not mean to disparage the right of any person to abstain on an official vote. Indeed, the First Amendment protects such a right"). *See also Bundren v. Peters*, 732 F. Supp. 1486, 1499-1500 (E.D.Tenn.1989) (a school

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[1] On questions of federal law and federal rights, Wisconsin treats decisions of the US Supreme Court as binding and decisions of other federal courts as persuasive authority. *See, e.g., Alberte v. Anew Health Care Servs., Inc.*, 2000 WI 7, ¶ 7, 232 Wis. 2d 587; *Rao v. WMA Secs., Inc.*, 2008 WI 73, ¶¶ 47–50, 310 Wis. 2d 623.

district administrator illegally retaliated against a district employee who was a member of the county board but abstained from school finance questions to avoid a conflict of interest).[2]

Moreover, "[p]ermitting members to abstain is not functionally different from permitting them to vote no." *Wrzeski*, 558 F. Supp. at 668. A significant number of "no" votes are cast by supervisors in a typical Board cycle with no requirement whatsoever to explain. Because "an abstention is no less a legislative act than a 'yes' or 'no' vote," *Coogan*, 134 F.3d at 489, and is "the functional equivalent of a negative vote," *id.* at 486, the Board should treat a vote to abstain the same as a "no" vote, with no explanation required.[3]

Admittedly, it may be frustrating for a supervisor who takes a stand on a controversial issue to see a colleague refuse to vote at all and not explain why. But Judge Crabb made clear that imposing a penalty for an abstention is a job for the electorate – not for other supervisors:

> There can be no doubt that a representative who consistently dodges difficult or controversial issues by not voting on them does a disservice to his or her constituency. However, in our government system, the proper remedy for such behavior lies with the electorate.

Wrzeski, 558 F. Supp. at 668, citing *Powell v. McCormack*, 395 U.S. 486, 547 (1969) ("A fundamental principle of our representative democracy is, in Hamilton's words, 'that the people should choose whom they please to govern them' ").

Boards are allowed to establish procedural rules to "further the efficient functioning of a legislative body" as long as they are "closely drawn to serve that end" and do not restrict First Amendment rights. *Wrzeski*, 558 F. Supp. at 668. But there is a difference between providing a reason for an abstention and merely providing notice of intent to abstain as currently required under MCO 1.04(b). The notice requirement serves the procedural purpose of alerting other Board members that there will be fewer than 18 votes on the item. That may affect how other supervisors wish to approach the item. But the notice comes without explanation, so there is no First Amendment restriction involved. It is simply announcing what the vote will be a little while before it is cast.

The Board already observes a practice related to the First Amendment right to keep silent. When a supervisor poses a question on the floor, the responding supervisor has the option of not answering. This reflects *Robert's Rules of Order*, which the Board has adopted to govern its proceedings to the extent not inconsistent with specific rules or statutes. MCO 1.26. Under Roberts, whether to respond to a question or request for information is optional. *See Roberts* at 294-95, 392. Requiring explanation of an abstention would counter this longstanding practice.

In summary, for the reasons stated, in my view the amendment to MCO 1.04(b) proposed in File 13-869 is unconstitutional and unenforceable, and it should not be considered.

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[2] *But see Nevada Comm. on Ethics v. Carrigan*, __ U.S. __, 131 S. Ct. 2343, 2350 (2011) (upholding a legislative body's right to prevent members from voting on matters where they have conflicts of interest); *see also* MCO 9.05(2)(c), which bars a supervisor from voting on a matter where there is a conflict of interest.

[3] For that matter, how would the Board decide what constitutes a "brief verbal statement of the reason for abstaining"? Would it be enough to say, "because I want to"? Or could a supervisor still be sanctioned if colleagues deemed the "reason" insufficient?

By Supervisor Rainey

A RESOLUTION

to develop a Minority Impact Statement Ordinance for all Milwaukee County resolutions, contracts and grants greater than $300,000

WHEREAS, Minority Impact Statement ordinances have been established in Iowa and Connecticut; and

WHEREAS, Milwaukee County is the largest populated and most ethnically diverse county in the State; and

WHEREAS, the Census Bureau in 2011 indicates that 41 percent of African Americans and 35 percent of Latinos living in Milwaukee are impoverished; and

WHEREAS, Forbes Magazine March 2011 edition listed Milwaukee Metropolitan Area as 52nd among 52 cities in the United States for Minority Entrepreneurship; and

WHEREAS, the April 2010 U.S. Census Bureau decennial count found that 1 in 8 African American working age men are in the State prison system, accounting for a 12.8 percent of incarceration rate, while the national average is 6.7 percent or 1 in 15; and

WHEREAS, 15.2 percent, or 127,930 of the Milwaukee County population has some type of disability according to Disability Planning Data.com; and

WHEREAS, a recent study by Olson & Associates titled “The Face of Aging in Milwaukee County” estimates that 16.9 percent of the population in Milwaukee County is 60 or older with;

WHEREAS, minorities age 65 or older are more likely to live in poverty, which includes the following rates: Blacks/African American 20.1 percent, American Indian/Alaskan 25.0 percent, Hispanics/Latinos 19.4 percent, Pacific Islander 26.3 percent; although the rate for Caucasians is only 6.7 percent; and

WHEREAS, the April 2010 U.S. Census Bureau decennial count found that 1 in 7 Native American men of working age men are in the State prison system, accounting for a 7.6 percent incarceration rate, while the national average is 6.7 percent or 1 in 15; and

WHEREAS, the development of a minority impact statement process would ensure that at-risk minority populations are carefully considered when expending taxpayer resources; now, therefore,

BE IT RESOLVED, that the County Board supports the requirement that all resolutions, grants and contracts with a fiscal impact greater than $300,000 include a completed Minority Impact Statement prior to Milwaukee County Board approval; and

BE IT FURTHER RESOLVED, that the minority impact statement shall explain qualitative and quantitatively the positive and/or negative impact the legislation, grant or contract may have on the following groups:

- Women
- African-American and Blacks,
- Hispanics/Latinos
- Asian and Pacific Islanders
- Native Americans and Alaskan Natives
- Elderly, over 65
- Disabled

; and

BE IT FURTHER RESOLVED, that the Director of the Office of Community Business Development Partners, working in conjunction with the Corporation Counsel, shall develop a recommended ordinance and related procedures to formally implement the aforementioned minority impact statement requirement for consideration by the County Board no later than the March 2014 meeting cycle.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: January 13, 2014

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: A resolution to develop a Minority Impact Statement Ordinance for all Milwaukee County resolutions, contracts and grants greater than $300,000

FISCAL EFFECT:

☒ No Direct County Fiscal Impact

- ☒ Existing Staff Time Required

☐ Increase Operating Expenditures
(If checked, check one of two boxes below)

- ☐ Absorbed Within Agency's Budget
- ☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ 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	0	0
	Revenue	0	0
	Net Cost	0	0

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.

Approval of this resolution indicates Milwaukee County's support of a requirement that all resolutions, grants and contracts with a fiscal impact greater than $300,000 include a completed Minority Impact Statement prior to Milwaukee County Board approval. The minority impact statement would explain qualitative and quantitatively the positive and/or negative impact the legislation, grant or contract may have on the following groups:

- Women
- African-American and Blacks,
- Hispanics/Latinos
- Asian and Pacific Islanders
- Native Americans and Alaskan Natives
- Elderly, over 65
- Disabled

The Director of the Office of Community Business Development Partners will develop a recommended ordinance and related procedures to formally implement the aforementioned minority impact statement requirement for consideration by the County Board no later than the March 2014 meeting cycle.

The development of a recommended ordinance and related procedures does not have a fiscal impact, but existing staff time will be necessary to complete.

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[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.

[2] Community Business Development Partners' review is required on all professional service and public work construction contracts.

Department/Prepared By Steve Cady, Director of Research Services, Office of the Comptroller

Authorized Signature Stephen J. Cady

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☐ Yes ☐ No ☒ Not Required

By Supervisors Jursik and Broderick

A RESOLUTION

Authorizing and directing the Office of the Corporation Counsel to coordinate with outside counsel on the filing of an action for a declaration of rights in property to obtain a judgment determining the extent of the County's title and rights to the downtown Transit Center property

WHEREAS, the County Board of Supervisors in July 2012 adopted Resolution File No. 12-633 (vote 18-0) which authorized the Director of Economic Development to negotiate with Barrett Visionary Development on the terms and conditions of purchasing the downtown Transit Center which the county had declared excess property for development of the property as the Couture; and

WHEREAS, the Department of Natural Resources (DNR) concluded in September 2012 that none of the property is subject to the Public Trust Doctrine, but individuals and community groups have indicated disagreement with this DNR conclusion; and

WHEREAS, in February 2013, The Milwaukee County Board of Supervisors adopted Resolution File No. 13-152 (vote 14-2) to obtain legal certainty concerning the legal right to develop the property as intended and authorized and directed Corporation Counsel to amend the legal services contract with Reinhart Boerner Van Deuren S.C. to represent Milwaukee County in litigation to declare rights in the subject property and further authorized the filing of an action under Chapter 841, Wis. Stats, to obtain a judgment determining the extent of the County's title and rights to the subject property; and

WHEREAS, no such action was commenced but instead provisions were inserted into the most recent budget bill adopted by the Wisconsin legislature declaring that the shoreline of Lake Michigan in the City of Milwaukee is "fixed and established" along a line that lies east of the downtown Transit Center property; and

WHEREAS, in spite of this legislative action, no title company has been willing to issue a title policy that removes the issues concerning Public Trust and the Milwaukee County Board believes that it is necessary to obtain legal certainty regarding legal rights to develop the said Transit Center property and that such legal certainty can only be attained by a final court judgment; now, therefore,

BE IT RESOLVED, to the extent that the County's title and rights permit, the County Board of Supervisors supports the redevelopment of the Transit Center site; and

BE IT FURTHER RESOLVED, that the Office of Corporation Counsel is authorized and directed forthwith to arrange for the filing of an action under Chapter 841, Wis. Stats. for a declaration of rights in property to obtain a judgment determining the extent of the County's title and rights to the downtown Transit Center property, with such action to be filed no later than March 15, 2014.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: January 13, 2014

Original Fiscal Note ☒

Substitute Fiscal Note ☐

SUBJECT: A resolution authorizing and directing the Office of the Corporation Counsel to coordinate with outside counsel on the filing of an action for a declaration of rights in property to obtain a judgment determining the extent of the County's title and rights to the downtown Transit Center property

FISCAL EFFECT:

☐ No Direct County Fiscal Impact

☐ Existing Staff Time Required

☒ Increase Operating Expenditures
(If checked, check one of two boxes below)

☐ Absorbed Within Agency's Budget

☒ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ 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		
	Revenue		
	Net Cost	See narrative	See narrative
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.

Approval of this resolution authorizes and directs the Office of Corporation Counsel to arrange for the filing of an action under Chapter 841, Wis. Stats. for a declaration of rights in property to obtain a judgment determining the extent of the County's title and rights to the downtown Transit Center property, with such action to be filed no later than March 15, 2014.

Milwaukee County has previously retained the law firm of Reinhart Boerner Van Deuren S.C. for legal services related to the Downtown Transit Center. (File No. 13-152, adopted February 7, 2013) Currently, a total of $140,000 has been authorized for this contract from Org. Unit 1961 – Litigation Reserve to represent Milwaukee County in litigation to declare rights in the Transit Center property.

The Office of Corporation Counsel reports that a contract amendment to increase the authorized funds with Reinhart Boerner Van Deuren is expected to be submitted this month to the Committee on Finance, Personnel and Audit under the "passive review" process. This contract amendment is anticipated to be approximately $50,000. These funds would be allocated from the 2014 Org. Unit 1961 – Litigation Reserve. If the amended contract is accepted by the Board, the amendment would provide enough monies to <u>begin</u> the legal action contemplated in this resolution.

According to the Office of the Corporation Counsel, the total cost to fully litigate this matter cannot be estimated at this time. As the litigation continues, additional funds will be

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[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.

[2] Community Business Development Partners' review is required on all professional service and public work construction contracts.

necessary beyond the amount that will be contained in the contract amendment that is being submitted this cycle.

Department/Prepared By Steve Cady, Director of Research Services, Office of the Comptroller

Authorized Signature Stephen J. Cady

Did DAS-Fiscal Staff Review? ☐ Yes ☒ No

Did CBDP Review?[2] ☐ Yes ☐ No ☒ Not Required

INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE

DATE: January 7, 2014

TO: Marina Dimitrijevic, Chairwoman, County Board of Supervisors

FROM: James M. Carroll, Principal Assistant Corporation Counsel

SUBJECT: *Barbara Marinoff, et al. v. Wisconsin County Mutual Insurance Corporation, et al.*
Milwaukee County Case No. 2011CV012468

I request that this matter be referred to the Committee on Judiciary, Safety and General Services for approval of a settlement. I request authority to settle this case for the total sum of $25,000.00, which will be paid by Wisconsin County Mutual Insurance Corporation.

This case involves a personal injury claim resulting from a trip and fall that occurred at the Milwaukee County Zoo on September 13, 2008. The incident occurred during a diabetes walk held on the zoo premises. Ms. Marinoff alleges that a depression in the concrete near the Oak Grove picnic area caused her to fall and injure her left arm, wrist and hand, left ankle, and left knee. While actual notice of the concrete defect may be difficult for Ms. Marinoff to prove, Corporation Counsel feels she may succeed in establishing constructive notice as the depression in the concrete was not trivial and existed for approximately two years prior to Ms. Marinoff's fall.

Ms. Marinoff claims $16,268.28 in medical expense for treatment of injuries including a left arm fracture, sprained left ankle, sprained left rotator cuff, and left elbow and knee pain. She maintains that her left arm injuries are permanent.

This proposed resolution resulted from settlement discussions with plaintiff's counsel as trial approached. The settlement provides that the Wisconsin County Mutual Insurance Corporation will pay Ms. Marinoff and her attorneys $25,000.00. In return, Ms. Marinoff will dismiss her suit and provide the County with a full and complete release from any liability. The payment will be applied to the County's deductible with the County Mutual.

Corporation Counsel and the Wisconsin County Mutual recommend this settlement for approval.

1/7/14

James M. Carroll, Principal Assistant Corporation Counsel

cc: Amber Moreen
Kelly Bablitch
Alexis Gassenhuber
Raisa Koltun
Jessica Janz-McKnight

From Corporation Counsel recommending the adoption of a resolution to settle the personal injury claim of Barbara Marinoff

File No. 14-
(Journal,)

A RESOLUTION

WHEREAS, on September 13, 2008, Barbara Marinoff was injured due to a trip and fall incident while participating in a diabetes walk at the Milwaukee County Zoo; and

WHEREAS, as a result of said incident Marinoff filed a lawsuit in the Circuit Court of Milwaukee County, Case No. 11CV012468, against Milwaukee County and Wisconsin County Mutual Insurance Corporation seeking damages for injuries sustained in the September 13, 2008 incident; and

WHEREAS, Marinoff claims that she suffered a left arm fracture, sprained left ankle, sprained left rotator cuff, and left elbow and knee pain as a result of the incident, that her left arm injuries are permanent, and that she incurred medical expenses attributable to the incident in the amount of $16,268.28; and

WHEREAS, the parties engaged in court-ordered mediation and subsequent settlement discussions; and

WHEREAS, the tentative settlement agreement provides for a release of all claims against Milwaukee County and the Wisconsin County Mutual Insurance Corporation in return for a payment by the Wisconsin County Mutual Insurance Corporation in the amount of $25,000.00 to Marinoff and her attorneys, Kmiec Law Offices, S.C.; and

WHEREAS, the Office of Corporation Counsel recommends this settlement; and

WHEREAS, the Committee on Judiciary, Safety and General Services approved this settlement at its meeting on January 24, 2014 by a vote of _____;

NOW, THEREFORE, BE IT RESOLVED, that the Milwaukee County Board of Supervisors approves the payment by the Wisconsin County Mutual Insurance Corporation of $25,000.00 to Marinoff and her attorneys, Kmiec Law Offices,

S.C., in exchange for dismissal of her suit and a full and complete release of all claims against Milwaukee County.

MILWAUKEE COUNTY FISCAL NOTE FORM

DATE: January 7, 2014

Original Fiscal Note X

Substitute Fiscal Note ☐

SUBJECT: A RESOLUTION to approve a settlement agreement related to personal injury claims in *Barbara Marinoff, et al. v. Wisconsin County Mutual Insurance Corporation, et al.*, Milwaukee County Case No. 2011CV012468.

FISCAL EFFECT:

No Direct County Fiscal Impact

☐ Existing Staff Time Required

X Increase Operating Expenditures
(If checked, check one of two boxes below)

X Absorbed Within Agency's Budget

☐ Not Absorbed Within Agency's Budget

☐ Decrease Operating Expenditures

☐ Increase Operating Revenues

☐ Decrease Operating Revenues

☐ Increase Capital Expenditures

☐ Decrease Capital Expenditures

☐ Increase Capital Revenues

☐ Decrease Capital Revenues

☐ 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	25,000.00	
	Revenue		
	Net Cost	25,000.00	
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. The County is proposing a settlement to Barbara Marinoff, who was involved in a trip and fall incident while participating in a diabetes walk at the Milwaukee County Zoo. Adoption of this settlement will result in a payment of $25,000.00 by the Wisconsin County Mutual Insurance Corporation to Barbara Marinoff and her attorneys, Kmiec Law Offices, S.C.
B. Approval of this Resolution authorizes a payment of $25,000.00 to Barbara Marinoff and her attorneys, Kmiec Law Offices, S.C. by Wisconsin County Mutual Insurance Corporation. The $25,000.00 payment will be applied to the County's deductible.

Department/Prepared By Corporation Counsel

Authorized Signature 1/7/14

Did DAS-Fiscal Staff Review? ☐ Yes X No

Did CBDP Review?[2] ☐ Yes ☐ No X Not Required

[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.
[2] Community Business Development Partners' review is required on all professional service and public work construction contracts.

INTEROFFICE COMMUNICATION
COUNTY OF MILWAUKEE

DATE: January 10, 2014

TO: Theodore Lipscomb Sr., Chairman
Committee on Judiciary, Safety and General Services

Willie Johnson & David Cullen, Co-Chairmen
Committee on Finance, Personnel and Audit

FROM: Mark A. Grady, Deputy Corporation Counsel

SUBJECT: Status update on pending litigation

The following is a list of some of the significant pending cases that we believe may be of interest to the Committees. New information and additions to the list since the last committee meetings are noted in **bold.** However, our office is prepared to discuss any pending litigation or claim involving Milwaukee County, at your discretion.

1. *DC48 v. Milwaukee County* (Rule of 75)
   Case No. 11-CV-16826 (stay of case until March 14, 2014)

2. *MDSA v. Milwaukee County* (overturn arbitration award on 2012 deputy layoffs)
   Case No. 12-CV-1984 (circuit court affirmed award)

3. Retiree health plan (co-pays, deductibles, etc.) cases:
   Estate of Hussey v. Milwaukee County (Retiree health)
   Case No. 12-C-73 (U.S. District Court ruled in County's favor, appealed by Hussey to U.S. Seventh Circuit Court of Appeals)
   MDSA prohibited practice complaint
   WERC Case No. 792 No. 71690 MP-4726
   Rieder & MDSA v. Milwaukee County
   Case No. 12-CV-12978
   DC48 prohibited practice complaint
   WERC Case No. 762 No. 70685 MP-4657
   DC48 et al. v. Milwaukee County et al.
   Case No. 12-CV-13612 (stayed pending outcome of *Hussey* case)

4. Medicare Part B premium reimbursement cases:
   FNHP and AMCA v. Milwaukee County
   Case No. 12-CV-1528 (Court of Appeals ruled in favor of County; Petition for Review filed with Supreme Court)
   DC48 et al. v. Milwaukee County et al.
   Case No. 12-CV-13612 (stayed pending outcome of case above)

5. <u>1.6% Pension Multiplier cases</u>:
   Stoker & FNHP v. Milwaukee County
   Case No. 11-CV-16550 (Court of Appeals ruled against County, petition for review filed by County with Supreme Court)
   AFSCME v. Milwaukee County
   Case No. 12-CV-9911 (stayed pending *Stoker* appeal)
   Brillowski & Trades v. Milwaukee County
   Case No. 12-CV-13343 (stayed pending *Stoker* appeal)

6. *Wosinski et al. v. Advance Cast Stone et al.* (O'Donnell Park)
   Case No. 11-CV-1003 (Jury Verdict)

7. *Christensen et al. v. Sullivan et al.*
   Case No. 96-CV-1835

8. *Milwaukee Riverkeeper v. Milwaukee County* (Estabrook dam)
   Case No. 11-CV-8784

9. *Milwaukee County v. Federal National Mortgage Ass'n. et al.* (transfer taxes)
   Case No. 12-C-732 (U.S. District Court ruled against County, **U.S. Seventh Circuit Court of Appeals affirmed dismissal**)

10. *Midwest Development Corporation v. Milwaukee County* (Crystal Ridge)
    Case No. 12-CV-11071

11. Froedtert Hospital petition to disturb burial sites – petition granted by State.

12. *FNHP, AMCA & AFSCME v. Milwaukee County and ERS*
    Case No. 13-CV-3134 (backdrop modification)

13. *Roeschen's Healthcare LLC v. Milwaukee County*
    Case No. 13-CV-3853 (court ordered records produced; attorneys' fee issue remaining)

14. *MTS v. Milwaukee County*
    Case No. 13-CV-7234 (court ordered records produced; attorneys' fee issue remaining)

15. *Madison Teachers Inc. v. Walker*
    Dane County Circuit Court Case No. 11-CV-3774 (Act 10)

16. Orlowski v. Milwaukee County
    Case No. 13-C-994 (E.D. Wis.)(2007 death of inmate in HOC)