



COUNTY ADMINISTRATOR
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TO: Jeff Irwin
Chair, Ways & Means Committee

FROM: Robert E. Guenzel
County Administrator

DATE: June 7, 2006

SUBJECT: Proposed offer to Ypsilanti Township, Augusta Township and Salem Township for police services in those communities

BOARD ACTION REQUESTED:

It is requested that the Washtenaw County Board of Commissioners approve an offer to extend contractual police services to Ypsilanti, August and Salem Townships, set the time for those Townships to respond to the offer, and outline the action to take if the offer is rejected.

BACKGROUND:

Throughout 2005, Washtenaw County negotiated with a number of local governmental units and local school districts in the County to provide contractual police services to those entities. The County proposed a four-year contract covering 2006-2009, with the first two years of the contract (2006-2007) using the old Police Service Unit ("PSU") methodology. The last two years (2008-2009) of the contract introduced a more transparent menu methodology where the contracting units would pay the cost of a deputy and supervision, while the County paid for the cost of "County-wide services" such as the detective bureau, SWAT/Hostage Negotiation Team, etc.

Each of the local governmental entities signed the four-year contract on or before December 31, 2005, except for Ypsilanti, Augusta and Salem Townships ("Plaintiff Townships"). Representatives from each of these Townships publicly stated that they would not sign the four-year proposed contract because the specific prices for 2008-2009 would not be approved by the County Board of Commissioners before April, 2006.

In response to this concern, the County proposed a four-month "bridge" contract to the Plaintiff Townships to cover January through April, 2006 at a cost of \$100 per hour per PSU, which was less than the County's actual full cost of \$111 per hour per PSU to place a PSU on patrol. The purpose of the "bridge" contract

was to provide a contractual means to continue police services to the Plaintiff Townships until such time as the Board of Commissioners would approve the price figures for 2008-2009. Once those figures were approved, these Townships would then be able to approve or reject the four-year proposed contract. As part of the contract negotiations between the County and the local governmental entities, a police services steering committee ("Committee") was formed. This group had representatives from local governmental units, including the Plaintiff Ypsilanti Township, County Administration, Board of Commissioners, Sheriff and other local police departments. It was designed to make a recommendation to the Board of Commissioners on the prices for 2008-2009 and to provide a forum to discuss other issues concerning contract policing. The Committee ultimately agreed on recommended prices for 2008-2009 which were approved by the County Board of Commissioners on March 1, 2006.

On January 4, 2006, the Board of Commissioners approved offering the Plaintiff Townships the "bridge" contract. Instead of responding to this offer, the Plaintiff Townships filed a Verified Complaint against the County Board of Commissioners, the County Administrator and selected individual members of the Board of Commissioners. The Complaint contained five counts: (1) Specific Performance of Contract; (2) Promissory Estoppel; (3) Injunctive Relief; (4) Constitutional Duty; and (5) Mandamus. The Plaintiffs also requested a preliminary injunction to prevent the County from laying off deputies in those Townships. This lawsuit is currently in litigation.

On January 18, 2006, the parties attended a hearing before visiting Judge Joseph A. Costello to address Plaintiffs' Motion for Preliminary Injunction. At this hearing, the Judge declined to grant the Plaintiffs' request for injunctive relief; rather, the parties met in the Judge's chambers and agreed to fashion a Stipulated Order to maintain the status quo until further order of the Court. Under this Order, the Townships would pay the same rate for PSU's (\$53.00 per PSU per hour) as those governmental entities that had signed the four-year contract. In addition, the County agreed not to lay off any deputies serving in the Plaintiff Townships' jurisdictions. The purpose of the Order was to maintain the status quo while the parties filed motions for summary disposition on the merits of the case.

The case has now been litigated for nearly four months. In that time, the Plaintiffs amended their Verified Complaint to add the following five counts: (1) Action for Appointment of Receiver for Suitable and Sufficient County Jail; (2) Action for Appointment of Receiver for Suitable 14A District Court; (3) Innocent Misrepresentation; (4) Violation of the Open Meetings Act; and (5) Rescission of Contract Signed Under Duress. These Counts were added to the original five counts of the Verified Complaint and are now known as Counts 6-10 of the Amended Verified Complaint.

On March 15, 2006, the parties argued the County Defendants' Motion for Summary Disposition on the original Counts 1-5 of the Amended Verified Complaint. On March 23, 2006, the Court issued an Order granting the County Defendants request and dismissing each of these original five counts in their entirety.

On April 6, 2006, the parties argued the County Defendants' Motion for Summary Disposition on Counts 6-10 of the Amended Verified Complaint. On May 9, 2006 the Court issued a ruling on this Motion dismissing the Plaintiff Townships' counts seeking a receiver for the 14A District Court and the County Jail as well as the county for innocent misrepresentation. The Court denied the County Defendants' Motion to Dismiss the Open Meetings Act Claim and Lincoln Schools' request to rescind its contract with the County.

The parties also argued two other Motions at the April 6, 2006 hearing. One was the County Defendants' Motion to clarify statements in the Judge's earlier Order dismissing Counts 1-5 of the Amended Verified Complaint. In addition, the Plaintiffs sought a stay of the proceedings pending their appeal of the Judge's ruling to dismiss the first five counts of the Amended Verified Complaint.

The Court granted the County Defendants Motion to clarify the statements in the earlier Order. Plaintiffs request for a stay of proceedings, however, was denied. Subsequently, County Defendants filed a Motion for Relief from the Stipulated Order Maintaining the Status Quo. The Court heard arguments on this Motion on April 25, 2006. At the conclusion of the hearing, the Judge granted the County Defendants' Motion and dissolved the Stipulated Order maintaining the status quo.

DISCUSSION:

With the status quo order now dissolved, there is no court order or written contract either compelling the Plaintiff Townships to continue paying the County \$53.00 per hour, per PSU or for the County to continue the same level of police services. It is in the public's interest, however, for the County Board of Commissioners to make a contractual offer for continued police services at the current levels to the Plaintiff Townships. To that extent, the proposed Resolution contains a flexible offer from the Board of Commissioners to the Plaintiff Townships giving them two options for contractual police services. These options are: (1) execute the same four-year contract signed by the other Townships with an effective date beginning when the contract is signed and extending through 2009; or (2) execute a month-to-month contract through the end of 2006 at a rate to be determined by the Board of Commissioners. If accepted, the month-to-month contract could be renewed for 2007 with rates to be determined by the Board of Commissioners in late 2006.

Under the first contract option, the Plaintiff Townships would be given the opportunity to sign a contract similar to the contract signed by the other

Townships in late 2005. The contract rates would remain the same as was accepted by the other Townships. The only difference in the Contract is the starting date. Whereas, the contract signed by the other governmental entities in late 2005 began on January 1, 2006, the proposed contract to the Plaintiff Townships would not begin until they actually signed the contract. For example, if these Townships signed the contract on June 1, 2006, the pricing provisions of the contract would begin on that date. The price to be paid by these Townships for the police services provided by the County from January 1, 2006 up to the date a new contract is signed would be determined by the Board of Commissioners and reviewed by the Court as part of the County Defendants' counterclaim for damages against the Plaintiff Townships in the pending litigation.

Under the second contract option, the Plaintiff Townships are given the choice to sign a month-to-month contract for police services. Under this Option, the Plaintiff Townships would not have to sign the four-year contract, but could still insure the seamless continuation of police services on a month-to-month basis. Under this Option, the Board of Commissioners would set the rate to be charged for this contract.

The County has determined that the cost of providing contractual police services is \$111.00 per hour, per PSU. As noted above, the Board of Commissioners formed a Police Services Committee comprised of representatives from local governmental units, including the Plaintiff Ypsilanti Township, County Administration, Board of Commissioners, Sheriff and other local police entities. It was designed to provide a forum to recommend prices for contract years 2008-2009 as well as to discuss issues concerning contract policing. As a result of these discussions, which extended into early 2006, the County agreed to back out fixed costs and overhead from the full cost to the County for a PSU. As a result, the County's full cost for a PSU dropped to \$95.00 per hour, per PSU. The County also acknowledges that under Michigan case law there is a duty to provide a minimal amount of police services within the County. Recognizing this minimal constitutional duty, the recommended rate to charge the Plaintiff Townships for the month-to-month contract is \$77.00 per hour. The \$18.00 per hour per PSU difference between the County's full cost to provide police services and what it would charge the Plaintiff Townships (\$95.00 minus \$77.00) would more than satisfy the County's responsibility to provide funding for the minimal level of police services constitutionally required in the County. The proposed Resolution gives the Plaintiff Townships until 9:00 a.m. on 21, 2006 to accept either of the two contract options. The County will voluntarily maintain the status quo until this date.

While the County is hopeful the Plaintiff Townships will accept one of the two proposed contractual options, the Resolution provides for action to be taken should these Townships reject both proposals. If both options are rejected, the County will reduce funding for police personnel in the Plaintiff Townships to a

level that would satisfy the minimal level of police services that is constitutionally required under Michigan law. The County would bear the full cost of paying for this service. County Administration has received input from the Sheriff and will request further comment before determining that number.

IMPACT ON HUMAN RESOURCES:

The proposed Resolution will have no impact on human resources unless Option 3 is implemented, in which case, the level of police services to the Plaintiff Townships will be reduced to the minimal levels that are constitutionally required.

IMPACT ON BUDGET:

If Options 1 or 2 are accepted by the Plaintiff Townships, the contract revenue will help offset the cost of providing contractual police services to those Townships. If Option 3 is implemented, the County will pay for the full cost of providing the minimal levels of police services that are constitutionally required.

IMPACT ON INDIRECT COSTS:

There are no indirect costs associated with the proposed Resolution.

IMPACT ON OTHER COUNTY DEPARTMENTS OR OUTSIDE AGENCIES:

If Options 1 or 2 are accepted by the Plaintiff Townships, they will pay the contract rate for police services outlined in those respective options. If Option 3 is implemented, the level of police services within the Plaintiff Townships will be reduced to the minimal level that is constitutionally required.

CONFORMITY TO COUNTY POLICIES:

The proposed Resolution conforms to all applicable County Policies.

A RESOLUTION EXTENDING TWO OPTIONS TO YPSILANTI TOWNSHIP, AUGUSTA TOWNSHIP AND SALEM TOWNSHIP FOR CONTRACTUAL POLICE SERVICES WITH WASHTENAW COUNTY; PROVIDING A TIME FOR THE TOWNSHIPS TO ACCEPT OR REJECT EITHER OPTION; AND PROVIDING A COURSE OF ACTION FOR THE BOARD OF COMMISSIONERS TO FOLLOW IF BOTH OPTIONS ARE REJECTED

WASHTENAW COUNTY BOARD OF COMMISSIONERS

July 5, 2006

WHEREAS, throughout 2005, Washtenaw County negotiated with local governmental units and school districts to provide contractual police services to those entities; and

WHEREAS, every governmental entity that contracted for police services in 2005, except for Ypsilanti Township, Augusta Township and Salem Township, after extensive negotiation, agreed to sign a four-year contract with the County to cover 2006-2009; and

WHEREAS, the stated reason given by representatives from these Townships for not signing the four-year contract was that the price for the last two years of the contract (2008-2009) was unknown in December, 2005 and would not be approved by the County Board of Commissioners until April, 2006; and

WHEREAS, the existing police services contracts with Ypsilanti Township, Augusta Township and Salem Township expired effective January 1, 2006; and

WHEREAS, on January 4, 2006, in an attempt to continue contractual police services in these Townships until the prices for 2008-2009 would be approved by the Board of Commissioners, the Board approved a four-month "bridge" contract (Jan-April, 2006) which would permit these Townships to seamlessly continue a contractual relationship with the County by paying for police services until the price under the four-year deal for 2008-2009 had been approved; and

WHEREAS, rather than continuing to discuss the concept of a "bridge" contract, these Townships filed suit against the County Board of Commissioners, County Administrator and selected County Commissioners, alleging, in part, that the County was estopped from entering into the four-year contract because it had made earlier promises to all of the contracting entities that it would only increase the cost of police services by 6% annually through 2010 pursuant to a "master contract;" and

WHEREAS, on January 18, 2006 at a hearing before Judge Joseph A. Costello, the visiting judge who is presiding over the litigation, the parties stipulated to an Order maintaining the status quo until further order of the court, thus giving the parties the necessary time to file motions for summary disposition; and

WHEREAS, under this stipulated Order, the Plaintiff Townships agreed to pay the County \$53.00 per PSU, per hour (the same rate as is currently paid by those entities that agreed to the four-year contract) while the County agreed not to reduce the number of deputies in the Plaintiff Townships until further order of the court; and

WHEREAS, as the litigation has now progressed, the following actions have occurred: (1) Plaintiff Townships amended their original complaint to add five new counts to the original five counts; (2) the Court granted the County Defendants' Motion for Summary Disposition on the first five counts of the original complaint; (3) the County Defendants' Motion for Summary Disposition on the remaining five counts of the Complaint has been argued before the Court with the Court dismissing three of the remaining five counts, leaving Plaintiffs with only the Open Meetings Act and Lincoln Schools' contract rescission claims remaining from their ten claims; (4) Plaintiff Townships' Motion for a Stay of Proceedings pending an appeal to the Court of Appeals was denied by the Court; and (5) County Defendants' Motion for Relief from the Stipulated Order Maintaining the Status Quo was granted by the Court; and

WHEREAS, with the Order Maintaining the Status Quo now removed, there is no court order or written contract to compel the Plaintiff Townships to pay for police services, and no requirement for the County to continue to provide for such services at the current levels; and

WHEREAS, it is in the public interest for the County Board of Commissioners to extend an offer to the Plaintiff Townships for contractual police services in those areas; and

WHEREAS, the actual cost to the County to fund one Police Service Unit is \$111.00 per PSU per hour; and

WHEREAS, during the contract negotiation process, the County created the Police Services Steering Committee consisting of representatives from the local contracting entities, including the Plaintiff Ypsilanti Township, County Administration, Board of Commissioners, Sheriff and other local police agencies; and

WHEREAS, the Committee was charged with recommending prices for the 2008-2009 contract years as well as to address other issues concerning contract policing; and

WHEREAS, as a result of discussions with the Police Services Steering Committee, which extended into early 2006, the County agreed to back out fixed costs and overhead from the cost of a Police Services Unit, thus reducing the cost from \$111.00 per PSU per hour to \$95.00 per PSU per hour; and

WHEREAS, on March 1, 2006 the Board of Commissioners approved the 2008-2009 contract prices recommended by the Police Services Committee;

NOW THEREFORE BE IT RESOLVED that the Washtenaw County Board of Commissioners approves the following contract options to be presented to the Plaintiff Townships immediately: (1) sign a contract similar to the four-year contract currently in effect for the other governmental entities receiving contract police services, with the effective date of the contract being the date it is signed by the Plaintiff Township(s) with the cost of contract services provided from January 1, 2006 through the date the contract is signed to be determined as part of the County's counterclaim in the pending litigation; or (2) sign a month-to-month contract for police services to extend for the rest of 2006 at a rate of \$77.00 per PSU, per hour, which is significantly less than the County's incurred cost of \$95.00 per PSU, per hour.

BE IT FURTHER RESOLVED that the Plaintiff Townships shall have until 9:00 a.m. on August 18, 2006 to accept one of, or reject, these contract options.

BE IT FURTHER RESOLVED that if the Plaintiff Township(s) reject both contract options, the County Administrator, after seeking input from the County Sheriff, shall begin the process of providing, at the County's sole cost, only that minimal level of police services in the Plaintiff Townships that is constitutionally required.

BE IT FURTHER RESOLVED that the Board of Commissioners directs the County Administrator to send a copy of this Resolution to Ypsilanti Township, Augusta Township and Salem Township as soon as is practicable.