



COUNTY ADMINISTRATOR
220 NORTH MAIN STREET, P.O. BOX 8645
ANN ARBOR, MICHIGAN 48107-8645
(734) 222-6850
FAX (734) 222-6715

TO: Rolland Sizemore, Jr. Chair
Ways & Means Committee

FROM: Curtis N. Hedger, Office of Corporation Counsel
Verna J. McDaniel, County Administrator

DATE: July 6, 2011

SUBJECT: Approval of Settlement with Ypsilanti Charter Township and Augusta Charter Township in the Police Services Litigation and Authorizing the County Administrator to Execute the Legal Documents Necessary to Implement that Settlement

BOARD ACTION REQUESTED:

Corporation Counsel and County Administration are requesting that the Board of Commissioners, approve the settlement of Washtenaw County's Counterclaim against Ypsilanti Charter Township for \$732,927.00 and Augusta Charter Township for \$16,500.00 and authorize the County Administrator to execute the legal documents necessary to implement that settlement.

BACKGROUND:

On January 13, 2006, Ypsilanti Charter Township, Augusta Charter Township and Salem Township filed a lawsuit against Washtenaw County, the Washtenaw County Board of Commissioners as it was then constituted, former County Administrator, Robert E. Guenzel and certain individual members of the Washtenaw County Board of Commissioners alleging a number of claims concerning the County's contractual provision of police services to the Plaintiff Townships.

The County and the Plaintiff Townships stipulated at the outset of the litigation that the County/Sheriff would continue to provide road patrol services with the Plaintiff Townships paying \$53.00 per hour per Police Service Unit ("PSU"). This stipulation, also provided, however, that this voluntary arrangement did not waive any claims, defenses, rights, duties, obligations or arguments of either the Plaintiff Townships or the County Defendants.

On February 2, 2006, the County Defendants filed a Counterclaim against the Plaintiff Townships seeking the reasonable value of the police services provided to Plaintiff Townships without a contract beginning on January 1, 2006. For purposes of its Counterclaim, the County argued that it was entitled to \$24.00 per hour, per PSU (\$77.00 per hour minus the \$53.00 per hour the Plaintiff Townships voluntarily paid for the services).

On December 6, 2006, the Plaintiff Townships did agree to sign police services contracts with the County/Sheriff on a going-forward basis with the contracts specifically stating that the

signing of the contracts would not adversely affect any existing claims of the Plaintiff Townships or the Defendants for past damages.

The Circuit Court ultimately ruled in the County's favor on every substantive claim brought by the Plaintiff Townships; however, the Circuit Court dismissed the County's Counterclaim against the Plaintiff Townships as moot based upon the signing of the police services contracts on December 6, 2006.

The Plaintiff Townships appealed the dismissal of their claims against the County to the Michigan Court of Appeals and the County cross appealed the dismissal of the Counterclaim. The Court of Appeals upheld the Circuit Court's dismissal of the Plaintiff Township's claims against the County, but reversed the Circuit Court's ruling dismissing the Counterclaim. The Court of Appeals remanded the Counterclaim back to the Circuit Court to calculate the award due the County.

Judge Costello ultimately ordered the parties to attend Facilitation before former Wayne County Circuit Judge James Rashid on June 22, 2011. Following an all-day session with Judge Rashid, he issued a non-binding recommendation that the County's Counterclaim be settled for \$749,427.00 with Ypsilanti Charter Township paying \$732,927.00 of the settlement and Augusta Charter Township paying the remaining \$16,500.00.

DISCUSSION:

The most compelling reason to accept the Facilitator's recommended settlement is to end this litigation which has now lasted for five and half years. While either the County Defendants or Plaintiff Townships could point to possible scenarios where they might reach a better result should they continue the litigation, such scenarios are speculative at best and would result in the continued accumulation of attorney fees and costs on both sides. Accepting the Facilitator's recommended settlement would end this cash outlay for both sides and permit the parties to move on from this litigation.

IMPACT ON HUMAN RESOURCES:

Approval of the proposed Resolution will have no impact on the County's human resources.

IMPACT ON BUDGET:

Approval of the proposed Resolution will add \$749,427.00 to the County's general fund.

IMPACT ON INDIRECT COSTS:

There are no indirect costs associated with this Resolution.

IMPACT ON OTHER COUNTY DEPARTMENTS OR OUTSIDE AGENCIES:

Approval of the Resolution is necessary to implement a settlement of the County's Counterclaim against Ypsilanti and August Townships. Those Townships will also have to approve the settlement before it may proceed.

CONFORMITY TO COUNTY POLICIES:

The proposed Resolution conforms to all County policies and procedures.

A RESOLUTION AUTHORIZING THE COUNTY ADMINISTRATOR TO SIGN THE
LEGAL DOCUMENTS NECESSARY TO COMPLETE A SETTLEMENT WITH YPSILANTI
CHARTER TOWNSHIP AND AUGUSTA CHARTER TOWNSHIP IN THE POLICE
SERVICES LITIGATION

WASHTENAW COUNTY BOARD OF COMMISSIONERS

July 6, 2011

WHEREAS, on January 13, 2006, Ypsilanti Charter Township, Augusta Charter Township and Salem Township (“Plaintiff Townships”) filed a lawsuit against Washtenaw County, the Washtenaw County Board of Commissioners, as it was then constituted, then County Administrator, Robert E. Guenzel and certain individual members of the Board of Commissioners, (“Defendants”) alleging a number of claims concerning the County’s contractual provision of police services to the Plaintiff Townships; and

WHEREAS, the existing police service contracts expired on December 31, 2005 and none of the Plaintiff Townships signed the new police services contracts which had been extensively negotiated and offered to all the contracting police entities, including the Plaintiff Townships, for 2006 through 2009; and

WHEREAS, Washtenaw County and the Plaintiff Townships stipulated at the outset of the litigation that Washtenaw County would continued to provide police services to the Plaintiff Townships with the Plaintiff Townships paying \$53.00 per hour per Police Service Unit (“PSU”) for those services, provided, however that the stipulation explicitly provided that this voluntary arrangement did not waive any claims, defenses, rights, duties, obligations or arguments of either the Plaintiff Townships nor the Defendants; and

WHEREAS, on February 2, 2006, Defendants filed a Counterclaim against the Plaintiff Townships seeking the reasonable value of the police services provided to Plaintiff Townships without a contract beginning on January 1, 2006; and

WHEREAS, on July 5, 2006 the Plaintiff Townships still had not signed police service contracts; accordingly the County provided them two options: (1) sign the same four-year contracts that the other contracting entities had signed on a going-forward basis; or (2) sign month-to-month contracts for \$77.00 per hour per PSU; and

WHEREAS, the \$77.00 per hour per PSU charge, which is less than the County’s actual cost to provide the service, was reached after County Administration conferred with its internal finance personnel and outside expert Plante, Moran who examined all the relevant data concerning the County’s provision of contractual police services; and

WHEREAS, on December 6, 2006, the Plaintiff Townships signed police services contracts with the County on a going-forward basis with the contracts specifically stating that the signing of the contracts would not adversely affect any existing claims of the Plaintiff Townships or the Defendants for past damages; and

WHEREAS, the County requested, as damages for their Counterclaim, \$24 dollars per hour per PSU (\$77.00 per PSU minus the \$53.00 per hour per PSU rate which the Plaintiff Townships voluntarily paid the County from January 1, 2006 through December 6, 2006; and

WHEREAS, after the submission of motions for summary disposition, the Circuit Court ultimately ruled in the County's favor on every substantive claim except for the County's Counterclaim which the Circuit Court dismissed as moot based upon the signing of the police services contracts on December 6, 2006; and

WHEREAS, the Plaintiff Townships appealed the dismissal of their claims to the Michigan Court of Appeals, and the County cross appealed the dismissal of the Counterclaim; and

WHEREAS, the Michigan Court of Appeals upheld the Circuit Court's dismissal of the Plaintiff Township's claims against the County, but reversed the Circuit Court's ruling dismissing the County's Counterclaim and remanded the matter back to the Circuit Court to calculate an award; and

WHEREAS, on June 2, 2010, the Washtenaw County Board of Commissioners approved a settlement of its Counterclaim with Salem Township;

WHEREAS, on June 22, 2011, the remaining parties in the lawsuit (Washtenaw County, Ypsilanti Charter Township and Augusta Charter Township) attended a non-binding Court-ordered facilitation before former Wayne County Circuit Judge James Rashid; and

WHEREAS, following this facilitation, Facilitator Rashid proposed that the County's counterclaim be settled for \$749,427.00 with Ypsilanti Charter Township paying \$732,927.00 and Augusta Charter Township paying the remaining \$16,500.00; and

WHEREAS, the Washtenaw County Board of Commissioners believes that it is in the best interest of the tax payers of Washtenaw County to resolve this long-standing litigation and move forward.

NOW THEREFORE, BE IT RESOLVED that the Washtenaw County Board of Commissioners authorizes the County Administrator to sign the legal documents necessary to settle the dispute over the amount of the County's Counterclaim against Ypsilanti Charter Township and Augusta Charter Township in the on-going police services litigation for a total payout to Washtenaw County of \$749,427.00 with Ypsilanti Charter Township paying \$732,927.00 and Augusta Charter Township paying the remaining \$16,500.00.

H: general/yptaugsettle